

Nandlal Khodidas Barot

Vs

Bar Council of Gujarat and Others

Civil Appeal No. 1786 of 1977

(A. P. Sen, A. C. Gupta JJ)

24.09.1980

JUDGMENT

GUPTA, J. -

This is an appeal under Section 38 of the Advocates Act, 1961. In a proceeding transferred to it under Section 36-B of the Act, the Bar Council of India by its order dated April 17, 1977 found that the appellant was guilty of professional misconduct and suspended him from practice for a period of one year. The complaint on which the proceeding was initiated was filed in the Gujarat Bar Council on October 9, 1971.

2. Section 35(1) of the Advocates Act, 1961, reads :

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.

In *Bar Council of Maharashtra v. M. V. Dabholkar (I)* ((1976) 1 SCR 306 : (1975) 2 SCC 702, 709, 711, 712) this Court having examined the scheme and the provisions of the Advocates Act observed : (SCC pp. 709 711 & 712, paras 24, 29 & 31)

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 acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

....the function of the Bar Council in entertaining complaints against advocates 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...

3. In the case before us the Bar Council of Gujarat passed a Resolution on November 16, 1971 referring several complaints against different advocates including the one against the appellant to the Disciplinary Committee of the Bar Council. The Resolution reads :

Resolved that the following complaints be and are hereby referred to the Disciplinary

Committee of the Bar Council.

The names of the advocates and the complaints in which they were concerned were listed. Nothing appears from the record of the case to suggest that before referring the complaint against the appellant to the Disciplinary Committee, the State Bar Council applied its mind to the allegations made in the complaint and found that there was a prima facie case to go before the Disciplinary Committee.

4. In Dabholkar (I) case ((1976) 1 SCR 306 : (1975) 2 SCC 702, 709, 711, 712) referred to above, a Bench of seven Judges decided the question whether the Bar Council of a State was "a person aggrieved" to maintain an appeal under Section 38 of the Advocate Act; the merits of the individual cases were left to be decided by another Bench. Our attention is drawn by counsel for Bar Council of India to the following observation in the judgment of this Court deciding the merits of the cases : (Bar Council of Maharashtra v. M. V. Dabholkar (II), (1976) 2 SCR 48 : (1976) 2 SCC 291, 293) (SCC p. 293, para 4)

The requirement of 'reason to believe' cannot be converted into a formalised procedural road-block, it being essentially a barrier against frivolous inquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the Disciplinary Committee, that it had reason to believe, as prescribed by the statute.

5. But in the case before us the Resolution does not even say that the State Bar Council had considered the complaint and found that there was a prima facie case. It must therefore be held that the reference by the State Bar Council to the Disciplinary Committee was incompetent and that being so the proceedings before the Disciplinary Committee of Bar Council of Gujarat and also before the Disciplinary Committee of the Bar Council of India on transfer were invalid. In the view we take it is not necessary to consider the merits of the case.

6. The appeal is allowed and the order of the Disciplinary Committee of the Bar Council of India suspending the appellant from practice for one year is set aside. There will be no order as to costs.

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