



906-WP-16417-2024 BCMG.ODT

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16417 OF 2024

An Advocate
Versus

...Petitioner

Bar Council of Maharashtra & Goa
Through Chairman and Ors.

...Respondents

Mr. Santosh Paul, Senior Advocate i/b An Advocate in person for Petitioner.
Mr. Yogendra Rajgor For Respondent No.1.
Mr. Shekhar Jagtap a/w Ms. Sairuchita Choudhary for Respondent No.2.
Ms. P.J. Gavhane, APP for Respondent No.10-State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 22 JANUARY 2025

P.C.

1. We have heard Mr. Santosh Paul, learned Senior Advocate appearing for the petitioner. The petitioner appears in person. At the outset we may observe that the petitioner stated before us on the earlier occasion, that as the proceedings are against the Bar Council of Maharashtra & Goa (BCMG) and as also against the Bar Council of India (BCI), she could not engage the services of an advocate who would be willing to file vakalatnama on her behalf. Mr. Paul, Senior Advocate has appeared for the petitioner. He intends to make submissions through Video Conferencing. Considering the well settled principles, as also recognised under the Advocates Act, a litigant needs to be permitted to be represented by a person of his/her choice in court

proceedings. Accordingly we intend to hear Mr. Paul, learned Senior Advocate.

2. The writ petition is served on the Respondents. On 14th January 2025, we had issued notice when the following order was passed:-

1. Petitioner has filed this petition in-person. She states that she intends to be represented by an Advocate on record. Let Vakalatnama on behalf of petitioner be accordingly entered.
2. Issue notice to the respondents, returnable on 21 January 2025.
3. In addition to Court notice, the petitioner is permitted to serve the respondents by private service by all permissible modes and place on record an affidavit of service before the returnable date.
4. In the event, despite service the respondents are not represented, the Court shall hear the appearing parties and pass appropriate orders.
5. Ms. Sairuchita Chowdhary appears and states that Mr. Shekhar Jagtap, usually appears as counsel for Respondent No.2-Bar Council of India. She waives service for Respondent No.2. A copy of the petition be served on the Advocate for respondent No.2 during the course of the day.
6. Stand over to 21 January 2025.

3. The present proceeding was listed yesterday at Sr. No. 52, however as it did not reach it's turn for hearing, an application was made by the petitioner at the time, of rising of the Court for the day, when the respondents were also present through their Advocates that the proceedings be taken today for hearing on interim reliefs, considering the urgency.

4. At the outset we may note that no reply affidavit in opposition, either to the admission of the writ petition or on interim reliefs is filed by any of the

respondents, although, in our opinion when there was sufficient notice for a short affidavit to be placed on record.

5. Be that as it may, as submitted by Mr. Paul yesterday as also today, that in the facts and circumstances of the case, the petitioner is praying for urgent ad-interim relief of a stay to the impugned order which is stated to be passed by Respondent No.2 Bar Council of India (for short “BCI”), although the complaint against the petitioner was filed before Respondent No.1- Bar Council of Maharashtra & Goa (for short “BCMG”) under Section 35 of the Act.

6. Mr. Paul has drawn our attention to the record, more particularly to contend that three advocates (the complainants), who are stated to be the members of the Advocate Association of Western India (for short “AAWI”) were aggrieved by certain actions of the petitioner in respect of an incident which was alleged to have taken place in Room No.18 -Bar Room, provided to the AAWI, in the premises of the Bombay High Court. The alleged incident is dated 4 April 2016 which is *inter alia* to the effect that the petitioner had thrown on the floor the briefs of the complainants and that such actions were videographed by one of the complainants. It appears that in this regard there are complaints and cross complaints on such incident. The complainants contended that they being the members of the AAWI, they were sitting at a particular place in Room No.18, and their place was

sought to be used by the petitioner to their inconvenience. It appears that on such issue, there were quarrels and disputes between the petitioner and these complainants which stemmed the incident. Mr. Paul has submitted that although such incident is alleged to have taken place on 4th April 2016 , and assuming that the AAWI was made aware of such incident, there was no complaint whatsoever by the AAWI against the petitioner on such incident, also no proceeding at the behest of AAWI were adopted.

7. Mr. Paul has submitted that significantly, after one year and five months of such incident, the three complainants lodged a complaint with the BCMG on 8 September 2017 titled as a complaint under Section 35¹ of the Act. A copy of the said complaint is annexed to the Petition. A reading of the complaint depicts it to be quite peculiar, as seen from Paragraph No.3 which is a grievance that the petitioner is using the premises of AAWI although she is not its member. She also uses the facilities of electricity, Air Conditioning, as also charging her laptop and mobile phone, which is alleged to be without any authority. There are other incidents which are referred however without any particulars. More importantly, Paragraph Nos.4, 5 and 6 of the complaint, according to Mr. Paul, are vague allegations of the complainants which are totally irrelevant, in the context of the prayers made in the

1Section 35 : punishment of Advocates for misconduct.

complaint are concerned, namely of an action to be taken against the petitioner under Section 35 of the Act.

8. Mr. Paul has submitted that there are three detailed replies filed by the petitioner to the complaint filed against the petitioner under Section 35 of the Advocates Act. According to Mr. Paul the replies clearly indicate the entire background which preceded such belated complaint being filed against the petitioner, which in his contention, is at the behest of persons /advocates whose names are specified in such replies along with the relevant facts in that regard. It is next submitted that the petitioner in her reply had made specific allegations against some advocates and her contentions in that regard pertained to serious matters. It is petitioner's contention that the complainants case against the petitioner for such reasons was far from bonafide and in fact was a retaliation / counterblast, to the previous incidents including complaints made by the petitioner against some members of the BCMG in respect of which even criminal proceedings under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are pending. These are specific pleas which are taken by the petitioner to contend that the complaint as made by these three advocates, against the petitioner, is in fact founded on the backdrop of the different proceedings initiated by and against the petitioner. The petitioner in the reply has also furnished details as to how the BCMG proceedings would be

required to be said to be completely linked and/or based on such incidents which had taken place in the past and not the incident of 4th April 2016 as alleged in the complaint. The three replies filed by the petitioner are placed on record of the present proceedings (Page Nos.78 to 105).

9. Mr. Paul has also submitted that the notice dated 2 April 2024, for hearing on the complaint was issued to the petitioner by the BCMG, informing the petitioner, that the hearing of the complaint was fixed on 14 April 2024. It was not issued by the BCI. It is contended that such notice in no manner informed the petitioner that the complaint, which although was filed under Section 35 of the Act, would not be decided by the Disciplinary Committee of BCMG and it would be a complaint treated under Section 36 of the Act to be decided by a different authority namely the BCI. This more particularly as the complaint was not filed before the BCI and/or there was no intimation to the petitioner that the complaint is in fact been treated as the complaint before the BCI.

10. Mr. Paul would submit that as to what happened on the date of hearing ie; on 14 April 2024, is quite peculiar, namely that there were additional affidavits which were filed by the complainants being affidavit dated 13 April 2024. There were two such affidavits of Complainant No.3 supporting what had happened on 4 April 2016 at around 4.00 p.m. to contend that videography and photo of said incident was available and annexed to the said

affidavit alongwith certain materials as pointed out from the said affidavit annexed at Page No. 122 of the paper book. There was another affidavit filed by Complainant No.3 stated to be affidavit under Section 65-B of the Evidence Act, 1872. These affidavits are stated to be served on the petitioner on the date of hearing itself. Mr. Paul submits that no opportunity was granted to the petitioner, to rebut the said affidavits at the hearing held on 14 April 2024, which according to the petitioner in reality and in law cannot be termed as any lawful hearing, also in which, none of the complainants were present, who are stated to be represented by the advocate. This is fairly conceded by Mr. Jagtap, learned Counsel for BCI.

11. Mr. Paul thus submits, that such alleged hearing having taken place on 14 April 2024, the impugned order as seen from its contents was passed on the very same day i.e, on 14 April 2024. However, after more than four months, the impugned order was forwarded to the petitioner by Registered Post, which was dispatched on 29 August 2024. A copy of the envelope dispatching the said order is annexed to the Petition. The impugned order in such manner was received by the petitioner on 2 September 2024, i.e., almost after more than four months from the actual date of the order.

12. Mr.Paul submits that the consequences which are brought about by the impugned order are extremely harsh, apart from the impugned order being wholly illegal, when it suspends the petitioner's sanad for a period of two

years, who has a 24 year standing as an Advocate. Mr. Paul submits that all norms of fairness and reasonableness, in the conduct of such proceedings have been breached and completely overlooked, that too without even a basic notice being given to the petitioner, on the jurisdiction of the forum adjudicating the complaint. It is his submission that the procedure which was adopted in passing the impugned order was *ex facie* illegal and against the settled principles of law, which were expected to be adopted, by such authority, when its actions entail civil consequences i.e. to take away the petitioner's source of livelihood in prohibiting her to practice law as an Advocate for a period of two years. It is submitted that the petitioner is a single mother with two daughters who are all seriously prejudiced by the impugned order. It is hence submitted that, the petitioner has made out a strong *prima facie* case to be entitled for an interim relief of a stay to the impugned order.

13. We have heard Mr. Jagtap on behalf of BCI. We have also called the Secretary of BCMG to place before us the file of the proceedings and more particularly the impugned order as originally signed. However, we are informed that the original signed order is not available as it would be with the BCI. We however note from the file as produced before us that the entire file of the proceedings is with the Secretary BCMG which includes notice of hearing dated 2 April 2024 issued by the BCMG. We find this to be quite

astonishing that the original order would however be in the file of the BCI and all other proceedings of the complaint with the BCMG.

14. Be it so, Mr. Jagtap, learned Counsel for BCI/Respondent No.2 submits that the petitioner has alternate remedy under Section 38 of the Act to approach the Supreme Court, if she is aggrieved by the order passed under Section 36 of the Advocates Act. In so far as the basic contentions as urged on behalf of the petitioner, on the procedural fairness required to be followed in adjudicating the complaint made to BCMG and proceeding being not initiated before the BCI, and in such context, the petitioner not being intimated, of the transfer of the proceedings to the BCI, Mr. Jagtap could not controvert these contentions as urged on behalf of the petitioner. This when at all material times both the BCMG and the BCI were aware of the status and the factual position of the proceedings. Also, when the complaint in question was filed under section 35 of the Advocates Act, as to when the same was transferred to the BCI and whether an intimation in that regard was issued to the petitioner, could not be answered by Mr. Jagtap.

15. Learned counsel for the BCMG submits that he would adopt the contentions as urged by Mr. Jagtap.

16. Accordingly, we proceed to consider the rival contentions of the parties on interim reliefs, as being pressed by the petitioner.

17. At the outset we may observe that the nature of the impugned order certainly entails civil consequences, as it has the effect of taking away the source of livelihood of the petitioner who is an Advocate having a standing of 24 years. In our opinion not only substantive fairness but procedural fairness was required to be adhered to, by the respondents in conducting the impugned proceedings against the petitioner. Further the principles of natural justice appear to have been thrown to the winds which was expected from a responsible statutory body, which is clear from the fact that affidavits of the complaint dated 13 April 2024 were served on the petitioner on the day of the hearing i.e. on 14 April 2024 without any opportunity being granted to the petitioner to deal with such new material, and astonishingly on the same day the impugned order is stated to have been passed.

18. Further, *prima facie* we may observe that, there are disputes between the petitioner and certain advocates who are members of the BCMG. This was contended by the petitioner to be the basic reason for the proceedings of the complaint being initiated against the petitioner by the said three complainants at the behest of such persons. A specific plea to this effect including setting out the names of such persons, was taken by the petitioner in her replies, which in our opinion certainly deserved an appropriate consideration when the complaint was filed after a period of more than one year and five months, of the alleged incident having taken place, in room

no.18 of the AAWI. Further, almost seven years were taken to pass orders on the said complaint, and that too, the hearing being wrapped up on 14 April 2024, in the manner as noted by us. What is further disturbing is that although an order was stated to have been passed on 14 April 2024, as to how it could be forwarded to the petitioner, after almost four months, which was received by the petitioner on 2 September 2024 itself raises serious doubts on the legal propriety of the impugned order. This, as contended on behalf of the petitioner certainly is neither acceptable nor logical.

19. Further, things appears to have happened too casually, the record indicates that complaint was admittedly filed under Section 35 of the Act before the BCMG. As to when and under what procedure (even if so required by law) it was transferred to the BCI was not informed to the petitioner. In fact, a notice dated 2 April 2024 intimating the petitioner the date of hearing on 14 April 2024, was issued by the Secretary of the BCMG, which also does not indicate that the jurisdiction of the committee is not with the BCMG but with the BCI and/or that the adjudicating forum is not the committee of the BCMG but the BCI. A party to the proceedings being not informed of the jurisdictional authority which decide the complaint itself, is fatal to all norms of fairness, this was the most basic expectation of the petitioner.

20. Prima facie, it appears to us that the intent of the complainants appear to be something else and quite extraneous to the alleged incident of 4 April 2016. We may also observe that a Division Bench of this court in Public Interest Litigation No. 23 of 2015 (Bombay Lawyers' Association vs State of Maharashtra and Others) in paragraph No. 6 of its order dated 22 March 2016 has categorically observed that no Bar Association can deny entry to any member of the Bar, in the Bar room on the ground that he or she is not a member of the local Bar Association. It was also observed that there are specific instances of members being denied entry in the Bar rooms on the ground that the concerned member of the Bar is not a member of the local Bar Association, and in such context the petitioner therein was free to make a representation to the appropriate authority of the Bar Council of Maharashtra and Goa. It was also observed that if the entry of an Advocate is prevented by other members of the Bar Association, such aggrieved member can always approach the Bar Council of Maharashtra and Goa which can take an appropriate action in this regard. In the present case, the AAWI itself had not made any complaint against the petitioner and even if such complaint was to be made by any member, it could not have been a complaint entailing consequences of suspension of the licence to practice for two years as imposed on the petitioner.

21. Thus, *prima facie* we do not find any reason to reject the contentions as urged on behalf of the petitioner and as contended by her in her replies filed to the complaint in question, to contend that the complainants were not pursuing the said complaint bonafide and / or in pursuing a stale incident. Further what is more important is the case of the petitioner that the complaint was not bonafide or was untenable, being a counter blast in view of the proceedings taken by her against some advocates/ member of the BCMG appears to be of serious nature, as categorically set out in her replies to the complaint., which in our opinion was a relevant aspect to test the bonafides of the complainants in pursuing their belated complaint against the petitioner.

22. We are also quite astonished as to for what reason the BCMG kept the complaint pending for long years, and / or did not decide the same at the BCMG so as to let the same being transferred to the BCI, is another factor which needs to be gone into. Whether such laxity was intended for ultimate transfer of the proceeding to BCI considering the background and peculiar facts of the case, is also a question.

23. In the light to the above discussion, certainly the petition requires to be heard for final hearing. In the facts and circumstances of the case and considering the rights of the petitioner guaranteed under Article 14 of the

Constitution of India and 19(1)(g) and 21 of the Constitution of India the petitioner is entitled to interim reliefs.

24. We accordingly proceed to pass the following order :

- (i) Rule
- (ii) Respondents waives service.
- (iii) Reply affidavit to be filed within six weeks from today. Copy of the same be furnished to the Petitioner.
- (iv) Pending final disposal of the petition the impugned order dated 14 April 2024 passed by respondent No.2 Bar Council of India shall remain stayed.
- (v) As a consequence of the aforesaid orders the Petitioner is entitled to practice as an advocate, duly enrolled on the rolls of the BCMG.
- (vi) Ordered accordingly.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)