

CWP-PIL-220-2024

Anjali Kukar and others Vs. Bar Council of India and others

Present : Mr. G.S. Bal, Senior Advocate, with
Ms. Lovepreet Kaur, Advocate,
Ms. Anjali Kukar – applicant/petitioner No.1 in person
Mr. Ranjeet Singh – applicant/petitioner No.3 in person and
Mr. Davinder Singh – applicant/petitioner No.4 in person.

Mr. Prateek Sodhi, Advocate (through video conferencing), with
Mr. Amit Vaid, Member of the Bar Council of India (through v.c.)
for respondent No.1 – Bar Council of India.

None for respondent No.2 – Bar Council of Punjab & Haryana.

Mr. Sumeet Jain, Addl. Standing Counsel, UT Chandigarh,
Mr. Akash Jain, Advocate, and
Ms. Sukhmani Patwalia, Advocate,
for respondent No.4 – UT Chandigarh.

Mr. Pankaj Bhardwaj, Advocate, and
Mr. Vikas Malik – respondent No.5 in person.

Mr. Gaurav Chopra, Senior Advocate, with
Ms. Seerat Saldi, Advocate, and
Mr. Swaran Singh Tiwana – respondent No.6 in person.

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1. The present petition has been filed assailing two interlocutory orders, one dated 27.09.2024 (Annexure P-1) and the other dated 30.07.2024 (Annexure P-2), both passed by respondent No.1 – Bar Council of India.
2. Vide order dated 27.09.2024 (Annexure P-1), the Bar Council of India stayed the interim order dated 04.07.2024 (Annexure P-3) passed by the Bar Council of Punjab & Haryana, which was to the following effect :-

“As observed in the High Court order reproduced above, the assaulting and manhandling of the complainant No.5 amounts to interference in the administration of justice, the respondent no.1 who is sitting president of PHHBA and is holding the prestigious post, is not expected to commit this kind of act. We are of the opinion that his presence is not safe for the atmosphere of the Bar Association and in view of the above mentioned

allegations/circumstances, the respondent no.1 is restrained to act as President till the final decision of the present complaints. He is also hereby restrained from using the Bar Association office in any form/capacity possible till the final outcome of these complaints. We also direct the respondent no.1 Sh. Vikas Malik not to be seen anywhere near the office of the President/Executive/Bar Association office till the final decision of the present complaints.”

3. Vide order dated 30.07.2024 (Annexure P-2), the Bar Council of India stayed another interim order dated 26.07.2024 (Annexure P-4) of the Bar Council of Punjab & Haryana, which was to the following effect :-

“However, in the present case the allegations are that the respondent no.1 Sh. Vikas Malik and respondent no.2 Sh. S.S. Tiwana have not followed any of above mentioned rules and regulations and when the complainants moved an disputed application (annexure A-1) to the respondent no.2 for calling a General House on the matter of embezzlement on 26.02.2024; the respondent no.2 Secretary at that time did not call for it saying that he has not received any such representation/application for calling general house meeting. At this stage, all the allegations qua removal of respondents from their respective posts on 9.4.2024 by the dispute General House are yet to be proved but we cannot overlook the report sent by Acting President of PHHCBA which is an independent body and this report indicates towards embezzlement and that also to be proved/unproved before the Financial Committee or PHHCBA.

As the matter is related to embezzlement of public funds and image of legal fraternity is being tarnished due to this unfortunate alleged event; this Committee deems it fit to restrain the respondent no.2 to act as Secretary, till the final decision of the present complaint, so that he may not

influence the office bearers, Executive/Finance Committee and Account officials of the PHHCBA.

At this stage, respondent no.2 submitted that this report is absolutely false and he should be given some time to file reply to this report. We have gone through his request and same is declined as this is not any application/report filed by complainants but it is submitted by the Acting President of PHHCB. If the respondent no.2 wants to file any reply/response, the same be filed before Finance Committee of PHHCBA, which will decide this matter as expeditiously as possible preferably before next date of hearing.

The respondent no.2 has submitted that even the complainants meet daily with the Acting President and Treasurer in their official rooms and they are exerting pressure/influence upon the Acting President, Treasurer and other officials of the Bar Association. In response, the complainant no.1 Ms. Anjali Kukar submitted that her Tea Table (waiting room/seniors room) is with seniors in a room adjacent to Treasure Office and she is having lunch/tea there since last 13 years. Looking at the gravity of the case, the complainants are directed to refrain themselves from meeting with Acting President, Treasurer or any other official of the PHHCBA. They are further advised to avoid going to the Administrative office/Executive Block of PHHCBA, till disposal of this complaint. In case there is any emergency, then they can approach Joint Secretary of PHHCBA namely Mrs. Parveen Dahiya, Advocate and still if there is any problem to them, they can apprise this Committee.

Matter is adjourned for 31.7.2024 at 3.00 PM for cross examination of remaining CWs respondent no.2. All the CWs be summoned for the date fixed.”

4. When the matter is taken up today, Shri Amit Vaid, Member of the Bar Council of India and also of the Disciplinary/Revision Committee, has

been heard through video conferencing. Shri Prateek Sodhi, Advocate, appearing on behalf of the Bar Council of India is also heard through video conferencing.

5. On a specific query made by this Court as to the scope and sweep of Section 48A of Advocates Act, 1961 (for short, 'the Act') as to whether the Bar Council of India can assume revisional jurisdiction in a matter, which is pending before State Bar Council, neither Shri Amit Vaid nor Shri Prateek Sodhi is able to answer the query of this Court and have sought time.

6. On this Court apprising Mr. Vaid and Mr. Sodhi about the confusion that is caused by the impugned interim orders passed by the Bar Council of India, the only assurance given is that the revision shall be decided as early as possible.

7. A bare perusal of Section 48A of the Act reveals that revisional jurisdiction can be assumed by Bar Council of India in matters, which are disposed of by a State Bar Council or a Committee thereof. For ready reference and convenience, Section 48A is re-produced below :-

“48A. Power of revision – (1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.”

8. The Bar Council of India, while exercising jurisdiction under Section 48A of the Act, is assessing the legality and validity of interim orders passed on 04.07.2024 and 26.07.2024 by State Bar Council of Punjab &

Haryana in respect of disciplinary proceedings pending consideration before the State Bar Council against respondents No.5 and 6.

9. Since there is no assistance from the Bar Council of India in respect of scope and spirit of Section 48A of the Act, this Court is of the considered *prima facie* view that the revisional jurisdiction by the Bar Council of India can only be assumed, as is evident from plain textual reading of Section 48A of the Act, when a matter is disposed of by a State Bar Council or a Committee thereof, but not during pendency of proceedings before State Bar Council.

10. In view of above, it appears that the orders challenged herein passed by Bar Council of India are *prima facie* suffer from jurisdictional error.

11. Accordingly, the orders dated 27.09.2024 (Annexure P-1) and 30.07.2024 (Annexure P-2), impugned herein, shall remain stayed till the next date of hearing.

12. List on 23.10.2024.

13. In the meanwhile, the Bar Council of India is directed to first decide the question of jurisdiction and thereafter enter into merits, latest by 22.10.2024.

14. The day to day affairs of the Bar Association of Punjab & Haryana High Court shall be managed by the Vice-President along with Joint Secretary of the Association.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

October 19, 2024
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