

In Re: the Bar Council Act

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Court : Kolkata

Decided On : Jul-08-1929

Reported in : 126Ind.Cas.558

Judge : George Claus Rankin, C.J.,; Philip Lindsay Buckland and; Zahhadur Rahim Zahid Suhrawardy, JJ.

Appellant : In Re: the Bar Council Act

Judgement :

George Claus Rankin, C.J.

1. In this case it appears to me to be necessary that this Court should exercise its power under Clause 4, Section 12, Bar Councils Act, and refer the matter back to the tribunal through the Bar Council. A complaint was made against the Advocate in question. The High Court did not think fit to summarily reject the complaint and was obliged, therefore, to refer the case for enquiry to the Bar Council. It was referred to the tribunal and it appears that, after certain evidence had been taken on affidavits on 22nd June, 1929, a letter was produced from the Solicitor of the complainant to say that he had a talk with the Advocate concerned and had to inform the Bar Council that his client did not wish to proceed with the matter farther, and that he, therefore, withdrew the complaint. On this the tribunal has reported: 'In, these circumstances, the enquiry cannot further be proceeded with.' With the greatest possible respect to the learned lawyers who composed that tribunal the position is very different. It was quite possible for the tribunal to

proceed to investigate the complaint, and it had ample power to compel the attendance of witnesses under Section 13 of the Act. The complainant, after the matter has been referred to the tribunal, is not in any way a person who is like a plaintiff dominus litis.

2. The Act requires that the tribunal should come to a finding. The question is not whether the complainant has a grievance, but whether a member of the profession against whose conduct the complaint has been made--a matter in which the public has an interest--is to be found to have done something that he should not have done or whether he should be cleared of the charge. It appears to me highly unsatisfactory from the point of view of Advocates and of the public that any one should make a solemn complaint against one of them to the High Court and have the matter referred to the tribunal, and that then, without any finding which could clear the Advocate the enquiry should be dropped. I quite appreciate that, in this particular case, there may well have been circumstances and evidence before the tribunal which would entitle it upon consideration to say that it was satisfied that there was no need to further investigate the matter and that there was no proof that the charge preferred had any substance. In these circumstances it would certainly be open to the tribunal to exercise its own discretion, whether to employ its power to summon the complainant personally or other people. It was in no way obliged to do so if it did not think this necessary in order to arrive at a finding upon the question. But the report as drawn clearly imports that the tribunal was of opinion that the enquiry necessarily came to an end. I am so well satisfied that this view would deprive the new enactment--the Bar Council Act of much of its advantage to the public that it appears to me desirable on the whole to make an order referring the matter back to the tribunal and the tribunal will, I trust, make up its mind as regards this matter and come to a definite finding on which this Court will be entitled to take action either by dismissing the complaint or otherwise as the circumstances may require.

Buckland, J.

3. I desire to add a few words to what has fallen from the learned Chief Justice. The situation which has arisen in this particular matter appears to have been

foreseen by those who framed the rules under the Bar Councils Act. Under Rule 3 it is provided that when a complaint has been made by a person other than a Court or by the Bar Council, such person or the Bar Council shall be entitled to appear before the tribunal to prosecute the complaint. The object of that is that, if the complainant will not prosecute the complaint, the Bar Council may do so and bring the matter to a final conclusion. The Bar Council, I apprehend, is in the position of a trustee and guardian of the dignity and privileges of the Bar and the rights and duties of its members, and it is to the interest of the profession that when a charge is made against an Advocate H should either be cleared up or be brought home to him. The rules are so designed that a charge of misconduct should not be left in the position in which this case comes before us, out that there should be a finding one way or the other. The present position is unsatisfactory from every point of view and I concur in the order to be made.

Suhrawardy, J.

4. I agree with the learned Chief Justice. I do not understand what the tribunal meant by saying that the matter cannot be further proceeded with. If they mean to say that, because the parties compromised the matter, the law does not empower them to proceed further, then they are wrong. On the other hand, if they are satisfied that, in the circumstances of the case, and on the material before them the matter should be proceeded with further, then they should have said so in so many words.

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