SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

An Advocate Vs. Disciplinary Committee

An Advocate Vs. Disciplinary Committee

SooperKanoon Citation : sooperkanoon.com/383657

Court : Karnataka

Decided On : Sep-04-1992

Reported in : ILR1992KAR2816; 1993(2)KarLJ318

Judge : Shivaraj Patil, J.

Acts : Advocates Act, 1961 - Sections 36B(1)

Appeal No. : W.P. No. 18291 of 1992

Appellant : An Advocate

Respondent : Disciplinary Committee

Advocate for Def. : B.V. Acharya, Adv. for ;B.L. Acharya, Adv. for R-1 and R-2 and ;B.C. Seetharama Rao, Adv. for R-3

Advocate for Pet/Ap. : K.R.D. Karanth, Adv.

Disposition : Writ petition allowed

Judgement :
ORDER

Shivaraj Patil, J.

1. The facts relevant and necessary for resolving the controversy raised in this Writ Petition in brief are:

The petitioner is a practicing Advocate. The third respondent filed complaint alleging misconduct on the part of the petitioner. The petitioner received a notice dated 7-2-1991 from the first respondent fixing the date of hearing on 10-3-1991. During the pendency of the proceedings before respondent No. 1 it was reconstituted and the proceedings were continued as provided under Section 36A of the Advocates Act, 1961. On 19-1-1992 the petitioner filed a Memo stating that the proceedings pending before respondent No. 1 stood transferred to the Bar Council of India under Section 36B(1) of the Act, as the complaint was made on 26-7-1990 and the period of one year had expired on 27-7-1991. Thus, the petitioner contended that the first respondent had no jurisdiction to proceed with the enquiry. The first respondent passed the order on the said Memo on 19-1-992 rejecting the same holding that the starting point of limitation under Section 36B of the Act was 27-1-1991 before the Disciplinary Committee No.III prior to its reconstitution and that the limitation for the reconstituted Committee had only commenced from 18-8-1991. Thus, the bar under Section 36B did not apply, the copy of the said order is filed at Annexure-C, which is sought to be quashed in this Writ Petition.

The chronology of the events which have bearing on the Decision to be taken in this case are :

Date

Event

25-6-1990

Lodging ofthe complaint by the third respondent.

16-9-1990

StateBar Council resolved to refer the complaint to Disciplinary Committee.

27-1-1991

DisciplinaryCommittee No. lll initiated proceedings on the complaint by directing toissue notices to the parties.

21-7-1991

DisciplinaryCommittee No. Ill (before reconstitution) passed order for transfer ofcomplaint to any other Disciplinary Committee

18-8-1991

TheDisciplinary proceedings continued by the reconstituted Disciplinary CommitteeNo. III.

2. The third respondent has filed the statement of objections even touching the merits of the proceedings pending before the first respondent. Relative merits of the complaint and defence are not required to be stated for the purpose of disposal of this Writ Petition. The third respondent has contended that if the petitioner was aggrieved by the impugned order of the first, respondent dated 19-1-1992 he should have preferred the Writ Petition at the earliest and having participated in the enquiry, at the stage of reaching conclusion, he has come up with this Writ Petition. The conduct of the petitioner having kept quiet between 19-1-1992 and 18-6-1992 demonstrates the speculative ideas of the petitioner. Thus, the third respondent has prayed for the dismissal of the Writ Petition.

3. Sri K.R.D. Karanth, learned Counsel for the petitioner urged that the Disciplinary Committee No. III initiated proceedings on the complaint of respondent No. 3 by directing to issue notices to the parties on 27-1-1991 on the basis of the Resolution dated 16-9-1990 passed by the State Bar Council referring the complaint of the third respondent to it. Citing the Division Bench Decision of this Court in the case of KARNATAKA STATE BAR COUNCIL v. AN ADVOCATE, : AIR1993 Kant7 he submitted that the disciplinary proceedings before respondent No. 1 having not been concluded and the complaint having not been disposed of by respondent No. 1 - Committee within a period of one year from the date on which respondent No. 1 initiated the proceedings, Section 36B(1) of the Act is attracted to the case on hand and the proceedings stood transferred to the Bar Council of India. Admittedly, respondent No. 1 initiated the proceedings on 27-1-1991. The period of one year has come to an end on 27-1-1992. Hence, it may be declared that proceedings in D.C.E.No. 31/91 on the file of the Disciplinary

Committee No. 3 of the Karnataka State Bar Council stood transferred to the Bar Council of India.

4. Sri. B.V. Acharya, learned Counsel for respondents 1 and 2, submitted that respondents are only interested in knowing the correct position of law so as to apply in all such matters which come up for consideration before respondents 1 and 2. He added that in view of certain observations made in the aforesaid Division Bench Decision, there is need to clarify the position as regards the date from which the period of one year is to be calculated.

5. Sri B.C. Seetharama Rao, learned Counsel for respondent No. 3, urged that the Disciplinary Committee after its reconstitution initiated the proceedings on 18-8-1991 for the first time. The period of one year from the said date having not expired, Section 36B(1) cannot be applied to the facts of this case to say that the proceedings stood transferred to the Bar Council of India. He further submitted that petitioner having participated in the proceedings and having kept quiet from 19-1-1992 for quite some time has filed the present Writ Petition on 18-6-1992 when the first respondent was about to pass the final order. In view of this conduct of the petitioner the Writ Petition is liable to be dismissed.

6. Before proceed to consider the relative merits of the respective submissions made by the learned Counsel for the parties, I think it appropriate to extract the relevant proceeding sheet of respondent No. 1, which reads thus:

'BEFORETHE DISCIPLINARY COMMITTEE NO. lll OF THE KARNATAKA STATE BAR COUNCIL

D.C.E. 31/90

27-1-1991

Casetaken on file - issue notice to the parties and A.G. by 10-3-1991 .

28-4-1991

Complainantand Counsel absent. Respondent present. Objections filed. Issue notice to complainantby C.P. Issues and evidence by 2-6-1991 .

30-6-1991

Complainantabsent. Respondent present. Draft issues filed - issues raised. Evidence by 21-7-1991.

21-7-1991

Complainantby Sri C.K.R. and respondent in person. Copy of the objection received bycomplainant. Respondent files documents with a list. Complainant prays fortime. In the meantime this committee is not functioning since the beginningas one or the other members are absenting regularly. The parties are put togreat inconvenience. Hence the Chairman may be pleased to wind up thiscommittee and in its place appoint a more effective committee which candispose of cases diligently. Till such time as the new committee is formedand the case taken on file by such committee the proceedings in this case arestayed. The parties may be notified by the new committee.

8-9-1991

Cases called.Complainant and his Counsel present. Respondent in person. Call on forevidence by 29-9-1991'.

7. From the proceedings of the Disciplinary Committee No. 3 extracted above it is clear that proceedings were initiated on 27-1-1992 by respondent No. 1 and they are not concluded by 27-1 -1992. Hence, by operation of Section 36B(1) of the Act the proceedings stood transferred to Bar Council of India. The proceedings sheet also shows that as per the Resolution No. 104/91 dated 18-8-1991 the case had been transferred from D.C.III to D.C.IV, which was redesignated as D.C.III. Issues were framed on 30-6-1991 and respondent No. 1 continued the proceedings as can be seen from the proceedings sheet extracted above on the basis of the issues that were already raised earlier to 18-8-1991. Hence, it cannot be said that proceedings were initiated afresh by the Disciplinary Committee No. III on 18-8-1991 or on subsequent dates. The proceedings cannot be initiated twice. It is evident from the records of the case that the proceedings were initiated on 27-1-1991 and the same were continued thereafter. The disciplinary proceedings were

initiated on 27-1-1991 in the case on hand. Once the disciplinary proceedings are initiated the period of limitation starts to run. In other words, the period of one year stated in Section 36B(1) of the Act has to be reckoned from the date on which the proceedings were initiated for the purpose of calculating the period of one year. Neither the transfer of disciplinary proceedings from one Committee to the other nor continuation of the disciplinary proceedings by the reconstituted Committee arrest the period of limitation. To take a view to the contrary leads to anomalous results. The purpose of Section 36B(1), as to the period prescribed would be defeated and its rigour is lost. The period of one year prescribed in the said Section is related to the initiation of the proceedings and not to the Committee to which the proceedings are transferred or to the Committee reconstituted. Operation of a statute cannot be diluted or defeated by mere reconstitution of the Disciplinary Committee or transfer of the proceedings from one Disciplinary Committee to the other. As the things stand, by operation of Section 36B(1), the disciplinary proceedings pending before respondent No. 1 -Committee stood transferred to Bar Council of India. Thus, I have no hesitation to conclude accordingly. After the expiry of the period stated in Section 36B(1) the respondent No. 1 has no jurisdiction to continue the proceedings in D.C.E.No.31/90 when by operation of law the proceedings stood transferred under Section 36B(1) of the Act. The argument of the learned Counsel for respondent No. 3 based on the conduct of the petitioner on laches or acquiescence is of no avail. No estoppel can be pleaded in regard to operation of a statute. Acceptance of the arguments of the learned Counsel for respondent No. 3 leads to conferring jurisdiction on respondent No. 1 which is taken away by the statute after expiry of the prescribed period. As to the submission of Sri. B.V. Acharya, learned Counsel for respondents 1 and 2 that the position of law may be explained further in the light of certain observations made in the Decision of the Division Bench of this Court cited above, I may state that it is not required for the purpose of the disposal of the case on hand on the admitted facts.

8. In the result for the reasons stated, I pass the following order:

(1) The Writ Petition is allowed.

(2) It is hereby declared that the proceedings in D.C.E. No. 31/90 on the file of the Disciplinary Committee No. III of the Karnataka State Bar Council stood transferred to the Bar Council of India for disposal in accordance with law.

(3) The order dated 19-1-1992 Annexure - C passed by respondent No. 1 is quashed.

(4) No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com