

N.KIRUBAKARAN, J

and

R.PONGIAPPAN, J

The present writ petition has been filed seeking a writ of mandamus directing the respondents 1 and 2 to extend the time for completing DCC.No.184 of 2018 pending on the file of the 3rd respondent.

2.The petitioner contends that he has given a complaint against the 4th respondent on 16.11.2016 to the second respondent. Notice was issued to the 4th respondent and a reply was filed on 10.03.2017 by the 4th respondent. On 22.09.2018, notice of hearing was issued and resolution No.368 of 2018 was passed on 14.06.2018 to place the matter before the disciplinary committee for detailed enquiry under Section 42 of the Advocates Act, 1961. Thereafter, a petition was filed on 19.10.2019 by the 4th respondent to dismiss the complaint for which a counter was filed by the petitioner in the month of November 2019. The matter stands as it is.

3.Apprehending that the matter would be transferred to the file of Bar Council of India under Section 36B of the Advocates Act, 1961, the petitioner has come before this Court for the relief set out earlier.

4.Heard the learned counsel appearing for the petitioner, Mr.S.R.Rakhunathan, learned standing counsel for Bar Council of India and Mr.M.R.Jothimanian, learned standing counsel for the Bar Council of Tamil Nadu and Puducherry.

5.From the facts mentioned above, it is very clear that the petitioner/complainant made a complaint against the 4th respondent/Advocate on 16.11.2016 to the second respondent and a reply was given by the 4th respondent on 10.03.2017. The events narrated above would show that there is no fault or wrong on the part of the petitioner, however the matter has been dragged for such a long time. Though a petition was filed by the 4th respondent to dismiss the complaint on 19.10.2019 and a counter for the said petition was filed by the petitioner in the month of November 2019, without disposing of the same, it is represented by the Bar Council of Tamil Nadu and Puducherry that a note is being prepared to transfer the matter to the file of Bar Council of India. The petitioner herein has not committed any wrong and if the matter is transferred to the file of Bar Council of India, the petitioner may not have the money power to travel to New Delhi to contest the proceedings. Moreover, it is not the fault of the petitioner and if at all, it is only the fault of the Bar Council of Tamil Nadu and Puducherry for keeping the matter for more than 3 years without conducting enquiry and dispose of the matter.

6.No doubt Section 36B of the Advocates Act, 1961 speaks about transfer of complaint to the Bar Council of India if the complaint is not disposed by the State Bar Council within a period of one year from the date of receipt of the complaint or the date of initiation of proceedings. It would be appropriate to extract Section 36B of the Advocates Act, 1961.

36B. Disposal of disciplinary proceedings.—

(1).The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the 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.

*(2).Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), any proceedings in the respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, **that disciplinary committee of the State Bar Council shall 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, failing which such other proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).**]*

7.The delay in disposal of the complaint may occur due to so many factors at the instance of some parties. In the instant case, the petitioner has not committed any wrong or he has not dragged on the proceedings. Hence, the petitioner cannot be unnecessarily dragged to New Delhi. Hence, the transfer of the proceedings to New Delhi would prima facie do injustice to the petitioner.

8.It is evident from many cases listed before this Court that the Bar Council of Tamil Nadu and Puducherry is not exercising its statutory duty and disposing the complaint within the stipulated period of one year. There is every reason to believe that it is being done deliberately to ensure that Section 36B of the Advocates Act, 1961 could be invoked and the complaints could be transferred to Bar Council of India.

9.Therefore, Bar Council of Tamil Nadu and Puducherry is directed to answer the following queries:

1. How many complaints are pending before Bar Council of Tamil Nadu and Puducherry as on date?
2. How many matters have been referred to the disciplinary committees?
3. How many complaints are more than one year old?
4. How many matters are ready to be transferred to the file of Bar Council of India?
5. What are all the reasons for the delay in not disposing the complaints within one year?
6. How many cases have been transferred to Bar Council of India for the past 5 years? (years wise details have to be given)
7. What is the position of those cases which have already been transferred to the file of Bar Council of India?
8. How many cases have been transferred to Bar Council of India from various State Bar Councils under Section 36B of the Advocates Act for the past 5 years? (Year wise details and State wise details have to be given)
9. How many transferred cases from various State Bar Councils to Bar Council of India have been disposed for the past 5 years? (Year wise details and State wise details have to be given)
10. Why not the Bar Council of India have sitting in respective Judicial capitals of the State to dispose of the transferred cases from the respective State?

10. It is not only the case of the petitioner but also many other complaints filed by various other persons are sought to be transferred under Section 36B of the Advocates Act, 1961 for non-disposal of the cases within the stipulated time period of one year. In that event, all the parties would definitely be put to unnecessary hardship. Already the parties are distressed or their rights have been allegedly

violated by the respective counsels against whom they have preferred the complaints. In these circumstances, if the parties are directed to go to New Delhi which is 2200 kms away from Chennai to pursue the complaints, it would be impossible for the poor litigants. They would be put to untold hardship and grave injustice would be caused to them.

11. In view of the aforesaid reasons, not only the complaint preferred by the petitioner, but also the other complaints which are to be transferred to the file of Bar Council of India should not be transferred. **Therefore, there shall be a direction to the Bar Council of Tamil Nadu and Puducherry to not to transfer any of the cases under Section 36B of the Advocates Act, 1961 to the file of Bar Council of India until further orders from this Court.**

12. Section 36B of the Advocates Act, 1961 has been inserted by virtue of Advocates (Amendment) Act, 1973 (60 of 1973) and it came into effect on 31.01.1974 to ensure that the complaints against the advocates are disposed of expeditiously. It was brought only in the interest of the aggrieved litigants and also to see that erring advocates are punished at the earliest. However, the Bar Councils of the respective States are taking advantage of the said provision and doing injustice to the complainants by transferring their complaints to the file of the Bar Council of India, New Delhi deliberately. Thus, the very purpose of the provision is frustrated. In view of the attitude of the State Bar Council, Section 36B of the Advocates Act, 1961 appears to be against the interests of the aggrieved complainants.

13. Thus, in the opinion of this Court, the provision under Section 36B in the statute insofar as it enables transfer of case from the file of the State Bar Council to the file

of the Bar Council of India, in the event of the State Bar Council not disposing of the case within a period of one year, causes grave injustice to the aggrieved parties. As this Court has no power to direct the Parliament to delete the aforesaid portion in Section 36B of the Advocates Act, this Court, *suo motu*, would like to consider the vires of the aforesaid portion alone, as it appears to be violative of the rights of the litigants guaranteed under Article 14 of the Constitution of India, besides being unreasonable and arbitrary and appears to have lost its purpose and rationality.

14. In view of the same, "*Union of India, Rep. by its Secretary, Ministry of Law and Justice, New Delhi*" is *suo motu* impleaded as party respondent to the proceedings to answer as to how Section 36B of the Advocates Act, 1961 is constitutionally valid, since the said provision violates the rights of aggrieved litigants to get justice. Mr. G. Karthikeyan, learned Assistant Solicitor General of India takes notice on behalf of the newly impleaded respondent.

Call the matter on 06.03.2020.

(N.K.K.,J) (R.P.A.,J)
21.02.2020

1 P.L.Sundar
S/o. Lakshmanan No. 10 JadamuniKovil
Keelpuram 2nd Street Madurai City 625001

[PETITIONER]

Vs

1 The Secretary

[RESPONDENT]

Bar Council of India No. 21 Rouse Avenue
New Delhi 110002

- 2 The Secretary
Bar Council of Tamil Nadu and Puducherry
High Court Campus Chennai 600104
- 3 The Chairman
Disciplinary Committee Bar Council of Tamil
Nadu and Puducherry High Court Campus
Chennai 600104
- 4 D.Balakrishnan
S/o. Dhanushkodi No. 18-A Karpagam Nagar
2nd Street Opposite to Padma Theatre
Villupuram Madurai 12

Prayer

Directing the respondents 1 and 2 to extend the time for
completing D.C.C.No. 184/ 2018 pending on the file of 3rd
respondent