

12th July,
2024
(AK)
02-03

WPCRC 68 of 2024
In
WPA 26174 of 2023
With
WPCRC 69 of 2024

Debanjan Mondal
Vs.
Somabrata Mandal

Mr. Deepan Sarkar
Ms. Deepti Priya
Mr. Biswajit Kumar

...for the petitioner in
WPCRC 68 of 2024.

Mr. Soumya Roy Chowdhury
Ms. Susera Mitra

...for the petitioner in
WPCRC 69 of 2024.

Mr. Krishnaraj Thaker
Mr. Rohan Raj
Mr. Indranil Munshi
Ms. Vedika Bhotika
Ms. Anushka Sarkhel
Mr. Soumavo Mukherjee

...for the alleged contemnor.

1. Both the contempt applications are taken up together, since those arise out of the same act of contempt.
2. Learned counsel for the contemnor seeks leave to file a supplementary affidavit. Such leave is granted and the same is kept on record.
3. Although it is submitted by learned counsel for the petitioner in the contempt application that a copy of the same was sought to be served late last evening

and as such was not accepted by the petitioner, such non-service is rather irrelevant for the present purpose, since keeping in view the stage of the present matter, the question of contempt is between the contemnor and the court and the petitioner does not have any effective role to play therein apart from bringing to the notice of the court any relevant fact.

4. Upon a perusal of the supplementary affidavit filed today, I am satisfied that in the same, an unqualified apology, as opposed to that sought to be tendered in the original opposition, has been tendered.
5. The question which remains to be decided is whether despite such tendering of unconditional apology, the contempt of the petitioner stands purged.
6. It is well-settled that in contempt jurisdiction, before taking an extreme measure, courts are doubly circumspect.
7. However, in the circumstances of the present case, the benefit of doubt sought to be projected to the action of the contemnor by learned counsel for the contemnor cannot be extended.
8. Apart from tendering unqualified apology, learned counsel for the contemnor also submits that there was a *bona fide* scope of doubt insofar as the

interplay between Sections 36 and 36B of the Advocates Act, 1961 is concerned.

9. The facts of the present case are that the contemnor had challenged, in a writ petition, an action of the State Bar Council in keeping a complaint lodged by the contemnor against the petitioner in the contempt application pending for over a year, contrary to the provisions of the Advocates Act, 1961.
10. The hearing in the writ petition was concluded on December 5, 2023. The judgment thereon was delivered on December 13, 2023.
11. However, without waiting for the outcome of the said challenge, the contemnor chose to take out an independent application before the Bar Council of India, captioned as one under Section 36(2) of the 1961 Act, seeking withdrawal of the case by the Bar Council of India from the State Bar Council.
12. A bare perusal of the provisions of Sections 36 and 36-B indicates that there could not have been any doubt as to the interplay between the two, particularly in the mind of a qualified legal professional which the contemnor is.
13. The contemnor has some standing at the bar, being associated with the legal profession for a considerable period of time, and it cannot be said that he was so naïve as to misinterpret the

overlapping provisions of Sections 36 and 36B of the Advocates Act, 1961.

14. Sub-section (2) of Section 36B of the 1961 Act provides that notwithstanding anything contained in sub-Section (1) thereof, where any proceedings in respect of any disciplinary matter against an Advocate is pending before the disciplinary committee of a State Bar Council, such committee is to dispose of the same within a period of six months from the date of such commencement or within a period of one year from the date of the receipt of the complaint or as the case may be the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later.
15. It is further provided that failing the same, such proceedings “shall stand transferred to the Bar Council of India” for disposal under sub-Section (1) of Section 36B.
16. Thus, Section 36-B (2) does not envisage any provision for an application to be made by the complainant before the Bar Council of India.
17. The operation of sub-Section (2) of Section 36B is automatic, upon the failure of the disciplinary committee of the State Bar Council to decide on the complaint within the later period out of the three specified therein.

18. In the present case, the said later period was the date when the matter was referred to the disciplinary committee.
19. Hence, the only scope of making an application by a party to the complaint is provided under Section 36(2) of the Advocates Act, 1961.
20. Under sub-Section (2) of Section 36, the Bar Council of India may, either of its own motion or on a report by any State Bar Council, withdraw for enquiry before itself any proceedings for disciplinary action against an Advocate pending before the disciplinary committee of a State Bar Council and dispose of the same.
21. Alternatively, the same can be done also on an application made to it by any 'person interested'.
22. The contemnor, as a 'person interested' under Section 36(2), sought for withdrawal of the enquiry on the specific ground that the State Bar Council disciplinary committee had failed to dispose of the same within one year, that is, the ground contemplated in Section 36B.
23. Taking in conjunction the two concepts, on the one hand that no independent application by a party is envisaged under Section 36B and the only provision of an application is under Section 36(2), and on the other that the premise of the application of the contemnor before the Bar Council of India under

Section 36 (2) was under Section 36B, being precisely the same as taken before this court in WPA 26174 of 2023, which had been reserved for judgment at the juncture when the application was filed before the Bar Council of India, there cannot be any manner of doubt that the contemnor sought to frustrate the outcome of the writ petition, prior to judgment being delivered in the same by this court.

24. The position might have been otherwise if the application before the Bar Council of India had been previously filed.
25. However, the very act of the contemnor in filing the same at a juncture when judgment had been reserved in the matter after hearing both sides shows the contumacious action of the contemnor in seeking to frustrate the outcome of the writ petition.
26. It could even be understandable if an inordinately long period had elapsed after conclusion of hearing of the writ petition and passing of the order, in which case the contemnor might have taken a chance before the Bar Council of India, being harried by the delay. However, only eight days elapsed between the judgment being reserved by this court and the final judgment being passed on December 13, 2023.

27. Thus, the benefit of such doubt is also not available to the contemnor to alleviate his contumacious act.
28. There is a further component of contempt which continued even thereafter. The judgment of this court turned down the contemnor's plea that one year had elapsed within the contemplation of Section 36-B. However, even after the said date, when the matter came up before the Bar Council of India, instead of either withdrawing the application in the teeth of the order of this court or seeking at least a postponement or adjournment of the application pending decision in the appeal which had been preferred by the contemnor against the order of this court, the contemnor boldly proceeded with the application before the Bar Council of India, merely pointing out before the Bar Council of India that an order had been passed in the meantime before by this court, apparently to save the contemnor's skin so that the contemnor was not held guilty of suppression of the order subsequently.
29. Yet, fact remains that the contemnor did not choose to abstain from proceeding with the matter before the Bar Council of India at least till the outcome of the appeal against the order of this court was known.

30. Instead, the contemnor chose to proceed with the matter and upon the Bar Council of India observing that the contemnor should withdraw his Letters Patent Appeal filed in this court in respect of the order passed by the writ court, the contemnor proceeded on such premise, accepting the said direction and thereby continuing the contumacious Act by withdrawing the appeal filed against the parent order of the writ court in terms of the BCI observation with the obvious intention to carry forward the challenge before the BCI on the self-same ground which was turned down by this court in the contemnor's writ petition.
31. Thus, the contemnor not only abstained from withdrawing or seeking a postponement of his application before the Bar Council of India (BCI) but complied with the directive of the Bar Council of India on the contemnor's application by withdrawing the appeal to facilitate further proceeding before the BCI.
32. Not stopping there, the contemnor subsequently sought a recall of the order withdrawing the appeal.
33. The said attempt of the contemnor came at a juncture when the contempt application had been filed and orders have been passed in connection therewith.

34. Failing in such endeavour as well, since the recall application met with a rejection, the contemnor has proceeded now with a Special Leave Petition before the Supreme Court against the parent order.
35. It is made clear that there is nothing wrong in the contemnor proceeding with the challenge against the parent order passed by the writ court, since it is a right of every citizen of India to avail of a remedy of challenge as provided in law or under the Constitution of India.
36. However, the action of the contemnor partakes the character of contempt in view of the contemnor, despite the order of the writ court staring at the face of the contemnor at all relevant junctures, proceeding with and not seeking postponement of his application under Section 36(2) which, although captioned so, contained a challenge on the premise of Section 36B which had been clearly adjudicated upon by this court and was pending such adjudication after conclusion of hearing when the application before the Bar Council of India was filed.
37. Keeping in view the above circumstances, this court of the clear opinion that there was a willful and deliberate attempt on the part of the contemnor to thwart the order of this court dated December 13, 2023 passed in the writ petition, which cannot be

said to have been purged merely by paying lip-service to the term “apology” by seeking an unqualified apology by filing a supplementary affidavit today.

38. However, this court is not unmindful of the standing of the contemnor in the legal profession and the number of years put behind the profession by the contemnor which standing, although his nemesis in the contempt application, justifies a somewhat lenient view to be taken, since if the contemnor is committed to prison, the same may have an irreversible adverse effect on his career.
39. However, in view of the gross contempt committed by the contemnor in his actions as indicated above, the contemnor is directed to deposit fine to the tune of Rs.1 lakh to any of the Advocates’ benevolent funds of this court by August 9, 2024.
40. The matter shall be listed next on August 9, 2024 when the contemnor shall file a receipt to that effect before this court.
41. All parties shall act on a server copy of this order without insisting upon prior production of a certified copy for the purpose of compliance.
42. WPCRC 68 of 2024 as well as WPCRC 69 of 2024 shall next be listed on August 9, 2024 for passing further orders.

43. Further personal appearance of the contemnor is dispensed with for the present.

(Sabyasachi Bhattacharyya, J.)