IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE SUBHASIS DASGUPTA

W.P.O. (P) NO. 06 OF 2021

AKSHYA KUMAR SARANGI
VS
BAR COUNCIL OF WEST BENGAL & ANR.

Mr.Srikanta Dutta Adv.
Ms. Rituparna Sarkar Dutta Adv.
For the petitioner

Mr. Jishnu Choudhury , Adv.
Ms. Sabnam De, Adv.
Mr. Maharnab Roy, Adv.
For the respondents

Judgment On: 26.08.2021

Harish Tandon. J

The petitioner is a practising advocate of this Court and have taken out this Public Interest Litigation espousing the cause of four members of the Bar Council of West Bengal who protested against the letter dated 25.6.2021 issued by the Chairman of the said Bar Council raising grievance against the

Chief Justice (Acting) in discharging his administrative duties and making it public in different medias having an impact on the impartiality of the Judicial System and partition attitude having shown to selected class of the litigation. The foundation of the present PIL is that the Chairman has used the official letterhead of the Bar Council and percolating his own views which cannot be regarded as the views of the collective members of the Bar Council and such action is inflagrant violation of the statutory provision and the rules governing the said Bar Council amounting to misconduct within the sweep of the aforesaid statutory provision.

Both the letters of the Respondent no. 2 and dissenting four members of the Petitioner no. 1 are annexed to this application and the mandamus is sought, upon the Respondent no. 1 to initiate disciplinary proceedings for professional misconduct under the Advocates Act, 1961 and the Rules framed thereunder.

The letter of the Respondent no. 2 would evince several decisions of the Chief Justice (Acting) in distribution and allotment of selective cases either in contravention to the

Appellate Side Rules or in partition way which does not percolate a message to the common people that his actions are impartial, fair and in consonance with the well settled principles of statutory procedure.

The matter is assigned to this Bench by the Chief Justice (Acting) obviously for the reason that the nature of the pleadings in the said application is not suggestive of the matter to be taken by the regular PIL Bench in which he is one of the constituents thereof.

The Counsel appearing for the respondent took a preliminary objection on the maintainability of the instant proceeding at the instance of the present petitioner espousing the cause of four dissenting members of the Bar Council and the relief claimed thereunder. According to Mr. Chowdhury, learned Advocate there is a fatal defect in the instant application more particularly, the relief adumbrated in Clause (e) of the prayer portion is unconnected and unrelated with the pleadings made therein. The learned Advocate for the petitioner reacted to such submission and contended that it is a ministerial defect having no impact on the main relief

claimed therein and, therefore, the leave can be granted to the petitioner to omit/delete such relief from the prayer portion. It is no doubt true that prayer (e) to the petition has no nexus with the pleading and, therefore, deletion does not have any negative impact on the other reliefs claimed therein. There is no fetter on the part of the Court to permit the petitioner to abandon/delete one of the prayer therein which has no co-relation with the pleading nor such abandonment would render the other reliefs meaningless.

The other point which is projected by the respondent on the plea of demur is that the four dissenting members being the lawyers themselves can ventilate their grievance and cannot satisfy the conditions required to maintain the Public Interest Litigation.

We invited the Councils to address us on the merit of the instant application keeping the point of maintainability open.

The learned Advocate appearing for the petitioner submits that the letter of the Respondent no. 2 is repository of his own view which cannot be regarded as the view of the collective members of the Bar Council and, therefore, he has

misused his Office and exposed himself within the definition of a misconduct. It is further submitted that meeting of the members of the Bar Council was not called for nor there was a resolution taken in this regard which would be reflected from the letter of the four dissenting members. It is further submitted that the conduct of the Respondent no. 2 is a scurrilous, intemperate and aimed to tarnish the image of a Judge which have a ramification on the impartiality and fairness of the judicial system and, therefore, to be regarded as contemptuous. It is arduously submitted by the learned Advocate for the petitioner that any attack or comment on a Judge or the Judges which is disparaging in character and derogates their dignity or any defamatory statement affecting the judicial system as well is required to be viewed seriously as held in case of ***Brahmaprakash Sharma and Ors. Vs State of Uttar Pradesh reported in AIR 1954 SC 10***. It is fervently submitted that such a statement is likely to injure the public tending to create an apprehension over the impartiality in the administration of the justice. Such action is in reality effects the dignity and the majesty of the Court and required to be

dealt with and placed reliance upon a judgment of the Supreme Court in case of ***Perspective Publications Private Ltd and Anr. Vs. State of Maharashtra reported in AIR 1971 SC 221***. Taking a clue from the judgment of the Apex Court in ***Moorthy Vs. State of Tamil Nadu reported in 1988 (3)SCC 207***, the learned Advocate for the petitioner would submit that when the attack is calculated with an intent to obstruct and destroy the judicial process, it is required to be preserved and prevented by taking recourse to law as applicable in this regard and should not permit such person to walk merrily from the corridor of the Courts. The Counsel for the petitioner further submits that the aforesaid principles have been reiterated in a later decision of the Supreme Court rendered in case of ***Rajendra Sail Vs. MP High Court Bar Association and Ors. reported in 2005 (6)SCC 109***. Lastly it is submitted that a public spirited person if he felt himself aggrieved by the action of the statutory authority, he can maintain the Public Interest Litigation in order to build the public confidence into the judicial system in vogue.

On the other hand, Mr. Chowdhury, the learned Advocate appearing for the respondent submits that the Bar Council is a statutory body to protect and preserve the interest of the members of legal profession and if such a statutory body representing the specific class of the persons took a resolution to raise and ventilate their grievance there is no fetter in doing so. It is further submitted that the members of the Bar Council have a close door meeting with the Chief Justice (Acting) on 16.6.2021 making him aware of such grievance and subsequently, having sensed that such grievances have not been addressed, a resolution was taken on 19.6.2021 by the members of the Bar Council authorising the Chairperson, the Respondent no. 2, to take a decision and the present letter was addressed to the Chief Justice raising the grievance of the said Bar Council by the Chairman in such capacity which is in tune with the judgment of the Apex Court rendered in case of ***C. Ravi Chandran Iyer vs. Justice A.M. Bhattacharjee & Ors. reported in 1995 (5)SCC 457***. It is further submitted that in a subsequent meeting of the Bar Council held on 4.7.2021 out of 21 members present and voted, 19 members

have ratified the action of the Respondent no. 2 and, therefore, such action cannot be termed to be in gross violation of the statutory provision or the rules framed thereunder.

It is beyond cavil of doubt that the Public Interest Litigation has originated since last several decades as an effective tool to ventilate the grievance of unprivileged, downtrodden and economically unstable persons through a public spirited person. By passage of time it has gained steep momentum and the docket of the Court is exploded with the spate of such litigation and in a deserving case the Court has protected the right of the aggrieved person who are/were unable to approach the Court. It is never used as the privilege or a Publicity Interest Litigation which sometimes aimed at and the Courts of the country have dealt with such frivolous applications with sternity and the powers in their command. Though it is regarded as one of the effective tool yet it is seemed to have been abused and, therefore, the Court should be cautious in entertaining such application at the behest of a so-called public spirited person.

As indicated above the petitioner intend to espouse the cause of four dissent members who are well educated, economically solvent and capable of taking decision in redressing the grievance raised by them. We do not want to delve deep into such matter and leave it here but we must make some observations on the role of such statutory body in the perspective of the present case.

The Bar and Bench are the two pillars of the judicial system. The synergy between the two is *senital in que vive* and co-ordination, co-operation in administration of the justice is required to be established in building the confidence of the public in the judicial system as has been held in Brahmaprakash Sharma (Supra) that when an attack or comments are made on a Judge or Judges which is disparaging in character and derogatory to their dignity, care and caution must be made to distinguish between a libel on a Judge and a contempt of Court. The fair and legitimate criticism to a judgment in a healthy way is always welcome but if it is aimed with some motive and malice without any foundation on a real cause such errant person should be dealt

with iron hands as it hampers the judicial system and fairness and impartiality of the Court in discharging their duties entrusted under the Constitution.

The Apex Court ***in Perspective Publication Private Ltd. & Anr. (Supra)*** has succinctly collated and recapitulated the various views of the Judges manning the Court globally that if an action injures public and tends to create an apprehension in their mind regarding the integrity, ability or the fairness of the Judge or likely to cause the embarrassment in the mind of the Judge in discharging the judicial duties, it has an impact on the judicial system and inculcate a sense lack of impartiality and the unfairness in the mind of a common people.

In Moorthy (Supra) the Apex Court reiterated the broad principles touching upon such aspect and held:

39. The question of contempt of court came up for consideration in the case of C.K. Daphtary v. O.P. Gupta. In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court

alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of Court. A scurrilous attack on a judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the judiciary; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the

court. It was alleged that the said President and the other members of the bar have no locus standi. This court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K, that "proceedings should be instituted only if the Attorney General in his discretion considers them necessary." This was only a recommendation made in the light of circumstances prevailing in England. But this is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the attorney General should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General

was examined and explained by Sanyal Committee Report as noticed before.

43. Reference may be made to the case of Attorney General vs. Times Newspapers Ltd. In that case a drug company began to make and sell in the United Kingdom a sedative which contained the drug thalidomide. Lord Morris observed in that case that the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community and anything which hampers the administration of law should be prevented but it does not mean that if some conduct ought to be stigmatised as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress which was a matter of public sympathy and concern. Dealing with this aspect Lord Cross of Chelsea has observed that 'contempt of court' means an interference with the administration of justice and it is unfortunate that the offence should continue to be known by a name which suggests to the

modern mind that its essence is a supposed affront to the dignity of the court. 'Justice' he said is an ambiguous word. When we speak of the administration of justice we mean the administration of the law, but often the answer which the law gives to some problem is regarded by may people as unjust. Lord Cross further observed that there must be no prejudging of the issues in a case is one thing. To say that no one must in any circumstances exert any pressure on a party to litigation to induce him to act in relation to the litigation in a way in which he would otherwise not choose to act is another and a very different thing. Lord Cross at Page 87 of the report observed as follows:

> ***In conclusion I would say that I disagree with the views expressed by Lord Denning, M.R. and Phillimore L.J. as to the "role" of the Attorney General in cases of alleged contempt of court. If he takes them up he does not do so as a Minister of the Crown – "putting the authority of the Crown behind the complaint" – but as "amicus curiae" bringing to the notice of the court some matter of which he considers that the court shall be informed in the interests of the administration of justice. It is, I think, most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before***

the Attorney-General for him to consider whether or not those facts appear to disclose a contempt of court of sufficient gravity to warrant his bringing the matter to the notice of the court. Of course, in some cases it may be essential if an application is to be made at all for it to be made promptly and there may be no time for the person affected by the "contempt" to put the facts before the Attorney before moving himself. Again the fact that the Attorney declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the Attorney to act the matter complained of does in fact constitute a contempt of which the court should take notice. Yet, again, of course, there may be cases where a serious contempt appears to have been committed but for one reason or another none of the parties affected by it wishes any action to be taken in respect of it. In such cases if the facts come to the knowledge of the Attorney from some other source he will naturally himself bring the matter to the attention of the court."

The case of ***Rajendra Sail (Supra)*** is somewhat similar to the present facts where the tool of media was used impacting upon the role and conduct of the Judge and care and precaution is to be adhered to as they are supposed to act fairly and reasonably as opposed to capriciously and arbitrarily. The enlightening observation made therein is reproduced as under:

"35. Regarding the institution like judiciary which cannot go public, media can consider having an internal

mechanism to prevent these types of publications. There can be an efficient and stringent mechanism to scrutinise the news reports pertaining to such institutions, which because of the nature of their office, cannot reply to publications which have tendency to bring disrespect and disrepute to those institutions. As already noted such publications are likely to be believed as true. Such a mechanism can be the answer to pleas like the one in the present case by the Editor, Printer and Publisher and correspondent that either they did not know or it was done in a hurry and similar pleas and defences.

36. The power and reach of the media, both print as well as electronic is tremendous. It has to be exercised in the interest of the public good. A free press is one of very important pillar on which the foundation of rule of law and democracy rests. At the same time, it is also necessary that freedom must be exercised with utmost responsibility. It must not be abused. It should not be treated as a licence to denigrate other institutions. Sensationalism is not unknown. Any attempt to make

news out of nothing just for the sake of sensationalise, particularly at the expense of those institutions or persons who from the nature of their office cannot reply, such temptation has to be resisted, and if not, it would the task of the law to give clear guidance as to what is and what is not permitted.

37.While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgment of a court for public good or report any such statements; it should refrain from casting scurrilous aspersions on, or impute improper motives or personal bias to the judge. Nor should they scandalise the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge. It should be kept in mind that judges do not defend their decisions in public and if citizens disrepsect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the judge can defend a decision is by the reasoning in the decision itself and it is certainly open to

being cricticised by anyone who thinks that it is erroneous."

The respondent have heavily placed reliance on the judgment of the Apex Court in case of ***C. Ravi Chandran Iyer(Supra)*** in support of their contention as to what the procedure is to be adopted if the member of the Bar Association or a Bar Council has any grievance against the sitting Judge or the Judges as a whole including the Chief Justice. It is contended that the mechanism as provided therein was duly complied with before the birth of the letter dated 25.6.2021 and, therefore, such action cannot be said to be either misconduct within the meaning of the Advocates Act nor contemptuous in nature. The aforesaid case originated as Public Interest Litigation under Article 32 of the Constitution of India at the instance of a practising advocate seeking appropriate direction upon the Bombay Bar Association, Bar Council of Maharashtra and Goa and Advocates Association of Western India coercing the then Chief Justice to resign from the office as a Judge and further sought for an investigation by the Central Bureau of Investigation (CBI). The aforesaid

litigation was initiated on a resolution taken by the said Bar Council or the Bar Association demanding the resignation of the then Chief Justice who purportedly received a large sum of money in foreign currency as royalty guaranteed for authoring a book 'Muslim Law and the Constitution'. The role of such association and the right of the individual practising lawyer has been succinctly narrated in Paragraph 27 of the said report which runs thus:

"***27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fail in professional conduct and to punish the incorrigible as not benefitting the noble profession apart from admission of the advocates of its roll. Section 6 (1) (c) and rules made in that behalf, Sections 9, 35, 36-B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional***

standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends threat and extends no further. Article 121 of the Constitution prohibits discussion by the members of parliament of the conduct of any Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament therewith. By necessary implication, no other forum or for a or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf."

However considering the gravity of the situation, the Apex Court laid down the role of such statutory bodies and the procedure to be adopted for raising any grievance against a individual Judge or the Chief Justice in the High Court in the following manner:

"40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he

may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar

Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

At the very outset, we must say that all such judgments which are cited before us are relatable to the contemptuous act inviting the Court to come up heavily upon them who scandalises and tarnish the majesty and sanctity of the Court in upholding the constitutional aspiration or the goal envisioned by the framers thereof. None of the reliefs claimed

in the instant petition suggest such action to be taken but what has been prayed herein is a direction or order upon the Petitioner no. 1 to initiate disciplinary proceedings against the Petitioner no. 2 who acted solely, without authority and in derogation with the interest of its members. We do not find the aforesaid judgments have any bearing on the issue but have been compelled to deal with the same being cited at the Bar in order to eradicate any sense that their arguments have not been addressed. The four dissenting members of the Bar Council are also the practicing advocates and if they feel that the statutory provisions have been violated by the Petitioner no. 2, recourse is available under the statute and the redress can be made therein.

We do not intend to make any further comments thereon and leave the matter with caveat to the observations made therein by Justice Krishna Iyer in his celebrated judgment rendered in case of ***Re S. Mulgaookar reported in 1978 (3) SCC 339*** as under:

"27. The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its

jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences – the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt."

On the conspectus of the aforesaid findings the application is disposed of.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Subhasis Dasgupta, J.) ***(Harish Tandon, J.)***