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C. Dinakar Vs. Karnataka State Bar Council Represented by Its Secretary,

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Court : Karnataka

Decided On : Jun-29-2006

Reported in : AIR2006Kant252

Judge : N.K. Patil, J.

Acts : Advocates Act, 1961 - Sections 9, 35(3), 36(2), 36B and 36B(1); Bar Council of India Rules - Rules 5, 5(1)(2), 7, 17(2) and 33; Constitution of India - Articles 226 and 227

Appeal No. : Writ Petition No. 24806 of 2005

Appellant : C. Dinakar

Respondent : Karnataka State Bar Council Represented by Its Secretary, ;disciplinary Committee of Karnataka State

Advocate for Def. : Ashok R. Kalyan Shetty, Adv. for R-1 and R2 and ;Nandi Law Chambers for R4

Advocate for Pet/Ap. : Party-in-Person

Disposition : Petition dismissed

Judgement :
ORDER

N.K. Patil, J.

1. The petitioner, party-in-person, questioning the legality or otherwise of the notice dated 26th September 2005 bearing No. D.C.E.19/2005 on the file of the second respondent vide Annexure C, has presented the instant writ petition. Further, he has sought for a direction, directing the respondents not to conduct disciplinary inquiry against the petitioner on the allegations made by respondent No. 4 in his complaint dated 23rd August 2003 vide Annexure D and to order payment of costs and damages by respondents in view of unnecessary harassment and damage caused to the reputation of the petitioner and pass any order including the sanctioning of costs of the writ petition, considered appropriate by this Court.

2. The brief facts of the case of petitioner, party-in-person in a nutshell are as follows:

Respondent No. 4 herein gave a complaint against the petitioner, party-in-person on 23rd August 2003 to the State Bar Council alleging professional misconduct by the petitioner. In pursuance of the complaint given by fourth respondent, the first respondent herein has issued the notice dated 1st September 2003 vide Annexure A. After receipt of the said notice, petitioner has sent a reply dated 9th September 2003 vide Annexure B, stating that, the complaint is a false and malicious and the malice of fourth respondent against petitioner dates back to the year 1963 and can be seen in his complaint lodged in Indira Nagar Police Station and that, he has not committed any misconduct and hence, the question of taking action against him does not arise. Further, he requested the State Bar Council to dismiss the said complaint and close the matter. The second respondent issued another notice to petitioner on 26th September 2005, intimating the date of hearing for inquiry to the petitioner.

In the complaint given by fourth respondent, he has made three allegations against the petitioner which are as follows:

(i) petitioner allegedly assaulted respondent No. 4 in lawyers dress on the night of 30th May 2003;

(ii) In a widely attended press conference on 2nd June 2003 at the Press Club at Bangalore, petitioner distributed copies of M.C. Petition No. 692/1999 filed by the 4th respondent's wife to all the press persons;

(iii) Petitioner abused the process of the Court by arguing his case for over five hours in W.P.No. 27308/2003 and made allegations against R-4;

3. It is the case of petitioner that, none of the above three allegations in the complaint relate to professional misconduct of the petitioner as an Advocate and the action of second respondent in issuing the impugned notice violates Section 36-B of the Advocates Act, 1961. Therefore, the respondents 1 & 2 do not have the jurisdiction to take action against the petitioner nor the fourth respondent has cited any witnesses in support of the said allegations. It is the further case of petitioner that, the fourth respondent was motivated by malice against the petitioner and is aimed at harassing the petitioner as can be inferred from the very complaint given on 31st May 2003 in Crime No. 213/2003 registered at the Indira Nagar Police Station by fourth respondent, wherein it is stated that, it is a well known fact that, the petitioner harbours ill-will and animosity towards him right from 1963 when they were batch-mates at Central Police Training College, Mount Abu, Rajasthan. Therefore, the impugned notice dated 26th September 2005 issued by second respondent violates Section 36-B of the Advocates Act. Further, it is the case of petitioner that, the proceedings of inquiry ought to have been concluded within a period of one year from the date of receipt of complaint, i.e. 25th August 2003 or one year from 1st September 2003, on which date, disciplinary proceedings were started by second respondent herein. With this back ground, petitioner - party-in-person has presented the instant writ petition, assailing the correctness of the impugned notice vide Annexure C and seeking other reliefs, as stated supra.

4. The principal submission canvassed by petitioner - party-in-person is that, the notice dated 26th September 2005 issued by second respondent herein vide Annexure C violates Section 36-B of the Advocates Act for the reason that, the said Act stipulates that, the proceedings shall be concluded within a period of one year from the date of receipt of complaint or the date of initiation of proceedings, at

the instance of State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same, as if it were a proceeding withdrawn for inquiry under Sub-section (2) of Section 36. He submits that, the complaint given by fourth respondent was received by Bar Council on 25th August 2003 and the inquiry proceedings were started on 1st September 2003 and in any case, the inquiry proceedings ought to have been concluded within one year from either of the aforesaid two dates. Therefore, the impugned notice is arbitrary and mala fide since it does not contain any reasons for initiating the disciplinary inquiry against the petitioner. Further, he submits that, none of the three allegations made in the complaint amount to professional misconduct of the petitioner as an Advocate nor respondents 1 & 2 have any jurisdiction to initiate proceedings against the petitioner. The allegations made by fourth respondent in his complaint dated 23rd August 2003 alleging professional misconduct against the petitioner as Advocate are false and baseless. So far as registration of a criminal case in Crime No. 213/2003 is concerned, he has stated that, this Court has granted an interim order in Writ Petition No. 27308/2003, staying the investigation in the said case until further orders. He further submitted that, the allegation that, petitioner wasted the valuable time of Court by arguing his case for over five hours does not amount to professional misconduct for the reason that, petitioner argued the case not in the capacity as an Advocate but as a party-in-person. Further, he submitted that, the allegation that, petitioner assaulted fourth respondent in lawyer's dress on the night of 30th May 2003 is false since the said statement is made for the first time nearly after three months only for the purpose of bringing his compliant within the purview of the Karnataka State Bar Council. The sequence of events mentioned in the complaint dated 31st May 2003 itself is a testimony to the fact that, the petitioner could not have been in lawyers dress. He submitted that, petitioner advanced his arguments not in professional capacity as an Advocate but as a party-in-person. Therefore, he submitted that, all the three allegations made in the complaint do not relate to professional misconduct of the petitioner as an Advocate. Hence, respondents 1 & 2 have no jurisdiction to take action against petitioner for professional misconduct as an Advocate. It is the specific case of petitioner that, he was awarded the Police medal for meritorious service and the

President's Police medal for distinguished service by his Excellency, the President of India while respondent No. 4 was found unfit for these awards. Finally, petitioner became the Head of the Karnataka State Police Force while respondent No. 4 was promoted to the grade of Director General of Police for few months. Therefore, in view of jealousy and professional status, the attitude of respondent No. 4 towards the petitioner became completely inimical. The initiation of disciplinary inquiry against petitioner on the complaint of fourth respondent is mala fide initiated on extraneous considerations and without application of mind. Therefore, the initiation of disciplinary inquiry by respondents 1 and 2 against petitioner is without jurisdiction on the ground that, the said acts were not done under professional capacity as an Advocate and hence, do not amount to professional misconduct. Therefore, the proceedings initiated is one without jurisdiction. Further, he submitted that, though the complaint was received on 25th August 2003, respondents 1 and 2 took more than two years to take a decision to conduct the disciplinary inquiry that too, at the fag end of the term of the State Bar Council, on the eve of laying down of their office as members of the said Association.

5. Further, petitioner, party-in-person vehemently submitted that, thereafter, he filed a detailed reply to the show cause notice and proceedings were initiated. Even though petitioner raised a preliminary objection stating that, the complaint is not maintainable as the allegations in the complaint do not amount to professional misconduct, the proceedings were continued without considering the same. However, in view of not obtaining the interim order in the instant case, petitioner was constrained to appear before the second respondent and file his detailed objections. Regarding maintainability of the said complaint, petitioner has also filed an interim application before the second respondent and the said authority has rejected the said application in one line holding that, inquiry is necessary. For the first time, petitioner raised the objection stating that, the inquiry is not held by the committee and only one member has presided over the inquiry and therefore, the said inquiry conducted by only one member of the Committee is not an inquiry at all in the eye of law and the same is contrary to Section 9 of the Advocates Act. To substantiate the said stand, he has taken me through the order sheet maintained by the Bar Council, which is produced along with I.A.III/2006 filed for producing additional documents. He pointed out that, from the order sheet maintained by Bar

Council, it can be seen that, on 9th March 2006, only one member has signed, and on 2nd April 2006, his interim application has been dismissed and the same has been signed by all the three members. Therefore, it is the submission of petitioner that, second respondent has violated the mandatory provision of Sections 9 and 36-B of the Advocates Act. Therefore, the inquiry initiated by second respondent itself is one without jurisdiction and they are not entitled to proceed with further proceedings. He further submitted that, this Court can take cognizance of the manner in which the proceedings is initiated and conducted and mould the relief by declaring that, the impugned notice issued by second respondent is unsustainable in law. Hence, it is liable to be set side at the threshold itself including all further proceedings. To substantiate his submission, he placed heavy reliance on the judgment of the Apex Court reported in AIR (2004) 5 SCC 689 (Noratanmal Chouraria v. M.R. Murli and Anr.) and drew my attention to paragraph 12 of the said judgment, wherein it is stated that, 'Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an Advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regards initiation of a proceedings for misconduct of a member of the profession.

Further, he relied upon another judgment of the Apex Court reported in (2001) 2 SCC P.221 (D.P. Chadha v. Triyugi Narain Mishra and Ors.) and drew my attention to paragraph 23 of the said judgment, which reads thus:

Para.23. In George Frier Grahame v. Attorney-General, Fiji the Privy Council has approved the following definition of 'professional misconduct' given by Darling J. in Annexure- Solicitor ex the Law Society, Re:If it is shown that a solicitor in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his profession brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

In support of the submission of the petitioner - party-in-person that, the order passed on his interim application, stating that, inquiry is necessary, is not a speaking order, he relied upon the judgment of the Apex Court reported in : (1999)1SCC45 (Vasant D. Bhavsar v. Bar Council of India and Ors.) wherein the Apex Court has held that, the orders of the Disciplinary Committees in disciplinary matters should be speaking orders. They must set out the reasons for which they are passed. Where the orders are based upon evidence, as is usually the case with complaints against Advocates, there must be some analysis. Therefore, he vehemently submitted that, the said order is liable to be set aside.

Further, he has taken me through paragraph 34 of the judgment of the Apex Court reported in : [2002]SUPP5SCR186 (Ex. Capt. Harish Uppal v. Union of India and Anr.) and pointed out the middle of the said paragraph, wherein it is stated that, 'Conduct in court is a matter concerning the court and hence, the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers and submitted that, he has argued in Court as a party-in-person and not as an Advocate. Therefore, he submitted that, it is not the concern of the Bar Council to take cognizance of the alleged complaint given by fourth respondent and notice issued based on such complaint is not justifiable.

Petitioner further relied upon another decision of Apex Court reported in (1993) 3 SCC 433 (Babu Verghese and Ors. v. Bar Council of Kerala and Ors.) and submitted that, the Apex Court has held that, it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.' Further, he submitted that, even though he has not assailed the further proceedings before the second respondent in the instant writ petition, when it has come to the notice of the court and is highlighted with reference to the order sheets maintained by the Bar Council, this Court can mould

the relief in the manner which is required in view of the manner in which the authority has proceeded to initiate and conduct the inquiry proceedings. To substantiate the said stand, he placed reliance on another decision of the Supreme Court reported in : (2004)ILLJ 1061 SC (Ramrao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors.) and drew my attention to paragraph 25 of the said judgment and submitted that, 'It is true that the High Court is entitled to take into consideration the subsequent events, but the same can only be a relevant factor for the purpose of moulding the reliefs. But while moulding such reliefs, the High Court could not have considered grant of a relief where for no factual foundation existed or was laid in the pleadings of the parties.

With regard to the reliance placed by learned Counsel for respondents 1 and 2 and learned Counsel appearing for respondent No. 4, on the judgment of the Division Bench of this Court, reported in : AIR1993 Kant7 (Karnataka State Bar Council v. An Advocate) and the decision of the learned Single Judge of this Court reported in 1993 (2) Kar.LJ. 318 (An Advocate v. Disciplinary Committee), to submitted that, the stand taken by respondents 1 and 2 in their objections and reliance placed by them is not applicable to the facts and circumstances of the present case. Therefore, he submitted that, this Court can mould the relief and allow the writ petition.

6. Per contra, learned Counsel for respondents 1, 2 and 4, inter alia, contended and substantiated the impugned notice stating that, the impugned notice issued by respondent is in strict compliance of Section 36-B of the Advocates Act read with Rules 5, (1) (2) and 7 of the Bar Council of India Rules. To substantiate the said stand, they placed heavy reliance on the judgment of the Division Bench of this Court reported in : AIR1993 Kant7 (Karnataka State Bar Council v. An Advocate), wherein this Court has clarified the position of law as to from when the one year period should commence as envisaged under Rule 17(2) of the Bar Council of India Rules, wherein it is observed that, 'Rule 17(2) actually identifies the relevant date. It points out that in the case of a complaint, the date of its receipt is not the actual date when the Bar Council received it, but it is the date on which the case is referred to the Disciplinary Committee for disposal. It is impossible to understand

this Rule in any other manner'.

7. Further, learned Counsel for respondents have taken me through the proceedings before the second respondent and pointed out that, petitioner has filed the detailed objections to the notice by raising a preliminary objection and also has filed the interim application, stating that, the authorities cannot proceed with the matter any further on the ground that, one year period stipulated for conducting the inquiry proceedings has already elapsed. They submitted that, petitioner himself has appeared before the second respondent - Disciplinary Committee on 27th November 2005 and the proceedings recorded on that date reads thus: 'Case called. Complainant and Respondent are present. Objections filed. Case is posted for framing issues/charges. Respondent files objections. Complainant files rejoinder. Call on 4.12.2005 for issues/and with the consent of both the parties the case is posted on 18th December 2005 for evidence. That means, the matter is posted for evidence on 18th December 2005 with the consent of both parties, including petitioner- party-in-person herein. Further, the statutory authority while dismissing the interim application, has observed that, the respondent therein (petitioner herein) is at liberty to urge all the points raised by him at the time of final arguments. Therefore, learned Counsel for respondents submitted that, when petitioner himself has given consent for conduct of further inquiry, he cannot have any say now to stall the inquiry proceedings. Further, both the learned Counsel for respondents vehemently submitted that, the notice issued by second respondent is within the stipulated limitation period and that, the said time is still to expire. It is the specific stand of learned Counsel for respondents that, when petitioner has willingly participated in the inquiry proceedings, necessary charges are framed and the matter is posted for evidence of the parties and especially when the order passed by the competent authority dated 2nd April 2006 dismissing his interim application is not assailed by him, he cannot persuade this Court to set aside the further proceedings on the ground that, it is not a speaking order and inquiry conducted is not in strict compliance of the provisions of Advocates Act and the Bar Council of India Rules. Further, they submitted that, it is well settled principles of law laid down by Apex Court and this Court in series of matters that, petitioner cannot maintain the writ petition against a notice issued by statutory authority and that, the statutory authority may be permitted to conduct

and complete the proceedings. If it is found that, the charges levelled in complaint given by fourth respondent against petitioner do not amount to professional misconduct, then, the authority may even drop the proceedings. Therefore, this Court cannot entertain the instant writ petition, at this stage, when the matter has reached the stage of recording evidence of the parties. Therefore, they submitted that, the writ petition filed by petitioner, party-in-person is liable to be rejected at the threshold with exemplary costs.

8. I have heard petitioner - party-in-person and learned Counsel for respondents 1 and 2 and learned Counsel for fourth respondent on 14th June 2006 and 19th June 2006. After careful evaluation of the entire material available on record and after considering the rival contentions urged by petitioner, party-in-person and learned Counsel for respondents, the only question that arise for consideration before this Court in the instant writ petition is as to:

WHETHER the writ petition filed by petitioner, assailing the correctness of the impugned notice issued by second respondent is maintainable or not?

After microscopic evaluation of the entire material available on record, it emerges that, the fourth respondent has given a complaint to respondents 1 and 2 on 23rd August 2003. After receipt of the said complaint, a notice has been issued by first respondent dated 1st September 2003. The petitioner has replied to the same on 9th September 2003. After receipt of the said reply, the matter was placed before the meeting of the Bar Council. The Bar Council, in its meeting held on 21st August 2005 under subject No. 116/2005, after considering the complaint filed by fourth respondent and reply filed by petitioner, has passed the resolution, resolving to refer the complaint to the Disciplinary Committee for enquiry. After referring the matter to second respondent, the second respondent has issued the impugned notice dated 26th September 2005 as envisaged under the relevant provisions of the Bar Council of India Rules vide Annexure C, fixing the date of appearance of petitioner before the Disciplinary Committee on 9th October 2005 at 11 A.M. On 9th October 2005, a memo was filed on behalf of petitioner, party-in-person, stating that, due to ill health of petitioner and since he has been admitted to hospital, he is not able to appear before the Committee and therefore, some time

may be granted. Thereafter, petitioner has filed the present writ petition before this Court on 14th November 2005. When this matter came up for preliminary hearing before this Court on 17th November 2005, this Court ordered Emergent Notice. Meanwhile, the matter was posted before the Disciplinary Committee on 27th November 2005. On the said date, it is recorded that, 'the 4th respondent and petitioner are present. Objections filed. The case is posted for framing of issues/charges. The petitioner filed objections and complainant filed rejoinder to the same. The case was posted to 4th December 2005 for framing issues.' On 4th December 2005, issues/charges were framed and with the consent of both parties, the case was posted on 18th December 2005 for evidence of parties. When the matter was posted on 18th December 2005, M/s. Sreevatsa Associates filed vakalath on behalf of petitioner along writ an application under Section 35(3)(a) of the Advocates Act to dismiss the complaint. On 12th February 2006, arguments were heard on either side for considerable length of time and reserved for orders. Ultimately on 2nd April 2006, the application filed under Section 35(3)(a) of the Advocates Act was dismissed. The Disciplinary Committee, after careful perusal of the records available on its file as well as the decision relied upon by the learned Counsel for petitioner herein in support of his submission, has observed at paragraph 7 of the order dated 2nd April 2006 thus:

After giving our anxious thoughts and without going into the merits or otherwise of the complaint and the various decisions cited by respondent's counsel, we are not inclined to dispose of the complaint on the basis of the interim application under Section 35(3)(a) of the Advocates Act. Enquiry is necessary. On 27th November 2005, the parties have consented for the enquiry. The Learned Counsel for the respondent is at liberty to submit all the points urged by him at the time of final arguments.

After careful perusal of the aforesaid observation made during the course of the order, it is undisputed that, both the parties have consented for conduct of inquiry. Thereafter, an interim application is filed to dismiss the complaint filed by fourth respondent. Therefore, the second respondent has dismissed the application filed under Section 35(3)(a) of the Advocates Act holding that, when the matter is at the stage of evidence, they are not inclined to dispose of the complaint on the basis of

the interim application. I am of the view, at this stage, moulding the relief as submitted by petitioner, party-in-person, that too, when the matter has been seized by the statutory authority and when the petitioner - party-in-person has failed to assail the correctness of the order passed by the second respondent on interim application and more so, when petitioner himself has given his consent for conduct of inquiry proceedings, is not justifiable. Petitioner having given his consent for inquiry, cannot now turn back and take a stand that, the allegations made in the complaint filed by fourth respondent do not relate to professional misconduct and notice issued by second respondent based on the said complaint is one without jurisdiction and that, the second respondent has exceeded in his jurisdiction on the ground that, the said authority has not followed the mandatory provisions of Section 9 of Advocates Act read with Rule 33 of the Bar Council of India Rules. The submission of petitioner, party-in-person that, he being a senior citizen and retired Director General of Police for State, having excellent record in service and high reputation, the same will be jeopardized on the basis of the false and frivolous allegations and the proceedings initiated on extraneous consideration and without application of mind by second respondent and that, the attitude of fourth respondent towards petitioner became completely inimical because of several developments when they were in service in the police department of the State and both being the same batch-mates are all not relevant for the purpose of considering the scope and ambit of the relief sought for by petitioner in the instant writ petition and the same needs no consideration.

9. The question that would now arise for consideration in the instant writ petition is as to, whether petitioner can maintain the instant writ petition invoking the extra ordinary jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution of India, by assailing the correctness of the notice dated 26th September 2005 and seek a writ of prohibition, prohibiting respondents 1 and 2 from conducting disciplinary inquiry against the petitioner on the complaint given by fourth respondent As a matter of fact, as stated supra, in the instant case, in pursuance of the notice issued, petitioner has filed the reply and thereafter filed an interim application and the statutory authority has considered the said interim application and after hearing both parties, has given a finding holding that, the petitioner himself has consented for inquiry and therefore, the matter has been

posted for evidence of the parties. If that is so, the prayers sought for by petitioner, party-in-person do not survive for consideration. Even otherwise also, in view of the well settled principles of law laid down by Apex Court and this Court in series of matters, presenting the writ petition seeking to quash the show cause notice, and to stall the very initiation of proceedings pursuant to such show cause notice is not justifiable. The Apex Court in the case of Special Director and Anr. v. Mohd. Ghulam Bhouse and Anr. reported in 2004 AIR SCW.416 has held that, 'The practice of High Courts entertaining the writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties is deprecated. Unless, the High Court is satisfied that, the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into acts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respondent to the show cause notice and take all stands highlighted in the writ petition.'

(Emphasis supplied).

10. The specific contention urged by petitioner- party-in-person is that, as per Section 36-B of the Advocates Act, the limitation period starts from the date of receipt of the complaint and if the same is not disposed of within one year, such proceedings shall stand transferred to the Bar Council of India, which may dispose of the same, as if it were a proceeding withdrawn for inquiry under Sub-section (2) of Section 36 of the Act. In the instant case, notice issued by second respondent is dated 26th September 2005. The limitation period starts from the date of issuance of the said notice by second respondent. As per Rule 17(2) of the Bar Council of India Rules, the period of limitation is considered from the date of issuance of the notice by the Disciplinary Committee and this point is directly covered by the judgment of the Division Bench of this Court reported in : AIR1993 Kant7 (Karnataka State Bar Council v. An Advocate), wherein at paragraph 7 of the judgment, it is held as follows:

Para.7. xxx xxxx xxxWhen it is a case of a reference of a complaint, could not have been thought of. At any rate, a plain reading of Section 36-B(1) conveys the meaning that the period of one year is the period provided to consider the proceedings by the Disciplinary Committee and therefore, such a period would commence only when the proceedings of the Disciplinary Committee are initiated and not earlier.

Rule 17(2) makes the position further clear. It reads:

The date of receipt of the complaint or the date of the initiation of the proceedings at the instance of the state Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee under Section 35(1).Confining the above words to the instant case, Rule 17(2) would read:

The date of receipt of the complaint...shall be the date on which the State Bar Council refers the case for disposal to the Disciplinary Committee under Section 35(1).Rule 17(2) actually identifies the relevant date. It points out that in the case of a complaint, the date of its receipt is not the actual date when the Bar Council received it, but it is the date on which the case is referred to the Disciplinary Committee for disposal. It is impossible to understand this Rule in any other manner.

11. Therefore, interference by this Court on the basis that, the allegations levelled in the complaint do not amount to professional misconduct is not justifiable for the reason that, whether the allegations made in the complaint amount to professional misconduct or otherwise is purely a question of fact, and the same is required and would be gone into only by the competent authority alone, after appreciation of oral and documentary evidence. This Court cannot sit in its judgment and decide the question of facts by exercising the extraordinary jurisdiction having regard to the facts of the case, as stated above.

12. Therefore, in view of the well settled law laid down by the Division Bench of this Court, the specific ground urged by petitioner that, second respondent has no power to proceed with further inquiry in the matter has no substance. Hence, the said submission is liable to be rejected.

13. So far as the reliance placed by petitioner regarding maintainability of the writ petition under Articles 226 and 227 of the Constitution of India, there is no dispute or second opinion regarding the well settled principles of law laid down in series of matters, but the said judgments are not applicable to the facts and circumstances of the case on hand and the same are of no assistance to him in the present petition. It is pertinent to note, in the instant case, the matter is at the stage of recording evidence of the parties before second respondent. At this stage, entertaining the instant writ petition, by stalling the further proceedings and setting aside the notice issued, which is in fact been replied by petitioner and expressing any view on the reliance placed by petitioner and making it applicable to the case on hand, is not justifiable. The subject matter involved is purely a question of fact which the competent authority alone is entitled to go into. Therefore, I am of the considered view that, the ratio of law laid down by Apex Court, relied upon by petitioner are not applicable to the facts and circumstances of the case on hand.

14. Thus, in view of the well settled law laid down by the Division Bench of this Court, regarding limitation and in view of the well settled principles of law laid down by the Apex Court, referred above, entertaining the instant writ petition against the notice by invoicing the extra ordinary jurisdiction would be contrary and not justifiable and the same would lead to anomalous results.

15. In the light of the facts and circumstances of the case, as stated supra, I am of the considered view that, the writ petition filed by petitioner - party-in-person, assailing the correctness of the impugned notice is not maintainable.

16. Having regard to the facts and circumstances of the case, as stated above, and taking into consideration the totality of the case on hand, both on factual and legal aspects of the matter, I do not find any good grounds to entertain the instant writ petition, at this stage.

17. For the foregoing reasons, the writ petition filed by petitioner - party-in-person is dismissed as devoid of merits.

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