

Bar Council of Maharashtra

Vs

M. V. Dabholkar and Others

Civil Appeals Nos. 1461-1468 of 1974

(CJI A. N. Ray, K. K. Mathew, Syed Fazali, A. C. Gupta, M. H. Beg, V. R. Krishna Iyer JJ)

13.08.1975

JUDGMENT

RAY, C. J.

1. (for himself and Khanna, Mathew, Gupta and Fazal Ali, JJ.) - These appeals were placed before this Bench for consideration of the question whether the Bar Council of a State is "a person aggrieved" to maintain an appeal under Section 38 of the Advocates Act, 1961 hereinafter called the Act.
2. The Bar Council of Maharashtra on August 8, 1964 considered a complaint received from the High Court against the respondents and resolved that the complaint received from the High Court against the respondents be referred to the disciplinary committee. Another resolution was passed by the Bar Council of Maharashtra on the same day whereby Messers Hotchand Advani, R. W. Adik and S. C. Chagla were elected as members of the disciplinary committee to enquire into the complaints.
3. The aforesaid disciplinary committee met on March 19, 1965 and heard the advocates for the Bar Council of the State of Maharashtra. After Considering the papers before the committee, it directed the Registrar to issue notices under Section 35(2) of the Act "parties concerned including the Advocate-General". The Committee also expressed the opinion that "there is a prima facie case of professional misconduct".
4. The Bar Council of Maharashtra on May 18, 1965 issued notices under Section 35 of the Act to the respondents. The notice was described as a suo motu inquiry against the respondents. The notice proceeded with the recital that it came to the notice of the Bar Council of Maharashtra that the respondents stood at the entrance of the court house at the Presidency Magistrate's Court, Esplanade, Fort Bombay and solicited work and generally behaved at that place in an undignified manner and the said acts amounted to professional and/or other misconduct and the Bar Council constituted disciplinary committee and the inquiry was entrusted to the committee consisting of Messrs H. G. Advani, R. V. Adik and S. C. Chagla.
5. The said disciplinary committee heard evidence upto August 31, 1968, the Bar Council of Maharashtra passed a resolution requesting the aforesaid disciplinary committee to proceed with the inquiry which was pending before them prior to March 31, 1969.
6. The disciplinary committee of the Bar Council of Maharashtra on June 27, 1973 found the respondents guilty of conduct which seriously lowered the reputation of the Bar in the eyes of the

public. The disciplinary committee directed that the respondents would stand suspended from practising as advocates for a period of three years. The suspension orders were to be operative from August 1, 1973.

7. The respondents preferred appeals before the Bar Council of India. In these appeals, the respondents impleaded the Bar Council of Maharashtra as respondents. The disciplinary committee of the Bar Council of India on April 14, 1978 allowed the appeals and set aside the orders of the disciplinary committee of the Bar Council of Maharashtra. While setting aside the orders of the disciplinary committee of the Bar Council of Maharashtra, the disciplinary committee of the Bar Council of India stated as follows :

The Bar Council of Maharashtra has not appeared even though they started the proceedings suo motu and we do not pass any order as to costs and we direct each party will bear their costs. However, We have gone through the evidence ourselves and also the same has been placed in detail by the appellants All that we can say is that we expected the Bar Council of Maharashtra to be represented in the appeal because proceeding were started suo motu.

8. These statements of the disciplinary committee of the Bar Council of India indicate that the Bar Council of Maharashtra should have appeared before the disciplinary committee of the Bar Council of India.

9. The scheme of the Advocates Act in short is as follows.

10. There are State Bar Council of India. Every Bar Council is a body corporate.

11. The functions of a State Bar Council are inter alia to entertain and determine cases of misconduct against advocates on its roll and to safeguard the rights, privileges and interests of advocates on its roll.

12. The functions of the Bar Council of India are inter alia to lay down standards of professional conduct and etiquette, to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of State Bar Councils, to safeguard the right privilege and interests of advocates and to exercise general supervision and control over State Bar Councils.

13. Disciplinary committees are constituted by each Bar Council. A Bar Council is required to constitute one or more disciplinary committees each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to Section 3(2) of the Act and are not members of the Council, and the senior most advocate amongst the members of a disciplinary committee shall be its Chairman.

14. When the executive committees of a State Bar Council and of the Bar Council of India and an enrolment committee of the State Bar Council and the legal education committee of the Bar Council of India are to consist of members elected by the Council from amongst it members, it is noticeable that the disciplinary committees of Bar Council of State as well as of Bar Council of India shall consist of three persons of whom two shall be elected by the Council from amongst its member and the other shall be a person co-opted by the Council from advocates who are not otherwise members of the council.

15. Chapter V of the Act relates to the Conduct of Advocates Chapter V contains Sections 35 to 44.

Section 35 states that where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct that inquiry to be made by another disciplinary committee of the State Bar Council. The disciplinary committee of a State Bar Council shall fix a date for the bearing of the case and shall cause a notice to be given to the advocate concerned and to the Advocate-General of the State. The disciplinary committee of the State Bar Council may make any of the following orders namely, (a) dismiss the complaint, or where the proceedings were instated at the instance of the State Bar Council, direct that the proceedings be filled. (b) reprimand the advocate, (c) suspend the advocate for such period as it may deem fit. (d) remove the name of the advocate from the State roll of advocates.

16. Section 36 speaks of disciplinary powers of the Bar Council of India and provides that where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee of the Bar Council of India may either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceeding for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

17. Section 37 speaks of appeal to the Bar Council of India. This section states that any person aggrieved by an order of the disciplinary committee of a State Bar Council or the Advocate-General of the State may, within sixty days of the date of communication of the order, prefer an appeal to the Bar Council of India.

18. Section 38 provides for appeal to the Supreme Court. Section 38 states that any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 or the Attorney-General of India or the Advocate-General of the State as the case may be, may prefer an appeal to the Supreme Court.

19. Section 49 of the Act provides that the Bar Council of India may make rules for discharging its functions under the Act and in particular such rules may prescribe inter alia the standards of professional conduct and etiquette to be observed by advocates. The Bar Council of India in exercise of the rule-making power under Section 49(c) of the Act on July 10 and 11, 1954 approved the rules of standards of professional conduct and etiquette. The standards of professional conduct and etiquette are described in five sections. The first section deals with duty of advocates to the Court. The second section speaks to duty of advocates to the clients. The third section consists of rules regarding duty of advocates to opponent. The fourth section prescribes duties of advocates to colleagues. The fifth section lays down restriction on advocates on other employments.

20. The present appeals touch on Rule 36 of the Rules of the Bar Council of India. Rule 36 is in the fourth section under the heading "duty to colleagues". Rule 36 speaks that an advocate shall not solicit work or advertise either directly or indirectly, whether by circular, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned.

21. The question for consideration is the meaning of the words "any person aggrieved by an order made by the disciplinary committee of the Bar Council or India" occurring in Section 38 of the Act. It is noticeable that in Section 37, the Advocate-General of the State and in Section 38, the Attorney-General or the Advocate-General of the State as the case may be, have been given specific rights of appeal. These rights were introduced into the Act by amendments made in the year 1974 by Amending Act 60 of 1973.

22. In *Adi Pherozshah Gandhi v. H. M. Seervai*, Advocate-General of Maharashtra, Bombay ((1971) 1 SCR 863 : (1970) 2 SCC 484) the question which fell for consideration was whether the appeal filed by the Advocate-General of Maharashtra before the Bar Council of India was competent. The majority view was that the Advocate-General of the State was not competent to file an appeal of the Bar Council of India. In the *Adi Pherozshah Gandhi* case (supra), the disciplinary committee of the State Bar Council was satisfied that there was no reason to hold *Adi Pherozshah Gandhi* guilty of professional misconduct or other misconduct. The Advocate-General of Maharashtra filed an appeal before the Bar Council of India. The appellant objected to the locus standi of Advocate-General before the Bar Council of India. That objection was overruled and the appeal filed by the Advocate-General was accepted by the disciplinary committee of the Bar Council of India. The disciplinary committee of the Bar Council of India held the advocate, *Adi Pherozshah Gandhi* guilty of misconduct and suspended him from practice for one year. The advocate preferred an appeal under Section 38 of the Act to this Court. In view of majority decision, the appeal filed by *Adi Pherozshah Gandhi* was accepted by this Court on the ground that the Advocate-General of Maharashtra was incompetent to file as appeal. It is in this background that amendments have been introduced into Section 37 and 38 of the Act conferring right of appeal on the Advocate-General of State and the Attorney-General of India under Section 37 and 38 respectively.

23. The respondents contended on the ruling of this Court in *Adi Pherozshah Gandhi's* case (supra) that the Bar Council of the State is not a person aggrieved to maintain an appeal against a decision of its disciplinary committee for these reasons. First, the Bar Council of a State is not an aggrieved person because Bar Council has not suffered any legal grievance, and the decision of the Bar Council of India has not deprived the Bar Council of the a State of anything. Second, the allegation that order of the disciplinary committee of the Bar Council of India is wrongfully made does not by itself give any grievance to the Bar Council a State. The person must be aggrieved by the order and not by the order and not by the consequences which ensue. Third, it is not the duty of the State Bar Council to attempt to set right any alleged error of the disciplinary committee of the Bar Council of India. The reason is that no such duty has been imposed or cast by law on the Bar Council of a State. Fourth, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. Fifth, the bar Council of a State is subordinate to Bar Council of India and is, therefore, not competent to appeal against any order of the superior body. Finally, an appeal could have been filed by the Advocate-General or the Attorney-General of India who have the right to appeal but they have chosen not to do so.

24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Council therefore entertain cases of misconduct against advocates. The Bar Council are to safeguard the rights, privilege and interest of advocates. The Bar Council is a body corporate. The disciplinary committee are constituted by the Bar Council. The Bar Council is not the same body as its disciplinary committee. One of the principal functions of the Bar Council in regard to standard of professional conduct and etiquette of advocates to receive complaints against advocates and if the

Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. The Bar Council of a State may also of its motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. The Bar Council has a very important part to play, first in the reception of complaints, second in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its disciplinary committee. The initiation of the proceeding before the disciplinary committee is by the Bar Council of a State. A most significant features is that litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.

25. In finding out meaning of the words "person aggrieved by an order made by the disciplinary committee of the Bar Council of India", two features are to be kept in the forefront. First there is no its in proceedings before the disciplinary committee. When the disciplinary committee exercises the power to reprimand the advocate, or suspend the advocate from practice or remove the name of the advocate, the committee does not decide a suit between the parties. The Bar Council in placing a matter before the disciplinary committee does not act as prosecutor in a criminal case. A complainant who prefers a complaint against an advocate is not like a plaintiff in a civil suit. The complaint examined by the Bar Council in order to find out whether there is any reason to believe that any advocate has been guilty of misconduct. The Bar Council may act on it's own initiative on information which has come to it's notice in the course of it's duties. Second, there is no party to the disciplinary proceedings. It is because the Bar Council, the Attorney-General, the Advocate-General, as the case may be, all act in protecting the interest of advocates, the interest of the public. In so acting there is no conflict between the advocate and any other person. The reason is that it is professional conduct, professional etiquette, professional ethics, professional morality, which are to be upheld, transgression of which result in reprimanding the advocate or suspending him from practice or removing his name from the roll.

26. With regard to the conduct of the advocates, the state Bar council plays an important part, vis-a-vis the disciplinary committee constituted by the Bar Council. First, under Section 35(1A) of the Act the State Bar Council may either of its own motion or on an application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of the State Bar Council of the State Bar council. This indicates the watch that the State Bar Council has to keep. Its task does not cease on placing hand the abiding interest of the State Bar Council and of the other the duty of guarding the professional ethics with which it is entrusted. Second, under Section 36(2) of the Act, a State Bar Council may make a report to the Bar Council of India to withdraw before the disciplinary committee of the Bar Council of India any proceeding for disciplinary action against any advocate pending before the disciplinary of a State Bar Council. These provisions indicate that after the State Bar Council has placed the matter before its disciplinary committee, the Bar Council continues its check on the proceedings. These courses of action are procedural. These steps do not give the State Bar Council any power to deal with the decisions of the disciplinary committee. The reason why the State Bar Council is empowered under the Act to withdraw proceedings from one disciplinary committee and give it to another or to have the disciplinary proceedings withdrawn from the State for determination by the disciplinary committee of the Bar Council of India is that the State Bar Council is all the time interested in the task of preserving the profession against impurities in the

standards of conduct. The Bar Council is the collective representative of the lawyers, the public in regard to the observance of professional ethics by persons belonging to the noble profession.

27. The words "person aggrieved" are found in several statutes. The meaning of the words "person aggrieved" will have to be ascertained with reference to the purpose and the provision of the statute. Sometimes it is said that the words "person aggrieved" correspond to the requirement of locus standi which arises in relation in relation to judicial remedies.

28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach rights but deal with professional conduct and morality. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

29. The pre-eminent question : is what the interest of the Bar Council ? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

30. The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession. The grievance of the Bar Council is to be looked at purely from the point of view of standards of professional conduct and etiquette. If any decision of the disciplinary committee of the Bar Council of India is according to the State Bar Council such as will lower the standards and imperil the high traditions and values in the profession and the profession and the interest of the Bar.

31. The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the Statute. In disciplinary proceedings before the disciplinary committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represent the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocate is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry starts, the Bar

Council has no control has no Control over its decision. The Bar Council may entrust it to another it to another disciplinary committee or the Bar Council may make a report to the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to disciplinary committee, the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

32. For these reasons we hold that the Bar Council is an aggrieved person to maintain an appeal under the Act.

33. The appeals will now be heard on merits by a Division Bench.

Beg, J (concurring) - I not only concur with the conclusion reached by My Lord the Chief Justice and the reasons given to support it, but I think that we can and should hold that there was actually a "lis" between the Bar Council and the allegedly delinquent advocates who were hauled up before its disciplinary committee, on complaints sent by the executive committee of the State Bar Council, for what were said to be acts of professional misconduct.

35. The learned Chief Justice has very clearly and succinctly set out the reasons why a State Bar Council is a "person aggrieved" entitled to appeal against orders in disciplinary proceedings against members of the Bar of the State. It represent the Bar of the State. It represents the Bar of the State. It is the "keeper of the conscience" and the guardian of the interests of members of the Bar. It acts "as the protector of the purity and dignity of the profession" Its function in relation to disciplinary proceedings, is to entertain complaints against advocates, and, when there is a prima facie case of misconduct, to initiate proceedings by sending the complaint to its disciplinary committee. It has an interest in seeing that correct decisions are given upon matters involving allegations of misconduct against members of the bar of the state. My learned brother Krishna Iyer has indicated the wide range and the social significance and dimensions of this interest.

36. A State Bar Council is composed primarily of members elected from amongst Advocates of a State. Its statutory functions are given in Section 6 of the Advocates Act, 1961 (hereinafter referred to as the Act). Amongst these, we are especially concerned here with clauses (c) and (d) of Section 6(1) of the Act, which read as follows :

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

37. Under Section 9 of the Act, the State Bar Council constitutes is disciplinary committee consisting of

Three persons of whom two shall be persons elected by the Council from amongst is members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualification specified. . . .

Under section 10 it elects an executive committee of five members and an enrolment

committee of three members. Thus the State Bar Council creates through its committees. Each committee has distinct and separable functions. Each could, therefore, be said to have a "persona" and an entity of its own which is distinguishable from that of the Bar Council as a whole. Each committee, no doubts acts for the Bar Council, but members are likely to be different although this is not necessarily so, in any case, when the State Bar Council has sent a case to its disciplinary committee, under Section 35 of the Act, that committee proceeds as an independent and impartial authority which tries a complaint and dismisses it or directs proceedings to be filed, or, upon finding an advocate guilty, punishes him by either reprimanding him, suspending him from practice for a specified period, or orders removal of his name from its role of advocates. Indeed, Section 42(1) of the Act gives the disciplinary committee the powers of a civil court under the Civil Procedure Code; and, Section 42(2) enacts that its proceedings shall be "deemed" to be judicial proceedings for the purposes mentioned there.

38. At the trial of a complaint opportunities to be heard must be given to the Advocate General and to the advocate who is tried by it. This has to be done because there are disputes and conflicting interests and points of view on which the disciplinary committee has to give the decisions. The Advocate-General can appear either personally or through an advocate representing him. He presumably represents public interest as well as the interests of the legal profession of which he is the formal head in the State. It is true that there is no provision in Section 35 of the Act for impleading the State Bar Council which, its executive side, initiates the proceedings by sending the case to its disciplinary committee. But, if the Bar Council has a separable interest, as a guardian of the rights and privileges of the members of the Bar, specifically, mentioned the Section 6(1)(d) of the Act there is no reason why the right to represent this interest before its own disciplinary committee as well as before the Bar Council of India, on an appeal under Section 37 of the Act, or in the further Bar Council of India, on an appeal under Section 38 of the Act, should be denied to it. Neither Section 37 nor Section 38 of the Act mention the State Bar Council as a separate entity. Nevertheless, if, as we are holding, it can have the locus standi and rights of a "person aggrieved" affected by the results of such proceedings. I see no reason why we should itself and the allegedly delinquent advocate towards the decision of which the proceedings are directed.

39. The term "lis" is not confined to litigation by means of a suit in a court of law. In *Butler v. Mountgarret* (7 HLC 633, 641 : 11 ER 252), it was held that a "suit" is not necessary to constitute lis". It was pointed out there that "a family controversy capable of being litigated is a lis mota". In *B Johanson & Co. (Builders) v. Minister of Health* ((1947) 2 All ER 395, 399), Lord Greene, M. R. said :

Lis implies the conception of an issue joined between two parties. The decision of a lis ... is the decision of that issue.

40. If the State Bar Council, acting through its executive committee has found a prima facie case to be sent and tried by its disciplinary committee it performs the functions of a prosecuting agency. It does so in the discharge of its duty to safeguard "the rights, privileges and interests" of advocates as a whole on its roll which are affected by the misconduct of an advocate. There are, therefore, triable issues between it and the individual advocate accused of misconduct. It seems to me that we could and should, therefore, hold that the State Bar Council, in its executive capacity acts as the prosecutor through its executive committee. There is no incongruity in its disciplinary committee, representing its judicial wing, functioning as an impartial judge whose decisions are binding upon

the State Bar Council. If we are holding that a Bar Council, dissatisfied with a decision of its disciplinary committee, can appeal against it, we have to, I think as its logical corollary, also hold that it is a party to a "lis". Our opinion that it is a "person aggrieved" within the meaning of that expression as used in Section 37 and 38 of the Act, necessarily implies that.

41. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council : an executive, capacity, in which it acts as the prosecutor through its executive committee and a quasi-judicial function, which it performs through its disciplinary committee. If we can make this distinction, as I think we can there no merger between the prosecutor and the judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case there is no breach of a rule of natural justice. The prosecutor and the judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

42. For the reasons given above, I do not see any objection to a participation of a State Bar Council in its executive capacity in a disciplinary proceeding, against an advocate on its roll, either at the initial or the appellate stages. Before it can become a "person aggrieved" by an order against which it could appeal, there must have been a "lis" or a dispute to be decided which gives rise to the order complained of. To such a "lis" the State Bar Council in its executive capacity, must be deemed to be a party. Apparently, its interest are presumed to be sufficiently represented by the Advocate-General. Hence, it was not considered necessary to provide for its separate representation by a notice to be given by its disciplinary committee as is provided for in the case of the Advocate-General. But, there seems to me to be no legal obstacle in the way of its separate representation, if it so desires, even before its own disciplinary committee. It certainly has notice of every complaint whenever it sends it to its disciplinary committee. Its right to appeal, in any event, as a "person aggrieved", seems squarely covered by the provisions of Sections 37 and 38 of the Act. It may be mentioned here that the respondents themselves treated the Bar Council as a party interested in a "lis", so that it could become a "person aggrieved" by the setting aside of the orders against respondents, when they impleaded the State Bar Council as a respondent in their appeals to the Bar Council of India. Its statutory right to appeal to this Court under Section 38 is not affected by the mere fact that it did not put in appearance before the Bar Council of India.

KRISHNA IYER, J. (concurring) ♦

My concurrence in the opinion which has been handed down by the learned Chief Justice is ordinarily dissuasive of a separate long note, save when a fresh perspective is to be presented or new frontiers are to be drawn by doing so. Partially, my supplementary has this apology.

44. The two-day long arguments in this case have been devoted to a construction of two simple words in common use forming the expression 'person aggrieved'. Precedential erudition and traditional approaches notwithstanding, the key to the meaning of the expression in question lies in plain English plus the social feel of the statute and the public commitment of the legal profession, the regulation of which has been achieved by the Advocates Act, 1961 (for short, the Act) wherein the above words occur. Legal scholarship, to be fruitful, must focus on the lifestyle of the law without getting lost in mere logomachy.

45. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the

disciplinary tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and correct professional conduct among the members of the Bar on its rolls.

46. I skip the facts as they have been set out in the judgment of the learned Chief Justice, except to state that a number of advocate, who are ranged as respondents, had been found guilty by the disciplinary tribunal of the State Bar Council of unseemly soliciting but, on appeal, the disciplinary body of the National Bar Council exonerated them on certain view of 'professional conduct' which disturbed the State Bar Council and even the All-India Bar Council, with the result that the former came up to this Court in appeal and the latter activity supported this stand.

47. The hackneyed phrase, 'person aggrieved' is not merely of frequent occurrence in statutes and in the writ jurisdiction but has come up for judicial consideration in Anglo-American and Indian courts in a variety of situations and legislative settings. Notwithstanding the slippery semantics of such legalese draftsmen have continued to use them, out of linguistic allegiance to the British art and Indian judges have frequently sought interpretative light from English authorities of ancient vintage. These 'borrowed' drafting and interpretative exercise are sometimes inept when time and country change and the context and text of the statute vary. I stress this aspect since much of the time of the courts in Indian is consumed by massive, and sometimes mechanical, reliance on exotic constructions and default in evolving legislative simplicity and avoiding interpretative complexity. At a time when our courts are on trial for delayed disposals and mystifying processes, this desideratum becomes all the more urgent. Otherwise, why should decoding a single expression - 'Person aggrieved' - take two days of learned length ?

48. Even in England, so well-known a parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting that it is fundamentally important in a free society that the law should be readily ascertained and reasonably clear, and that otherwise it is oppressive and deprive the citizen of one of his basic rights.

It is also needlessly expensive and wasteful. Reed Dickerson, the famous American draftsman, said : 'It cost the Government and the public many millions of dollars annually'. The Renton Committee, in England, has reported on drafting reforms but it is unfortunate that India is unaware of this problem and in a post Independence Statute like the Advocated Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rules of law is basic to our constitutional order.

49. Back to the issue. Is the State Bar Council a 'person aggrieved'? No narrow, pedantic, technical or centenarian construction can be blindly applied. On the other hand, a spacious construction, functionally informed by the social conscience and the salutary purpose of the enactment must illumine the judicial effort. So viewed, the ample import and breadth of meaning of the words 'person aggrieved' will embrace the State Bar Council for reasons which I shall presently set out.

50. Each statute has a personality and a message. Judicial interpretation is not bloodless and sterile exercise in spinning subtle webs, sometimes cobwebs, out of words and phrases otherwise simple, but to unfold the scheme of the legislation insightfully, sense its social setting and read the plain intendment. This living approach can do justice to law. We are here concerned with a legislative outfit for a national Bar, organising and prescribing its statutory autonomy, elective structure public functions internal regulation and ultimate appeal to the Supreme Court where canons of good conduct have been allegedly breached by delinquent lawyers. This conspectus will show what a

vibrant and responsible role the Bar Council has to play at the State and national levels and any interpretation which will detract from this supervisory status of the Bar Council will be incongruous with the founding creed of the institution. The paramount concern of the Bar Councils is the lawyers, the public and professional responsibility. Anything that hurts the health of this system is a social trauma a legal grievance, a special injury for them. After all, 'lawyer-power' is not through peak incomes of few and security of statutory monopoly but by the high comport and ethics of the many, screening and weeding deviants and delinquents.

51. Let us get a glimpse of the great expectation about the legal profession in society. Long ago, De Toqueville trenchantly remarked that the profession of law

is the only aristocratic element which can be amalgamated without violence with natural elements of democracy. ... I cannot believe that a Republic could subsist if the influence of lawyers in public business did not increase in proportion to the power of the people.

He rightly stressed that 'lawyers belong to the people by birth and interest to the aristocracy by habit and taste'. Thus the profession is the connecting link between the community and the administration, given an enlightened goal-oriented group outgrowing its elitist more. Indeed today lawyers are recruited also from the lower brackets. India has a huge number of law men who can be a force. What Prof. Brabanti observed about the Pakistan Bar has some, only some though, relevance to India, and I quote :

The sheer size of the legal community strongly organised into Bar Associations and closely allied with equally strong courts has not only been a major source for the diffusion and regeneration of norms generally, but by weight of numbers has enabled the courts to remain strong and has prevented the rise of administrative lawlessness. There is a curious anomaly here. The legal community, while often antagonistic to government and constraining executive action, is nevertheless closely identified normatively and culturally with the bureaucratic elite. This identification curiously coupled with healthy antagonism actually enhances the strength of the legal community. It derives popular support from its ostensible opposition to Government, and at the same time elicits bureaucratic support in the community in large. It has a network of relationships in rural areas and the cities the Executive during and after martial law, it has defined efforts to restrict court jurisdiction, it has compelled justifiability of fundamental rights, it has forced abrogation of several restrictive enactment. Is this law as an impediment to political development ? Is this misallocation of scarce resources in the system ? Is this unproductive use of non-productive manpower? On the contrary, it seems to us that this is the very genius of political development.

Michael Hager, after quoting Prof. Brabanti, comments (in his article in the American Bar Association Journal, January 1972, Vol. 58, on The Role of Lawyers in Developing Countries) :

The legal profession has a unique opportunity to effect change from within the political elite, to exert pressure from without and to win over the general public to development policies. And as Mihaly and Nelson observed with respect in legal education, 'law graduates usually fan out not only into legal practice but also into responsible position in business, government and politics'.

52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold

contrast, a public institution committed to public justice and pro bono publico service. The grant of monopoly licence to practice law is based on three assumptions (1) There is a socially useful function for the lawyer to perform. (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('The Practice of Law is a Public Utility' - 'The Lawyer, The Public and Professional Responsibility' by F. Raymond Marks et al - Chicago American Bar Foundation, 1972, p. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological case of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheers bring about? The official heads of the Bar, i.e. the Attorney-General and the Advocates-General too are distressed if a lawyer 'stoops to conquer by resort to soliciting, touting and other corrupt practices.

53. I may now refer to *Adi Pherooshah Gandhi v. H. M. Seervai* (supra) where divergent opinions were delivered but all concurred in treating the Bar Council as an 'aggrieved person.' The earlier decision in *Bhataraju (Bhataraju Nageshwara Rao v. Hon'ble Judges of the Madras High Court, (1955) 1 SCR 1055, 1964 : AIR 1955 SC 223 : 10 ELR 216)* strikes a note in consonance with this view. No hesitancy inhibits me from hazarding the opinion that the social canvas must be spread wide when making out the profile of a statue like the Advocates Act for the good reason that the Bar has a share in being the sentinel on the qui vive when the legal dykes of right and justice are breached by authoritarianism or citizen wrong-doing. Nor do I conceal my half-horror at any professional tribunal glossing over 'snatching briefs' and 'dragging clients' - provided they are proved - As less than gross misconduct. The salt lose their savour, wherewith shall they be salted ? However, hasten to make it plain, to avoid prejudices to the parties, that I totally desist from pronouncing on the merits of the evidence in this case.

54. One more point. A case of professional misconduct is on a lis in the British sense nor a case and controversy in the American meaning. It is a public investigation about misconduct by one belonging to a public profession where everyone concerned with the justice administration is interested. Traditionally used to the adversary system, we search for individual persons aggrieved. But a new class of litigation - public interest litigation - where a section or whole of the community is involved (such as consumer's organisation or N.A.A.C.P. - National Association for Advancement of Coloured People - in America), emerges. In a developing country like ours, this pattern of public-oriented litigation better fulfils the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within this category of organisations when a lawyer is involved.

55. I derive support for this philosophy of approach from academic and judicial opinion in England and America. A question arose whether a railroad company - B.A.R. (Bangor and Aroostook Railroad) - could bring an action against the stockholders for having drained B.A.R. improperly. Although an academic critic took the view that the District Court was incorrect in its view that B.A.R. was the 'sole beneficiary', he went on to state that the public's interest in the financial health of B.A.R. provided a separate interest in bringing the action. The learned author wrote :

It would seem to be incontestable that the public has a very real interest in railroads. Railroads have been found vital to a healthy national economy; any such factor must, a priori, be deemed a potent component of the public welfare. As such, it is evident

that a financially healthy railroad is of concern not only to its stockholders, but to the public as well Finding that the management of a railroad has obligations running to the public as well as fiduciary duties owing to the corporation's stockholders, Court concluded that, of these two responsibilities, the public interest is paramount. "It must be remembered," the Court cautioned, "that railways are public corporation organized for public purpose. ... They all primarily owe duties to the public of higher nature even than that of earning large dividends for their shareholders."

[Review by James F. Simon of *Bangor & Aroostook R. R. v. Bangor Punta Operations, Inc. (Bangor & Aroostook)*, 482 F 2nd 865 (1st Cir, 1973), cert. granted. 94 S. Ct 863 (1973) *Columbia Law Review* Vol. 74 No. 3, April 1974 - p. 528 at pp. 531-532]

56. Similarly, the American Supreme Court relaxed from the restrictive attitude towards 'standing' in public action in *Baker v. Carr* ((1962) 369 US 186), vide *Maryland Law Review*, Vol. XXXIII 1973, p. 506 :

In *Baker*, voters challenged the failure of the Tennessee Legislature to reapportion itself since 1901; the plaintiffs lived in counties which had become had the requisite standing to challenge the inaction of the Legislature. The Court expanded the nation of direct injury to include mere 'debasement' of a vote, rather than the total deprivation which had previously been required.

57. American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of 'locus standi', such a course could not have been justified (see p. 807 - *New York University Law Review*, Vol. 46, 1971). In fact, citizen organisation have recently been campaigning for using legal actions for protection of community interest, broadening the scope of 'standing' in legal proceedings (see p. 403 - *Boston University Law Review*, Vol. 51, 1971).

58. In the well-known case of *Attorney-General of the Gambia v. Pierra Sarr N. Jie* ((1961) AC 617), Lord Denning observed about the Attorney-General's standing thus :

... the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose ? Their Lordship think that he has. The Attorney-General in duty to bring before the judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action.

Ray, J. (as he then was) crystallised this ration in *Adi Pherooshah Gandhi* case (*supra*) thus :

The Judicial Committee Construed the words 'person aggrieved' to include the Attorney-General of Gambia as representing the public interest. (p. 927) [SCC p. 528, para 20]

The profession touches the public on the one hand and the courts on the other. On no other basis could the presence of the Advocate General be explained. (p. 928) [SCC p. 529, para 23]

59. Although not strictly confined to 'standing' with reference to suits, jurists have thrown some light on this subject. Professor S. A. de Smith has observed :

All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest - the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome inter looper to invoke the jurisdiction of the courts in matters that do not concern him (Quoted in 'Standing and Justiciability' by V. S. Deshpande - Journal of the Indian Law Institute - April-June, 1971 - Vol. 13, No. 2, p. 174)

Professor H. W. R. Wade has observed :

In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the action popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers. (Standing and Justiciability - *ibid.*, p. 175). The possible apprehension that widening legal standing with a public connotation may unleash a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the system. In this very case, to grant an exclusionary windfall on the respondents is to cripple the Bar Council in its search for justice and insistence on standards.

60. I have been long on a short point, but brevity, where there is something to speak, is not the soul of wit but a sign of something different.

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