

The High Court of Madhya Pradesh Bench at Indore

Case Number	W.P. NO.18183/2021
Parties Name	<i>Vishal D. Remeteke Vs. State of MP & Ors.</i>
Date of Order	05/10/2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri N.L.Tiwari, learned counsel for petitioner. Shri Sandeep Mehta, learned counsel Bar Council. Shri Kamal Gupta, for respondent No.4. Shri Suraj Sharma, learned counsel for respondent No.3. Shri Valmik Sakargayen, learned Panel Lawyer for respondent/State.
Law laid down	Advocates Act, 1961 – Section 6 and Sec.35 – Section 6 deals with ‘functions’ of State Bar Council which includes certain functions relating to determining/entertaining case of misconduct of an Advocate. The procedure to impose punishment is laid down in Sec.35 of the Act. An Advocate can be punished only as per legislative mandate ingrained in Sec.35 of the Act. Sec.6 does not provide any procedure to punish an Advocate. Procedure is laid down in Sec.35 of the Act to punish an Advocate. Suspension of an Advocate – If State Bar Council has reason to believe that any Advocate is guilty of any professional or other mis-conduct, it shall <i>refer</i> the matter for disposal to its Disciplinary Committee. The Disciplinary Committee needs to put the concerned Advocate and Advocate General to

	notice, hear them and take a decision regarding punishment. In the instant case, the petitioner Advocate was not suspended by the decision of Disciplinary Committee. After suspending him, it is informed that Disciplinary Committee has taken up the matter which runs contrary to the statutory procedure prescribed in Sec.35. Hence, suspension order cannot be upheld. Administrative law – Principles of natural justice – If statute empowers a particular authority/body to take a decision, that authority/body alone can take such decision and even higher body/authority cannot take such a decision unless there exists an enabling statutory provision for the same. Interpretation of statute – (a) If statute requires a thing to be done in a particular manner it has to be done in the same manner and other methods cannot be accepted. (b) If language of statute is plain and unambiguous, it has to be given effect to irrespective of its consequences.
Significant paragraph numbers	11-19

ORDER
05.10.2021

Sujoy Paul,J.

This petition filed under Article 226 of the Constitution assails the Notification No.1918/21 dated 19/7/2021 whereby the petitioner, an Advocate is suspended by the communication signed by the Secretary of State Bar Council of Madhya Pradesh.

2. Shri Tiwari, learned counsel for petitioner submits that the provision about conduct of Advocate is taken care of in Chapter V of Advocates Act, 1961 (for short “Act”). Sec. 35 prescribes the procedure pursuant to which an Advocate can be punished for misconduct. By placing heavy reliance on Sec.35 of the said Act, it is urged that if Bar Council has any reason to believe that any Advocate

on its role is guilty of professional or other misconduct, it is required to refer the matter for disposal to the disciplinary committee. It is only the disciplinary committee which can take a decision after putting the Advocate concerned to notice. In the instant case, it is urged that; (i) the decision was never taken by the Disciplinary Committee, (ii) the decision making process is faulty because no show cause notice was served on the present petitioner, (iii) sub-section (2) and (3) of Sec.35 have not been followed. Thus, the suspension order is null and void and passed by incompetent authority and without following the “due process”.

3. Learned counsel for Bar Council submits that the conduct of petitioner was very serious and, therefore, in order to maintain order in the activities of advocates, a decision was taken to place the petitioner under suspension. The petitioner has an efficacious, alternative remedy u/S.37 of the said Act to prefer an appeal. In view of this remedy available, this petition may not be entertained. Counsel for respondent No.2 also placed reliance on Sec.6 of the Advocates Act to contend that the provision is wide enough pursuant to which petitioner could have been placed under suspension. Thus, no fault can be found in the order of suspension.

4. Shri Kamal Gupta, for respondent No.4 appeared in person and submits that during Covid 19 pandemic the Adhoc Committee of District Bar Association has left no stone unturned to see that Covid 19 protocol and restrictions are followed. The Advocates working under the leadership of Adhoc Committee have taken pains to take care of all Covid 19 restrictions so that system can work smoothly. Petitioner created serious ruckus during that period and this conduct of petitioner was in due course reported to the Bar Council. Action was taken by respondent No.4 also against the petitioner. In view of this conduct of petitioner, no interference may be made and petitioner may be relegated to avail the remedy of appeal u/s.37 of the Act. Shri

Gupta, in addition urged that the petitioner's conduct was in utter violation of a General Body decision taken by the Adhoc Committee and, therefore, the action may not be interfered with by this Court.

5. The parties confined their arguments to the extent indicated above.

6. We have heard the parties at length and perused the record.

7. Before dealing with rival contentions, we deem it proper to mention the relevant Sections on which learned counsel for parties during the course of their arguments placed heavy reliance. Relevant clauses of Sec.6 read as under:-

“6. Functions of State Bar Councils.—(1) The functions of a State Bar Council shall be—

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(h) to perform all other functions conferred on it by or under this Act; (i) to do all other things necessary for discharging the aforesaid functions.”

(emphasis supplied)

8. Relevant portion of Section 35 reads thus:-

“35. Punishment of advocates for misconduct.—(1)

Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council 4 *** shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit; (d) remove the name of the advocate from the State roll of advocates.”

(emphasis supplied)

9. Relevant part of Section 37 of the Act reads as under:-

“37. Appeal to the Bar Council of India.—(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made [under section 35] [or the Advocate-General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.”

(emphasis supplied)

10. Pausing here for a moment, it is relevant to mention here that on a specific query from the bench, learned counsel for Bar Council has fairly stated that after placing the petitioner under suspension the matter was referred to the Disciplinary Committee and the Disciplinary Committee has taken a decision. The petitioner was put to notice after issuance of suspension order. A plain reading of Sec.35(1) clearly shows that if Bar Council has reason to believe that any Advocate on its roll is guilty of professional misconduct, the Bar Council needs to refer the case for disposal to its Disciplinary Committee. In turn, as per sub-section (2) of Sec.35, the Disciplinary Committee of Bar Council is required to fix a date for hearing of the case and shall cause a notice thereof to the Advocate concerned and Advocate General of the State. Sub-section (3) of Sec.35 envisages that the Disciplinary Committee after giving opportunity to the Advocate concerned and Advocate General and after hearing them may pass any order which are mentioned in sub-clause (a), (b) and (c).

Sub-clause (c), indisputably enables the Bar Council to suspend an Advocate.

11. A bare perusal of Sec.35 makes it clear that a clear procedure is laid down for the purpose of taking disciplinary action against an employee. This is trite that if language of statute is plain, clear and unambiguous, it has to be given effect to irrespective of its consequences. See the judgment of Supreme court in *Nelson Motis Vs. Union of India (1992) 4 SCC 711* ratio of which is recently followed in *P. Gopalkrishnan Vs. State of Kerala & another (2020) 9 SCC 161*.

12. This is equally settled that if statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are unknown to law. [See *AIR 1959 SC 93 (Baru Ram vs. Prasanni)*, *2001 (4) SCC 9 (Dhananjaya Reddy vs. State of Karnataka)*, *2002 (1) SCC 633 (Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala)* and judgment of this Court in *2011 (2) MPLJ 690 (Satyanjay Tripathi & Anr. vs. Banarsi Devi)*].

If statute empowers a particular authority/body to take a decision, it is only that body which should take a decision and none else in the hierarchy, however, higher he may be unless statute permits him to do so. Reference may be made to *Manohar Lal (Dead) by L.Rs. Vs. Ugrasen (Dead by L.Rs and others (2010) 11 SCC 557*. Para 23 reads as under:-

“23. No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the original statutory authority nor can the superior authority mortgage its wisdom and direct the original statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the original statutory authority and passes an order, it remains unenforceable for the reason that it cannot be

termed to be an order passed under the Act.”

13. In the instant case, there is no material before us to show that State Bar Council has referred the case of the petitioner to the Disciplinary Committee to take a decision. No material is also available to establish that Disciplinary Committee has taken up the matter before placing the petitioner under suspension and petitioner and Advocate General were put to notice. As noticed above, learned counsel for Bar Council has fairly admitted that only after placing the petitioner under suspension, the Disciplinary Committee has initiated action. This procedure adopted by Bar council is unknown to law.

14. So far Sec.6 aforesaid is concerned, the heading itself makes it clear that by the said Section ‘functions’ of State Bar Council are defined. The functions so prescribed can be translated into action as per other enabling provisions of the Act. ‘Disciplinary action’ against an advocate is also one of the ‘function’ of Council, it can be taken only in consonance with the legislative mandate ingrained in Sec.35 of the Act.

15. The multiple functions are enumerated in the said enabling provision. The said provision nowhere runs down a procedure to punish an Advocate and this procedure finds place in Chapter V and in specific language in Sec. 35 of the Advocates Act, 1961.

16. In view of foregoing analysis, it is clear that; (i) the decision to place the petitioner under suspension is not taken by a body or authority who is empowered under the Act to place him under suspension. Thus, order is passed by an incompetent authority, (ii) the ‘decision making process’ which is mainly subject matter of judicial review in a case of this nature also shows that it runs contrary to the statutory and mandatory provision mentioned in Sec.35 of the Act. The principles of natural justice codified in the shape of Sec.35 were

not taken care of. Thus, despite availability of alternative remedy, this petition can be entertained in view of the judgment of Supreme Court in *Whirlpool Corporation Vs. Registrar of Trade Marks (1998) 8 SCC 1*.

17. The matter may be viewed from another angle. The remedy of appeal to Bar Council of India u/S.37 is available only when order is passed by the Disciplinary Committee. In the instant case, as discussed above, the Disciplinary Committee has not taken a decision to suspend the petitioner. Thus, remedy of appeal u/S.37 is not available to the petitioner.

18. So far question of activity of petitioner and alleged misconduct committed by him are concerned, we are only inclined to observe that we have not entered into the merits of the case. We have only examined the decision making process and competence of the person who has taken the decision in the light of Sec.35 of the Act.

19. In view of foregoing analysis, the impugned order of suspension is set aside. The liberty is reserved to the competent authority/Bar Council to take action against the petitioner in accordance with law. Petition is **allowed** to the extent indicated above.

(SUJOY PAUL)
Judge

(ANIL VERMA)
Judge

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