

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT SRINAGAR
(Before the Disciplinary Committee, Srinagar Wing)**

Dated: .09.2024

Secretary to Govt. Department of Law, Justice and Parliamentary Affairs

vs

Mian Abdul Qayoom, Nazir Ahmad Ronga and Ghulam Nabi Thoker *alias* Shaheen, Advocates

**Coram: Hon'ble Mr. Justice Rajnesh Oswal, Judge
Hon'ble Mr. Justice Sanjay Dhar, Judge
Hon'ble Mr. Justice Rahul Bharti, Judge**

Appearance:

Mr. D. C. Raina learned Advocate General.

For the complainant(s): Mr. Mohsin Qadiri, Sr. AAG along with Mr. Achal Sethi Secretary to Govt., Department of Law, Justice & Parliamentary Affairs.

For the respondent(s): Advocate Mian Abdul Qayoom-Respondent No.1 present through virtual mode, Advocate Nazir Ahmad Ronga- Respondent No.2 also present through virtual mode, and Advocate Nazir Ahmad Ronga Respondent No. 3 along with Mr. Z. A. Qureshi, Sr. Adv.

ORDER

1. A complaint dated 31.10.2022 submitted by the Secretary to Government, Department of Law, Justice and Parliamentary Affairs, Govt. of UT of J&K(in short 'the complainant) against (1) Advocate Mian Abdul Qayoom, (2) Advocate Nazir Ahmed Ronga, and (3) Advocate Ghulam Nabi Thokar *alias* Shaheen under the Advocates Act, 1961(in short 'the Act of 1961') to the Registrar General of the High Court of Jammu & Kashmir and Ladakh for taking appropriate necessary action against the aforesaid three advocates, was placed before the Hon'ble Chief Justice.
2. Said complaint came to be referred to and taken up for proceedings by the then comprising Disciplinary Committee, Srinagar Wing, High Court of

Jammu & Kashmir and Ladakh before which the three advocates, upon appearance, came to register their respective objections.

3. After considering the preliminary objections in respect of the entertainability of the complaint so raised by the respondent-advocates, the then Disciplinary Committee, for stated reasons, declined to proceed and deal with the complaint filed by the complainant and remitted the matter back to the Hon'ble Chief Justice. The matter was, accordingly, placed before the Hon'ble Chief Justice of the High Court of Jammu & Kashmir and Ladakh.
4. Consequently, High Court of Jammu & Kashmir and Ladakh's Full Court meeting, in its capacity as State Bar Council, was convened and held on 20.10.2023 in which, inter alia, a decision constituting the Disciplinary Committee came to be taken by the Full Court and the very same complaint dated 31/10/2022 as filed by the complainant and remitted back by the previous Disciplinary Committee to the Hon'ble Chief Justice, was referred to the newly constituted Disciplinary Committee, Srinagar Wing, High Court of Jammu & Kashmir and Ladakh for dealing with the complaint with respect to the respondent-advocates and that is how the proceedings have commenced in the matter before us on receipt of complaint on 04.11.2023 from the Joint Registrar (Judicial/Protocol), Srinagar Wing as Secretary Disciplinary Committee.
5. The three respondent-Advocates were put to notice and notice also to all the concerned.

6. Accordingly, on 17.12.2023, Advocate Mr. Mian Abdul Qayoom-respondent No. 1 came forward to submit his reply thereby first raising the preliminary objections as to the very maintainability of the complaint in reference.
7. Similarly, Advocate Nazir Ahmed Ronga-respondent No. 2 and Advocate Ghulam Nabi Thokar *alias* Shaheen-respondent No.3 also submitted their respective objections to the complaint on 02.03.2024.
8. Upon perusal of the complaint and the reply cum objections filed by said three respondent-advocates, three issues came to be framed, vide an order dated 02.03.2024, and the issues so framed, for the facility of reference, are extracted as under:
 - (i) Whether this Disciplinary Committee is not competent to deal with and hear the complaint?
 - (ii) Whether this complaint is not maintainable?
 - (iii) Whether the respondents are guilty of misconduct within the meaning of section 35 of the Advocates Act?
9. Issue Nos. (i) and (ii) came to be treated as preliminary issues as the same are meant to be agitated by the respondent-advocates to submit that the complaint submitted against them needs not to be dealt with at all.
10. Respondent No.1-Advocate Mr. Qayoom has next argued that on previous occasion qua the same very complaint, the then constituted Disciplinary Committee had declined to proceed and had referred the complaint back to the Hon'ble Chief Justice for disposal under law without seeking any order of remand from the State Bar Council, as such, the decision dated 20.10.2023 of the Full Court is without jurisdiction.

11. Respondent No.1-Advocate Mr. Qayoom has next argued that the complaint is not verified by the complainant in the manner provided under the Bar Council of India Rules and, therefore, not cognizable.
12. Respondent No.1-Advocate Mr. Qayoom further laid vehement stress that he is not even subject to operation and effects of the provisions of the Act of 1961. Therefore, neither the State Bar Council i.e. the High Court of Jammu & Kashmir and Ladakh nor any Disciplinary Committee constituted by the High Court of Jammu & Kashmir and Ladakh in its Full Court decision under the Act of 1961 has any jurisdiction to deal and proceed ahead against him by reference to the complaint so filed.
13. Respondent No.1-Advocate Mr. Qayoom had initially acknowledged that this Disciplinary Committee is a duly constituted and competent one but later on after the other two co-respondents raised objections with regard to the legality and legitimacy of the constitution of this Disciplinary Committee, he came to submit that the present Disciplinary Committee has not been validly constituted in terms of mandate of section-9 of the Act of 1961.
14. The respondent No.1-Advocate Mr. Qayoom further argued that the Full Court of the High Court of Jammu & Kashmir and Ladakh, acting in its authority and jurisdiction as a State Bar Council under the Act of 1961, can only exercise the power of 'Admission and Enrolment' of advocates in terms of section 58 of the Act of 1961 but has no power vested, acting as State Bar Council, to initiate and proceed ahead through its disciplinary committee with the disciplinary action against the advocates.

15. Lastly, the respondent No.1-Advocate Mr. Qayoom submitted that the satisfaction recorded by the Full Court is not in consonance with law, and, therefore, the complaint deserves to be dismissed, more particularly when there was no material before the Full Court to record its satisfaction in terms of Section 35 of the Act of 1961.
16. In this regard, the respondent No.1-Advocate Mr. Qayoom has placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702, S. Narayanappa v. CIT, AIR 1967 SC 523** and **Nandlal Khodidas Barot v. Bar Council of Gujarat, 1980 Supp SCC 318.**
17. The respondent No.2-Advocate Nazir Ahmad Ronga has submitted that a complaint under the Act of 1961 against an advocate is maintainable only at the instance of an aggrieved person whereas in this case there is no aggrieved person as such before the Disciplinary Committee. He has further submitted that there is no material against him, and, in fact, he used to persuade the people to participate in the elections when the militants had given the calls to boycott the elections.
18. Mr. Z. A. Qureshi, learned senior counsel representing the respondent No.3-Advocate Nazir Ahmad Ronga has raised objections with regard to the competence of the Law Secretary to file the complaint. Mr. Z. A. Qureshi has argued that, in fact, there is no complainant who has filed the instant complaint and also it is not forthcoming from the complaint as to who authorized the Secretary to Government, Department of Law, Justice and Parliamentary Affairs to file the complaint. He has also submitted that

the previous Disciplinary Committee, vide its order dated 07.10.2023, had sent the file back to the Hon'ble Chief Justice for disposal under law and the words 'disposal under law' would mean that the complaint was required to be dismissed or be filed in terms of section 35 of the Act of 1961. He also submitted that once the Full Court has observed that *prima facie* case for proceedings against the respondents is made out, then this Disciplinary Committee is incapacitated to proceed ahead with the complaint because the members of this Committee are also part of the Full Court which had applied its mind, therefore, proceeding ahead with the complaint by this Disciplinary Committee would violate the principle of natural justice that no one can be a judge in his own case and also being a biased state of mind.

19. On the other hand, Mr. Mohsin Qadiri, learned Sr. AAG representing the complainant has submitted that the previous Disciplinary Committee had declined to entertain the complaint only on the ground that the 'expression High Court' does not mean only the Chief Justice but also such other Judges as appointed to the High Court by the President of India.
20. Mr. Qadiri, learned Sr. AAG has further argued that as per law laid down by the High Court of Jammu and Kashmir & Ladakh in case titled, '**Altaf Haqqani vs. State of Jammu and Kashmir**,' 2015(4)JKJ(HC) 319, the High Court, while acting as a Bar Council under the Act of 1961, also has the power to initiate disciplinary proceedings against an advocate under the Act of 1961.

21. Mr. Mohsin Qadiri has further argued that the expression 'reason to believe' employed in section-35 of the Act of 1961, is meant only for the limited purpose to find out and exclude false and frivolous complaint/s filed against the advocate(s). He has further submitted that if there is any technical defect in filing of the complaint, the same can be rectified and the substantial proceedings cannot be sacrificed only on the ground of technicalities. He further submitted that in terms of section 58 (AF) of the Act of 1961, the respondent-Advocate Mr Mian Abdul Qayoom can be dealt with only under the Act of 1961.
22. Mr. D. C. Raina learned Advocate General has submitted that the role of Advocate General is only to assist the Disciplinary Committee and has no adversarial role.
23. Heard at length both sides and perused the record.

Issue No. 1: Whether the Disciplinary Committee is not competent to deal with and hear the complaint?

- a) It is meant to be contended that this Disciplinary Committee is not competent to deal with and hear the complaint in reference on the ground that the members of this Disciplinary Committee are part of the Full Court composition of the High Court of Jammu & Kashmir and Ladakh acting as State Bar Council and once the Full Court decided to hold that there is a prima facie case to proceed against the respondents, this Disciplinary Committee too became part of said prima facie shared opinion of Full Court and cannot then come in a role of an unbiased adjudicator.

- b) The contention raised at first blush appears to be persuasive but upon closer scrutiny deserves to be negated on the ground that the High Court of Jammu & Kashmir and Ladakh, as a State Bar Council, is not party or privy to subject matter allegations in the complaint made by the complainant against the respondents alleging cognizable misconduct, professional or otherwise, as the case may be. The issue is in respect of purported misconduct on the part of the respondents as alleged by the complainant and this Disciplinary Committee is a statutory adjudicator of said complaint notwithstanding the actual contents of the complaint in terms of merit, factual or legal, of the allegations.
- c) The High Court of Jammu & Kashmir and Ladakh, acting through its Full Court, while performing its duties under the Act of 1961, has constituted the present Disciplinary Committee. Thus, the Full Court, of which the members of this Disciplinary Committee are an indispensable part, on the basis of material placed before it and after considering the same, opined that there is a *prima facie* case presented for initiating proceedings under the Act of 1961 with respect to the respondent-advocates. This is akin to a situation where a complaint under the Bhartiya Nagarik Suraksha Sanhita, or for that matter under Cr. P.C. for commission of certain offences is filed against an accused by a complainant before the Magistrate having the jurisdiction and the given Magistrate after examining the material on record including the

statement of the complainant and witnesses, if any, and hearing the complainant proceeds to take cognizance and issue process against the accused therein. In doing so, a given Magistrate is not debarred from conducting the trial of the complainant merely because he has issued the process against the accused. On the same analogy, it cannot be said that this Disciplinary Committee cannot proceed ahead with the complaint filed by the complainant only on the ground that the members of this Committee are part of the Full Court, which by compulsion of the provisions of the Act of 1961, considered to proceed in the matter qua the respondents. This contention, in its given context, is baseless, as such, is rejected.

- d) It is next contended alike, with serious vehemence, from the respondents' end that the Disciplinary Committee is not a validly constituted in terms of section-9 of the Act of 1961. The kernel of the arguments of the respondents in this regard is that only a Disciplinary Committee, comprising of advocates drawn/elected from the State Bar Council and an advocate co-opted by the Bar Council, as mentioned in section-9 of the Act of 1961, has the jurisdiction and competence to deal with the complaint against an advocate whereas the present Disciplinary Committee is no advocates' comprising and does not have any advocate member co-opted from amongst the members of Bar of the Union Territory of Jammu & Kashmir and Ladakh, so this Disciplinary Committee all comprising of three Judges of the High Court of Jammu &

Kashmir and Ladakh is by no stretch of statutory legitimacy a duly constituted and competent to act, deal with and hear the complaint/s in exercise of disciplinary jurisdiction of the State Bar Council envisaged under the Act of 1961.

- e) There is no denial or escape from the fact that section 3 of the Act of 1961 envisages a State Bar Council for each State and Union Territory which is to be a statutory body corporate of the advocates, by the advocates and for the advocates. Section 3 (1) (g) of the Act, 1961 envisages a Bar Council for the Union Territory of Jammu & Kashmir and Union Territory of Ladakh in a similar manner and mandate as is for rest of the States/Union Territories of India. But, simultaneously, Act of 1961 also provides for a contingency for not being able to have State Bar Council as intended under section 3, then a statutory substitute is provided.
- f) In order to appreciate this contention, we are led to refer to, and we deem it appropriate to extract, sub section (1) of section 58 of the Act of 1961, which is as under: -

**“[58 Special provisions during the transitional period-
(1) Where a State Bar Council has not been constituted under the Act or where a State Bar Council so constituted is unable to perform its functions by reason of any order of a court or otherwise, the functions of that Bar Council or of any committee thereof, in so far as they relate to the admission or enrolment of advocates, shall be performed by the High Court in accordance with the provisions of this Act.”**

- g) A perusal of sub section (1) of section-58 of the Act of 1961 reveals that where a State Bar Council is, for any given reason, not

constituted in a given State/Union Territory under the Act of 1961 or is unable to perform its function by reason of any order of the Court or otherwise, the functions of the Bar Council or of any Committee for the purpose of 'admission and enrolment' of the Advocates under the Act shall be performed by the High Court.

- h) It is a long-standing reality in the context of erstwhile State of Jammu & Kashmir and now Union Territory of Jammu & Kashmir and Union Territory of Ladakh that in the past there was no and presently also there is no State Bar Council constituted thereby making the High Court of erstwhile State of Jammu & Kashmir and now of Union Territory of Jammu & Kashmir and Union Territory of Ladakh to step in the robe and role of State Bar Council for all ends and purposes.
- i) In a case titled, '**Altaf Haqqani, Advocate Versus State of J&K &Ors.**' 2015(4) JKJ(HC) 319, the High Court of erstwhile State of Jammu & Kashmir, now of Jammu & Kashmir and Ladakh had an occasion to examine the matter on judicial side to which this Disciplinary Committee, on its statutory side, is fully bound to follow, and observed as under:


"The High Court of Jammu and Kashmir in term of Section 58 having been asked to perform functions of the State Bar Council as it relates to "admission and enrolment of the advocate" is to necessarily perform the functions of the State Bar Council delineated in Chapter V of the Act. Any other interpretation would lead to irrational conclusions. **The authority given power to enrol the advocate is necessarily to have power to suspend and remove such advocate from the State rolls, once he/she is found guilty of professional or other misconduct. In case, the High Court performing functions during the transitory**

period to the extent delineated in Section 58 of the Act, is taken not to have power to initiate disciplinary proceedings and award penalty, there would be no Forum or authority available to deal with a complaint of professional or other misconduct received against an advocate.”
(emphasis added)


- j) Though in terms of section 58 of the Act of 1961 during the transitional period, i.e. when the State Bar Council is not existence or is not functional, a given High Court is to perform the functions of the Bar Council or of any committee thereof, relating to the admission and enrolment of advocate(s) only but in terms of judgment **in the case of Altaf Haqqani, Advocate Versus State of J&K &Ors.**’(supra), the High Court is held to be fully competent and eligible to exercise the disciplinary powers otherwise exercisable by the State Bar Council.
- k) There is an express situation that section-9 of the Act of 1961 mandates that the Disciplinary Committee is required to be constituted of two elected members of the State Bar Council and one member to be co-opted, by the originally elected advocate members to be on the disciplinary committee, from the advocates possessing the qualification as prescribed by proviso to sub section (2) of section-3 of the Act of 1961 and who is not a member of the Bar Council.
- l) There is no doubt to the fact that the framers of the Act of 1961 did not envisage, and could not have envisaged, that in a given State/Union Territory of Union of India there might be a very long stretched and continuing phase of a State Bar Council not

getting constituted for any reason whatsoever and therefore foresaw only a transitional period of absence of a State Bar Council to be provided for in terms of section 58 but the fact remains what is transitional under section 58 happened to be long durative for and in the erstwhile State of Jammu & Kashmir and now Union Territory of Jammu & Kashmir and of Ladakh.

- m) Therefore, in historical view of the fact that the elected Bar Council is not in place in the Union Territory of Jammu & Kashmir and of Ladakh, the literal adherence to section-9 of the Act of 1961 is not possible. Once a State Bar Council comprising of the advocates, by the advocates and for the advocates itself is not constituted, it is rendered self-impracticable to constitute a disciplinary committee of the State Bar Council to be comprised of advocates, be of elected ones and co-opted one, in absence of elected State Bar Council.
- n) If the contention of the respondents in respect of constitution of Disciplinary Committee in the manner as intended is accepted, then it would also lead to a situation as contemplated by the learned Single Bench in judgment **in the case of Altaf Haqqani, Advocate Versus State of J&K & Ors.**'(supra) that there would be no forum or authority to deal with the complaint of professional or other misconduct on the part of an advocate/s practising in the then State of J&K and now Union Territory of J&K and UT of Ladakh. It would lead to an anomalous situation where an



advocate, enrolled by the High Court in exercise of authority as State Bar Council, may indulge in any misconduct, major or minor, in terms of section-35 of the Act of 1961 but is to stay free without bearing any consequences, thereby resulting into a professional absurdity, chaos, uncertainty frustrating the very purpose of the Act of 1961, so far as relates to professional discipline of and by the Advocates. It would then be virtually a free license to misconduct while adorning the robes of an advocate without any fear of discipline and accountability and answerability.

- o) Much emphasis has been laid on the absence of a co-opted advocate member on the Disciplinary Committee being all comprised of three Judges. This plea sounds very tempting but upon close scrutiny of the Act of 1961, its policy and purpose, ends and objectives, would deflate said plea. A State Bar Council is supposed to be constituted from an electorate as per section 3 (2) of the Act, 1961. It is out of a State Bar Council membership that an elected Disciplinary Committee is to be constituted as per section 9 (1). Now, an elected Disciplinary Committee is entrusted with a mandate to co-opt an advocate from a non-State Bar Council membership to be on a disciplinary committee.
- p) State Bar Council elected and drawn members to be on a Disciplinary Committee of the Bar Council are supposed to have an authority in exercise of their collective discretion based upon
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personal knowledge of merit, standing and reputation of advocate constituting the electorate, to co-opt a non-State Bar Council advocate from said electorate to be on the disciplinary committee. This privilege of co-option of one by the elected ones on a disciplinary committee cannot be extended to High Court while discharging the role and function of State Bar Council and its disciplinary committee. Any advocate, if allowed to be co-opted by three of us comprising the Disciplinary Committee, to be on this Disciplinary Committee would be open to question mark of preference/prejudice vis-a-vis a given advocate and which would be spoiler of the situation. It is a settled law that a statute be interpreted in a manner which serves its essence, purpose, and/or which makes it workable and not wrecker.

- q) Apart from the above, if given to said take of the respondents, then the constitution of a disciplinary committee in accordance with section-9 of the Act of 1961 is a distant reality at present, given the fact that there is no elected State Bar Council in the U.T Of J&K and UT of Ladakh and before that there was no such entity in erstwhile State of J&K for some historical reasons to which this Disciplinary Committee is not to advert to. The performance of this impossible act has to be excluded in accordance with the maxim- "**lex non cogit ad impossibilia**" (the law does not compel doing of the impossible), as such section-9 of the Act of 1961 in the context is to be construed as not being applicable in the present

facts and circumstances, when there is no elected State Bar Council.

- r) Thus, though we found interest in the plea but we do not find any merit in the objection in this regard made by the respondents and the learned Senior Counsel assisting and arguing on their behalf, as such, the same is also rejected.
- s) Accordingly, the issue No. 1 is not decided in favour of the respondents. Furthermore, this Disciplinary Committee, constituted by the High Court of Jammu & Kashmir and Ladakh acting, through its Full Court decision, in its vested authority and jurisdiction under the Act of 1961, cannot self erase its own status on the asking of the respondents in the context of their objection in this regard for which the respondents are to figure out an appropriate legal remedy, if any, at their disposal which surely is not and cannot be before this Disciplinary Committee, to vindicate their objection to the legal existence of this Disciplinary Committee.

Issue No. 2:

Whether the complaint is not maintainable?

- a) It was vehemently argued by the respondents that it is not forthcoming as to who has actually filed the complaint as there is no complainant in the present case. In order to elaborate and substantiate this contention, the respondents have laid stress that in the prayer part of the complaint dated 31.08.2022, it has been

mentioned that the Secretary to Government, Department of Law, Justice and Parliamentary Affairs, Govt. of UT of J&K has been authorized to request the Registrar General to place the matter before the Hon'ble Chief Justice for taking an appropriate action against the named advocates but it is not forthcoming at all as to on whose order and behalf, he has been authorised to so act and file the complaint.

- b) Part-VII of the Bar Council of India Rules, 1975 deals with the 'Disciplinary Proceedings and Review.' Chapter-I of Part-VII of the Bar Council of India Rules, deals with the complaint/s against advocates and procedure to be followed by the Disciplinary Committee/s of the State Bar Council and the Bar Council of India.
- c) Rule-1 of Chapter-I of Part-VII of the Bar Council of India Rules states that a complaint against an advocate shall be in the form of a petition duly signed and verified under the Code of Civil Procedure. No format has been prescribed under the Bar Council of India Rules for the purpose of composing the complaint against an advocate whereas only requirement is that it should be in the form of a petition signed and verified under the Code of Civil Procedure.
- d) A perusal of the complaint, in the present case, filed by the Secretary to Government, Department of Law, Justice and Parliamentary Affairs reveals that in the prayer part it is mentioned

that he has been authorized to request the Registrar General of the High Court of Jammu & Kashmir and Ladakh to place the matter before the Hon'ble Chief Justice for taking appropriate action against the respondents mentioned in the complaint. In the body of the complaint, the allegations purportedly reckoned as misconduct have been levelled against the respondent-advocates. Merely, use of expression in the prayer part that the Secretary to Government, Department of Law, Justice and Parliamentary Affairs has been authorized to request the Registrar General of High Court of Jammu & Kashmir & Ladakh, would not make any difference, as in terms of Transaction of Business of the Government of Union Territory of Jammu and Kashmir Rules, 2019, the Secretary to Government, Department of Law, Justice and Parliamentary Affairs is Government and for all practical purposes, this complaint, thus, has been filed by the Government of UT of J&K against the respondents, as such, we do not find any force in the submission made by the respondents that it is not forthcoming from the complaint as to who is the complainant and answer to that is the Government. Under the Act of 1961, a Government is equally entitled to file a complaint in respect of an alleged misconduct on the part of an advocate in respect of his/her conduct falling within the meaning of professional misconduct' or 'other misconduct' in terms of section 35 of the Act of 1961.

- e) The essence of disciplinary proceedings under the Act of 1961 with respect to delinquent advocate/s, with respect to whose conduct a complaint may come or comes to be made, is not related to as to who is the complainant but as to what is the complaint against a given advocate. Thus, in view of this perspective and essence of Act of 1961, the objection of the respondents as to who is the complainant pales into insignificance and of no consequence to derail a complaint.
- f) It is next urged by the respondents that the complaint has not been verified by the complainant in terms of Chapter I of Part-7 of the Bar Council of India Rules. We find substance in the same as the complaint filed by the Secretary to Government, Department of Law, Justice and Parliamentary Affairs is without any verification. In this context, it is apt to take note of sub rule 2 of Rule 1 of Chapter-1 of Part VII of Bar Council of India Rules, which provides that the Secretary of the Bar Council may require the complainant to pay the prescribed fees, if not paid, to remove any defect and call for such particulars or copies of the complaint or other documents as may be considered necessary. This Rule permits the Secretary of the Bar Council to require the complainant to remove the defects from the complaint before the complaint is referred to a Disciplinary Committee. Once the Secretary of the Bar Council can require the complainant to remove the complainant's defects, the Disciplinary Committee too can act and

direct the complainant to attend to the procedural deficiency defect/s, if any, in the complaint, more particularly when the Disciplinary Committee is well in its power to permit or require the complainant to file replication within such time as may be fixed by such Committee as per **Rule 3(2) of the Bar Council of India Rules**. The absence of the verification of the complaint submitted by the complainant is not a defect which goes to the root of the case and same is a technical defect which is of rectifiable nature.

- g) The respondents have also objected to the maintainability of the complaint on the ground that the Full Court, while referring the matter to this Committee, has not applied its mind that in terms of section-35 of the Act. It is urged that a complaint can be referred to the Disciplinary Committee only when the State Bar Council has a 'reason to believe' that an advocate on its roll is guilty of professional or other misconduct. It was also urged that there was no material before the High court of Jammu & Kashmir and Ladakh as State Bar Council so as to refer the complaint to this Disciplinary Committee.
- h) A perusal of resolution of the Full Court dated 20.10.2023 demonstrates that the Full Court has recorded its *prima facie* satisfaction in respect of the alleged misconduct on the part of the respondents that enabled the Full Court to refer the matter to the Disciplinary Committee.

- i) A perusal of section-35 of the Act reveals that the State Bar Council shall refer the complaint to its Disciplinary Committee provided it has reason to believe that any advocate on its roll has been guilty of professional or other misconduct. This section does not provide the mode and manner, mood and modalities on which the State Bar Council is to record its satisfaction for the purpose of a prima facie belief as to the existence of cognizable cause amounting to professional or other misconduct on the part of an advocate for the purpose of referring the matter to its Disciplinary Committee. No universal principle can be tailored to be applicable for the purpose of recording a satisfaction in respect of circumstances amounting to professional or other misconduct except to the extent that the State Bar Council be alive to the allegations levelled in the complaint and if the State Bar Council is of the opinion that the allegations levelled against an advocate prima facie amounts to a cognizable professional or other misconduct, then on that prima facie basis it is to refer the complaint for its disposal to the Disciplinary Committee and not to sit in judgment on a given complaint.
- j) The Hon'ble Supreme Court of India in case, titled, '**N. G. Dastane v Shrikant S. Shinde and another**', AIR 2001 SC 2028 had an occasion to interpret the expression 'reason to believe' as employed in section 35 of the Act. The relevant paras are extracted as under:

“22. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression “reason to believe” is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

23. In *Bar Council of Maharashtra v. M. V. Dabholkar* [(1976) 2 SCC 291 a four-Judge Bench of this Court had held that **the requirement of “reason to believe” cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.**”
(emphasis added)

k) In ‘**Bar Council of Maharashtra v. M.V. Dabholkar,**’ (1975) 2

SCC 702, the Hon’ble Supreme Court of India has held and

observed as under:

“24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. **It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct.** The Bar Council of a State acts on that reasoned belief. The Bar Council has a

very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee. The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.”
(emphasis added)

- l) In '**Nandlal Khodidas Barot v. Bar Council of Gujarat**', 1980 **Supp SCC 318**, the judgment relied upon by the respondent No.1, the Hon'ble Supreme Court set aside the order passed by the disciplinary committee as the reference to the disciplinary committee was found to be bad. In that case, the Bar Council had simply resolved and referred the complaints to the Committee.
- m) Thus, the expression 'reason to believe' employed in section 35 of the Act only contemplates a prima facie satisfaction to be recorded by the Bar Council on the basis of material placed before it for the purpose of making reference to the disciplinary committee and not to carry out a full-fledged trial like mind application. The purpose underlying the use of expression "reason to believe" in section-35 of the Act is to filter out ex facie vexatious and misconceived complaints against the advocate/s.
- n) The relevant extract of the resolution of the Full Court meeting dated 20.10.2023 referring the complaint against the respondents to this Committee is extracted as under:

"The complaint titled, Secretary to Government, Department of Law, Justice and Parliamentary Affairs vs Advocate Mian Abdul Qayoom and others, came up for discussion. Summing up the allegations succinctly as

contained in the complaint against Mian Abdul Qayoom, Ghulam Nabi Thokar @ Shaheen and Nazir Ahmad Ronga, Advocates, it is seen that these advocates allegedly owe an allegiance to the separatist and secessionist movement and under the cloak of their robes as active Members of the High Court Bar Association, Srinagar, engineered Hartals, Bandhs, presented memorandums to the UNMOGIP Headquarter at Srinagar, so much so, defied the Constitution of India; etc. In order to substantiate these allegations, sufficient material in the shape of copies of J&K High Court Bar Association Constitution, FIRs and Payer clippings, etc, are placed on record. The Full Court has gone through the materials and upon consideration is of the opinion that there is a prima-facie case for proceedings against Mian Abdul Qayoom, Ghulam Nabi Thokar @ Shaheen and Nazir Ahmad Ronga, Advocates, for commission of alleged professional and other misconduct. Accordingly, the complaint is referred to the Disciplinary Committee, Srinagar Wing of the High Court, for conducting disciplinary proceeding against Mian Abdul Qayoom, Ghulam Nabi Thokar @ Shaheen and Nazir Ahmad Ronga, Advocates.”

- o) A perusal of the extract of the meeting reveals that the Full Court after taking note of the fact that the respondents allegedly owe an allegiance to the separatist and secessionist movement and under the cloak of their robes as active members of the High Court Bar Association, Srinagar, engineered Hartals, Bandhs, presented Memorandums to the UNMOGIP Headquarter at Srinagar, so much so, defied the Constitution of India etc; supported by the alleged material in the shape of copies of J&K High Court Bar Association Constitution, FIRs and Paper clippings, etc, recorded its satisfaction that *prima facie* case for proceeding against the respondent-advocates is made out. It needs to be stated that whether the allegations levelled against the respondents are correct or not, is to be considered during the enquiry. Thus, there is no substance in this contention of the respondents, accordingly, the

same is rejected. Otherwise also this Disciplinary Committee is not supposed to act as if a reviewing authority with respect to reasons to believe component of the Full Court reference. The respondents are knocking the wrong door by their submission in this context

- p) It was also urged that the earlier Disciplinary Committee had not taken the cognizance and as such, the complaint is required to be dismissed or be filed in accordance with section-35 of the Act of 1961. This contention too is without any merit, as the erstwhile Disciplinary Committee had sent the matter back as it refused to entertain the complaint being not referred to it in accordance with law and it is not that after examining the allegations levelled in the complaint, the erstwhile disciplinary committee deemed it worth not entertainable.
- q) The respondent No.1-Advocate Mian Abdul Qayoom has also raised a plea in respect of the maintainability of the complaint against him in particular by asserting that he came to be enrolled as an Advocate under the provisions of J&K Legal Practitioners Act, 1977 and whereas the Act of 1961, except section-30, was brought into force in the erstwhile State of Jammu and Kashmir on 01.08.1986 when he did not opt to become a member of the State Bar Council under the said Act of 1961. He further laid emphasis on section 58 (A)(3) of the Act of 1961-a special provision applicable to the erstwhile State of Jammu and Kashmir, to submit that as he did not opt to become a member of the State Bar

Council, therefore he is entitled to enjoy the same right in respect of his practice in any court which he was enjoying, prior to the enforcement of the Act of 1961, in terms of the J&K Legal Practitioners Act. He has further argued that he can be subjected to disciplinary jurisdiction of the same authority to which he was subjected to before the repeal of the said Act, whereunder he was entitled to practice. He has further stated in ground 16(c) of his written arguments that any disciplinary action for any alleged professional or other misconduct can be taken against him only under the J&K Legal Practitioners Act (supra). He has also asserted in ground (e) that neither section 50 of the Act of 1961 nor the J&K Reorganization Act, 2019 has repealed any of the provisions of the J&K Practitioners Act, 1977 or the Letters Patent, so far as he is concerned, therefore, he cannot be proceeded against under the Act of 1961.

- r) Before we appreciate this contention raised by the respondent No.1-Mr. Mian Abdul Qayoom, we deem it appropriate to extract sections 58AF and 58-B of the Act of 1961 and section-3 so far as it defines "Legal Practitioner" and sections 12 and 13 of the J&K Legal Practitioners Act, 1977, which are as under:

58AF. Special provisions in relation to Jammu and Kashmir.

(1) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, were entitled to practise in the High Court of that State, or who would have been so entitled had they not been in public service on the said date, shall, for the purpose of the clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian

Bar Councils Act, 1926 (38 OF 1926), and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he-

- (i) makes an application for such enrolment in accordance with the provisions of this Act; and
- (ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, or who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1) or sub-section (2), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any Court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(4) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

58-B. Special provision relating to certain disciplinary proceedings-(1) As from 1st day of September, 1963, every proceedings in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56: Provided that where in

Bar Councils Act, 1926 (38 OF 1926), and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he-

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, or who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1) or sub-section (2), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any Court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(4) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

58-B. Special provision relating to certain disciplinary proceedings-

(1) As from 1st day of September, 1963, every proceedings in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56: Provided that where in

respect of any such proceeding the High Court has received the finding of a Tribunal constituted under section 11 of the Indian Bar Councils Act, 1926 (38 of 1926), the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under section 12 of the said Act as if that section had not been repealed: Provided further that where the High Court has referred back any case for further inquiry under subsection (4) of section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to the High Court as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56.

(3) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with under this Act as if it were a proceeding arising against him thereunder.

(4) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926) and who, at the time when any proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an advocate on a State roll under this Act.

(5) The provisions of this section shall have effect, notwithstanding anything contained in this Act."

Section-3 of J&K Legal Practitioners Act, 1977.

"Legal Practitioner" means an advocate, vakil, a pleader or revenue agent;

Section-12 of J&K Legal Practitioners Act, 1977.

12. The High Court may suspend or dismiss any pleader holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader.

Section-12 of J&K Legal Practitioners Act, 1977.

13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader holding a certificate as aforesaid-

- (a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions; or
- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty; or
- (c) who tenders, gives or consents to the retention out of any fee-paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader; or
- (d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader through or by the intervention of, any person to whom any remuneration for

obtaining such employment has been given by him, or agreed or promised to be so given; or

(e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36; or

(f) for any other reasonable cause. The High Court may suspend or dismiss any pleader holding a certificate issued under Section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader.

- s) Chapter-III of the Act of 1961 deals with the admission and enrolment of advocates, whereas Chapter-IV of the Act of 1961 deals with the right to practice. Section 58AF(3) of the Act of 1961 lays down that an advocate who was practising the profession of law whether by way of pleading or acting or both or any other way by virtue of any provision of any law in force therein, who does not choose to be enrolled as an advocate under sub section (1) or sub section (2) of the section 58AF of the Act of 1961, shall notwithstanding the repeal by that Act or the relevant provision of law under which he was practising the profession of law shall continue to enjoy the same rights in respect of the 'practice' and shall be subject to disciplinary jurisdiction of the same authority, which he enjoyed or as the case may be, to which he was subjected to immediately before the said date and accordingly, the relevant provisions of that law shall be applicable in case of such person, as if the said law had not been repealed. Respondent No.1 claims to be an Advocate under the J&K Legal Practitioners Act, 1977. Section 13 of the J&K Legal Practitioners Act, 1977, as extracted above, provides for suspension and dismissal of the 'pleader only' who may be guilty of unprofessional conduct under that J&K

Legal Practitioners Act, 1977, though of course after an inquiry as contemplated under section (supra) and not of an Advocate. Similarly, section 12 of the J&K Legal Practitioners Act, 1977 provides for dismissal or suspension of pleaders convicted of criminal offence and not of an Advocate. We say so as the Legal Practitioner under the J&K Legal Practitioners Act, 1977, includes advocate, vakil, a pleader and revenue agent and sections 12 & 13 of the J&K Legal Practitioners Act, 1977, deal with pleader only. There is no provision under the J&K Legal Practitioners Act, 1977 that provides for initiating disciplinary proceedings against an advocate under the said Act. The respondent No.1 can no doubt practice as an advocate under section 58AF(3) but as there is no provision in the J&K Legal Practitioners Act, whereunder the respondent No.1 claims to have been practising as an advocate, for initiating disciplinary proceedings under the Act, so the contention of the petitioner that the disciplinary proceedings can be initiated against him only under the J&K Legal Practitioners Act, 1977, is mis-conceived and the same is rejected.

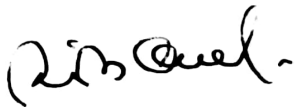
- t) Further, Sub-section-1 of the Section 58AF of the Act of 1961 provides that all advocates, who immediately before the date on which the provisions of Chapter-III came in to force in the erstwhile State of J&K, now UT of Jammu & Kashmir and UT of Ladakh were entitled to practice before the High Court, shall for the purpose of clause (a) of sub-section 1 of section 17, be deemed

to be persons who were entered as Advocates under the Indian Bar Councils Act, 1926.

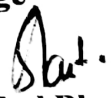
- u) It is not in dispute that Chapter III of the said Act came in to force in the erstwhile State of J&K on 01.08.1986 and as such the respondent No.1 acquired the status of deemed Advocate under the Indian Bar Councils Act, 1926. Further in terms of sub-section-1 of section 58-B of the Act of 1961, the disciplinary proceedings against the respondent No.1 can be initiated and disposed of by the Bar Council under the Act of 1961, as if he had been enrolled as an advocate on its roll. Sub-section-4 of the Section 58-B of the Act of 1961 defines expression 'existing advocate' for the purpose of this section as a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 and who at the time, when any proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an advocate on State Roll under the Act. The respondent No.1 falls within the category of 'existing advocate' and the disciplinary proceedings against him can be initiated under the Act of 1961. Accordingly, issue No.2 is also decided against the respondents.

24. In view of above consideration, we are of the considered view that the Disciplinary Committee is competent to deal with, hear and adjudicate the present complaint ~~admitted~~ and the same is held to be fully maintainable.

25. However, we find and hold that the present complaint has not been verified by the complainant in accordance with Rule 1 of Chapter-I of Part-VII of the Bar Council of India Rules, therefore, we leave it to the discretion of the complainant to verify the complaint and permit him to do so within a period of 30 days from today and in the event needful is done, the complainant shall lead evidence by filing the affidavit(s) with advance copy to the respondents.
26. Needless to say, in passing this order we have not expressed any opinion in respect of the merits of the allegations made in the complaint from the end of the complainant with respect to the respondents.
27. List on 21.09.2024



(Rajnesh Oswal)
Judge


(Sanjay Dhar)
Judge


(Rahul Bharti)
Judge

Srinagar:
11.09.2024

*Copy of Order is forwarded to Secretary to Govt.
Department of law, justice and parliamentary Affairs
through S. AAG.*


12/9/24
Joint Registrar (Judicial)
High Court of J&K and Ladakh
Srinagar