Reserved on : 11.09.2025
Pronounced on : 07.11.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.19619 OF 2022 (GM - RES)

BETWEEN:

MS.JAYNA KOTHARI
D/O MR PANKAJ L.KOTHARI
AGED ABOUT 46 YEARS
NO.899, 7TH MAIN, 4TH CROSS
HAL II STAGE, INDIRA NAGAR
BENGALURU – 560 008.

... PETITIONER

(BY SRI K.N.PHANINDRA SR.ADVOCATE FOR
SRI ADITYA NARAYAN, ADVOCATE)

AND:

1 . MANISH KUMAR
AGED ABOUT 39 YEARS
NO.18, THAYIL
6TH MAIN, WASA LAYOUT
DODDANEKUNDI
BENGALURU – 560 037.

2 . KARNATAKA STATE BAR COUNCIL
OLD ELECTION COMMISSION OFFICE
BENGALURU – 560 001
REPRESENTED BY THE SECRETARY.

... RESPONDENTS

(BY SRI HARSHA SWAROOP P., ADVOCATE FOR R-1;
SRI G.NATARAJ, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO PROHIBIT THE R2 FROM PROCEEDING WITH COMPLAINT BEARING NO.109/2019 (NOW NUMBERED AS D.C.E. NO.66/2022) FILED BY THE R1 HEREIN AGAINST THE PETITIONER BEFORE THE R2 KARNATAKA STATE BAR COUNCIL, PRODUCED HEREIN AS ANNEXURE-H; QUASH THE COMPLAINT BEARING NO.109/2019 NOW NUMBERED AS D.C.E. NO.66/2022, FILED BY THE R1 HEREIN AGAINST THE PETITIONER BEFORE THE R2 KARNATAKA STATE BAR COUNCIL, PRODUCED HEREIN AS ANNEXURE-H; QUASH THE NOTICE DTD 17.7.2022 ISSUED BY THE R2 KSBC, IN COMPLAINT BEARING NO.109/2019 NOW NUMBERED AS D.C.E.NO.66/2022 PRODUCED HEREIN AS ANNEXURE-R.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, a practicing Advocate, is at the doors of this Court seeking the following prayers:

> "A. Issue a writ of prohibition or other appropriate writ, order or direction prohibiting the Respondent No.2 from proceeding with complaint bearing No. 109 /2019 (now numbered as D.C.E. No. 66/2022) filed by the Respondent No.1 herein against the Petitioner before the Respondent No.2 Karnataka State Bar Council, produced herein as **ANNEXURE H**;
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> B. Issue a Writ of certiorari, or any other appropriate writ, order or direction quashing the complaint bearing No. 109 / 2019 now numbered as D.C.E. No. 66/2022, filed by the Respondent No.1 herein against the Petitioner before the Respondent No.2 Karnataka State Bar Council, produced herein as **ANNEXURE – H;**
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> C. Issue a Writ of certiorari, or any other appropriate writ, order or direction quashing the notice dated 17.7.2022 issued by the Respondent No.2 KSBC, in complaint bearing No. 109 / 2019 now numbered as D.C.E. No. 66 / 2022 produced herein as R **ANNEXURE-R**; and
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> D. Grant any other relief/s which this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice and equity."

2. Facts adumbrated are as follows:

2.1. The petitioner is a designated Senior Advocate practicing in the Courts of the country and is said to have put in

more than 25 years of practice. The petitioner, based on her expertise on the issue of tackling sexual harassment of women at work place, is said to have been requested by Zoomcar India Private Limited, (hereinafter referred to as the 'Company' for short), to be its General Counsel to the Internal Complaints Committee constituted by the Company. As a General Counsel the petitioner was given a role of an external member. The petitioner accepted the request to be a part of the Internal Complaints Committee as an external member. It is the averment in the petition that being the external member was in her personal and individual capacity, and not as a Senior Advocate. It is the further averment that the petitioner has no previous association of any kind with the Company and had never represented the Company in the capacity of an Advocate at any time in her career. The petitioner is said to have been a part of the Committee, as an external member, without any kind of payment or even honorarium.

2.2. On 23-05-2019, a complaint of sexual harassment in the Company is made by a female employee against the 1st

respondent. The 1st respondent was an employee of the Company. In the complaint certain allegations were made against the 1st respondent which would touch upon the ingredients of sexual harassment. Following the receipt of the complaint, the Committee sent a notice to the 1st respondent through an electronic mail directing him to submit his response to the complaint within 10 days, as required under the statute. The 1st respondent replies to the said mail refuting the allegations and is said to have communicated plethora of mails later.

2.3. Not being satisfied with the reply, the Committee opined to conduct an enquiry into the complaint in terms of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act' for short) and the corresponding Rules. The enquiry is said to have taken place only on one particular day i.e., 31-7-2019, when both the parties were called in and statements were recorded. The parties were also called separately and the enquiry of both the parties was completed on the same day,

including hearing of their submissions. During the enquiry, it is the averment again that both the parties did not ask to cross-examine each other. Thus, the parties participate in the said enquiry.

2.4. A day after the said enquiry i.e., on 01-08-2019, the 1st respondent shoots a mail to the petitioner raising objections against some other members of the Committee who are the employees of the Company. The Committee, after the said date i.e., 31-07-2019, did not meet again. The Committee members deliberated on the matter and unanimously passed an order on 06-08-2019 holding the 1st respondent to be guilty of sexual harassment at work place, as obtaining under Section 2(n) of the Act and recommended for termination of the employment of the 1st respondent. The consequence of it was termination of the 1st respondent on 06-08-2019.

2.5. Challenging the said decision of the Committee, the 1st respondent approaches the Additional Labour Commissioner by filing an appeal. The Additional Labour Commissioner

disposes the appeal holding that the findings of the Committee against the 1st respondent were baseless and makes some observations against the petitioner. The petitioner challenges those observations made by the Additional Labour Commissioner and sought for expunging of remarks in W.P.No.8237 of 2020. The writ petition comes to be allowed by expunging the remarks so made in terms of the order of the coordinate dated 19.04.2023. The said order is said to have become final.

2.6. In the interregnum, the 1st respondent who was held guilty by the Committee files a complaint before the 2nd respondent /Karnataka State Bar Council ('Bar Council' for short) on 11-09-2019. The allegation against the petitioner was that, the petitioner took sides with the Company in the proceedings and tried to falsely implicate the 1st respondent. It was further alleged that the petitioner did not act independently or impartially during the proceedings. It was further alleged that her brother, a practicing lawyer had sent a caveat on behalf of the Company and therefore, there was conflict of interest. The petitioner was served a notice to which she replied on 12-12-

2019. Post the reply nothing was heard till March 2022. The petitioner then seeks a copy of the entire file and comes to know that the objections or the papers that were in the file were never served upon her. Despite the reply of the petitioner, the complaint before the 2nd respondent was kept alive. Therefore, the petitioner is before this Court calling in question the registration of the complaint by the 1st respondent before the 2nd respondent/Bar Council.

3. Heard Sri K N Phanindra, learned senior counsel appearing for petitioner, Sri Harsha Swaroop P, learned counsel appearing for respondent No.1 and Sri G Nataraj, learned counsel appearing for respondent No.2.

4.1. The learned senior counsel appearing for the petitioner would contend that the petitioner being a woman, in her individual and independent capacity acted as an external member of the Internal Complaints Committee. It is a quasi judicial body constituted to consider the complaints under the Act. Findings rendered by the Committee cannot be construed to be a misconduct or violation of the Bar Council Rules.

Decision taken by the Committee cannot mean that a misconduct under the Rules. The allegation that the petitioner was part of the firm and appearing for the Company is contrary to the records.

4.2. The learned senior counsel further submits that the Bar Council failed to appreciate that the 1st respondent complainant had challenged the decision of the Committee before the Additional Labour Commissioner and if aggrieved by the orders passed by the Committee against him, he has already availed of a remedy. Only because the Committee had rendered adverse findings which are found to be wrong by the department, it cannot become misconduct under the Advocates Act. The learned counsel would seek to place reliance upon plethora of judgments rendered by the Apex Court and different High Courts, which would bear consideration *qua* their relevance in the course of the order.

5.1. Per-contra, learned counsel representing the 1st respondent/complainant would vehemently contend that there

was active participation of Ashira Law Firm all through the proceedings which is of the petitioner's. He would submit that the petitioner was specifically appointed as an external member only for the adjudication of the complaint against the 1st respondent. The constitution itself is contrary to the provisions of the Act. The Act further mandates that the external member so appointed would be paid fees for their services and contribution. The learned counsel submits that external members under the Act would be appointed for 3 years tenure. The petitioner took the role of external member with mala fide intention to orchestrate and execute the plan of the Company to terminate the complainant. Misfeasance by the petitioner is *prima facie* clear, as enquiry is concluded in a day in the most unprofessional and mala fide manner or an agenda.

5.2. The learned counsel would submit that there is a clear breach of professional conduct as obtaining under the Advocates Act or even the restrictions on the Senior Advocate. Once the fee is received by the petitioner, it cannot be said that the petitioner did not know of the balance between the

profession and appearance there. He would also seek to place reliance upon several judgments of the Apex Court and that of other High Courts to buttress his submission, all of which would bear consideration in the course of the order.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts, link in the chain of events are a matter of record, but would require a little iteration. The petitioner is asked to join in the Committee of the Company as an external member. A complaint then emerges alleging sexual harassment on 23-05-2019 by a female employee of the Company against the 1st respondent. The complaint was forwarded to the 1st respondent who replied to the said notice. The Committee conducts an enquiry in terms of the statute and recommends for termination of the services of the 1st respondent. The Company then terminates the 1st respondent's

employment with them. The findings and the order of termination is as follows:

> "Finding:
>
> 22. The Complaint, the Reply and accompanying documents and the statements of the parties and others were taken into account by the Committee. All the statements as alleged by the Complainant were all denied by him. It was not possible to call any other persons as witnesses as all of them in the legal team were reporting to the Accused and hence were unwilling to make any statements even anonymously. However, the statement as alleged by the Complainant was confirmed by Deepak, and it was also corroborated by many other persons in the Company that they had witnessed the Accused shout and scream at Deepshika and that she used to cry often due to this.
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> 23. Though there were no witnesses to the interactions between the Complainant and the Accused, the ICC finds no reason to disbelieve the statements of the Complainant. The several statements made by the Accused to the Complainant, about her drinking and being a half-sinner, talking about menstrual cycles and child-birth, marriage, that she should be with a husband all amount to making sexually coloured remarks and were unwelcome. His conduct of coming close to her, checking her phone for messages, shouting at her, screaming and yelling at the Complainant, harassing her on holidays and leave days, complaining that she does not know how to work, all amounts to creating a hostile work environment for the Complainant and others in the Company. Not only was the Complainant forced to submit her resignation due to this sexual harassment and hostile work environment, but others had also been compelled to do so in the past in the Company.

24. The Accused's response that these allegations were false and made only because the Complainant's work performance was poor does not seem to have any factual basis. If this were her motivation, the Complainant would not have submitted her resignation. Further, if the Complainant was harassing other people in the legal team as alleged by the Accused, there would have been complaints raised against her, which has not been done. Even regarding the Goa incident, when the Accused was asked about it he admitted that before she booked her tickets and went to Goa, he had not specifically told her that she should go only for one day, and that he only told her later when she already travelled to Goa.

25. Under Section 2 (n) of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013, (n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:- (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

26. This is certainly a case where all the incidents complained amount to creating a hostile work environment and sexual harassment. All the incidents taken together make it evident that the actions of the Accused amount to sexual harassment at the workplace and creating a hostile work environment due to which it was impossible for the Complainant to work anymore, and she then was forced to submit her resignation. Even after she was shifted to another team, the harassment from the Accused continued since he is the head of the legal department

27. In these circumstances and in light of all the statements given above, the ICC therefore recommends that because the Committee finds that sexual harassment has been committed, the same should be treated as a serious misconduct on the part

of the Accused and recommends to the management of the Company that a Major Punishment be imposed and that the Accused be dismissed from service. The ICC is of the opinion that dismissal is a fit and appropriate response to the complaint against the Accused, as his sexually harassing behavior is a highly serious matter and the same cannot be tolerated. This would be an appropriate punishment and action in the instant case since this is not harassment of a single Incident but a serious of continuous action on the part of the Accused to harass and create a hostile environment.

28. Hence it is recommended that the Accused be dismissed from service due to his conduct of sexually harassing the Complainant and creating a hostile work environment. Since the Accused is the head of the Legal department, it is also recommended that the management while dismissing him from service, take such measures of executing confidentiality, non-disclosure, non-disparagement and other such agreements to ensure that important Company information is not disclosed to any third parties."

The 1st respondent approaches the Additional Labour Commissioner challenging the said order of termination. The Additional Labour Commissioner goes beyond his brief, makes certain observations against the petitioner in terms of his order dated 18-04-2020. The observations and the order are as follows:

"ಮೇಲ್ಮನವಿದಾರರ ಅರ್ಜಿ ಹಾಗು ದಿನಾಂಕ: 18.1.2020 ರ ಲಿಖಿತ ವಾದ ಹಾಗು ಪ್ರತಿವಾದಿಗಳ ಆಕ್ಷೇಪಣೆ ಮತ್ತು ವಾದ ಮಂಡನೆಯನ್ನು ಪರಿಶೀಲಿಸಲಾಯಿತು. ಅರ್ಜಿದಾರರು ತಮ್ಮ ಅರ್ಜಿಯಲ್ಲಿ ಹಾಗು ಲಿಖಿತ ವಾದದಲ್ಲಿ ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ತನ್ನ ವರದಿಯಲ್ಲಿ ಯಾವುದೇ ಸಾಕ್ಷಿಯನ್ನು ಕೇಳಲು, ಪುರಾವೆಗಳನ್ನು ಮತ್ತು ದೂರುದಾರರಾದ 7ನೇ

ಪ್ರತಿವಾದಿಯನ್ನು ಪಾಟಿಸವಾಲಿಗೆ ಒಳಪಡಿಸಲು ಅವಕಾಶ ನೀಡಿರುವುದಿಲ್ಲ ಮತ್ತು ದಿ:23.05.2019 ರ ದೂರನ್ನು ಹೊರತುಪಡಿಸಿ ತನ್ನನ್ನು ಕೆಲಸದಿಂದ ತೆಗೆದು ಹಾಕುವವರೆಗೆ ದಿ:15.5.2019 ರ ದೂರುದಾರರ ದೂರಿನ ಪ್ರತಿ ಒದಗಿಸಿರುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆ ಮತ್ತು ಇದನ್ನು 67 ದಿನಗಳ ನಂತರ ನೀಡಿರುವುದು ಕಾಯ್ದೆಯ ಪ್ರಾವಧಾನಗಳಿಗೆ ವಿರುದ್ಧವೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ದೂರುದಾರರ ಈ ಎರಡು ದೂರುಗಳನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ದಿ.23.05.2019 ರ ದೂರಿನಲ್ಲಿ ದಿ:15.5.2019 ರ ಮೇಲ್‌ನಲ್ಲಿನ ಅಂಶಗಳನ್ನು ಪುನರುಚ್ಚರಿಸಲಾಗಿದೆ ಎಂದು ನಮೂದಿಸಲಾಗಿದೆ. ಆದರೆ ದಿ:23.05.2019 ರ ಮೇಲ್‌ನಲ್ಲಿ ದಿ:15.5.2019 ರ ಮೇಲ್‌ನ ಒಂದು ಭಾಗವಾಗಿರುತ್ತದೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ಆದರೆ ಅದನ್ನು ಹಂಚಿಕೊಳ್ಳುವ ಅವಶ್ಯಕತೆ ಇರುವುದಿಲ್ಲವೆಂದು 1ನೇ ಪ್ರತಿವಾದಿಗಳು ತಮ್ಮ ಆಕ್ಷೇಪಣೆಯಲ್ಲಿ ಒಪ್ಪಿರುತ್ತಾರೆ. ಇದರಿಂದ ದಿನಾಂಕ: 15.5.2019 ರ ದೂರಿನ ಪ್ರತಿಯನ್ನು ಮೇಲ್ಮನವಿದಾರರಿಗೆ 1ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯಾಗಲೀ ಅಥವ ಅಂತರಿಕ ದೂರು ಸಮಿತಿಯಾಗಲೀ ನೀಡದಿರುವುದು ಸ್ಪಷ್ಟವಾಗಿ ಕಂಡುಬರುತ್ತದೆ. ದಿನಾಂಕ: 15.5.2019 ರ ದೂರನ್ನು ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ಪರಿಗಣಿಸಿರುವುದು ಕಂಡುಬಂದಿದ್ದು, ಮೇಲ್ಮನವಿದಾರರಿಗೆ ಸದರಿ ದೂರಿನ ಬಗ್ಗೆ ಮಾಹಿತಿಯನ್ನು ನೀಡದೇ ಕತ್ತಲಲ್ಲಿಟ್ಟು ಸೂಕ್ತ ಅವಕಾಶ ನೀಡದೇ ಇರುವುದು ಕಂಡು ಬರುತ್ತದೆ. ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ಕೆಲವೊಂದು ಗಂಟೆಗಳಲ್ಲಿ ತನ್ನ ವರದಿಯನ್ನು ನೀಡಿರುತ್ತದೆ ಮತ್ತು ಕೇವಲ ಕೇಳಿ ಪಡೆಯಲಾದ ವರದಿಯಾಗಿರುತ್ತೆ ಹೊರತು ಯಾವುದೇ ಅಧಿಕೃತ ದಾಖಲೆಯಾಗಲೀ ಅಥವ ಸಾಕ್ಷಿಯಾಗಲೀ ಇರುವುದಿಲ್ಲ ಎಂದು ಮೇಲ್ಮನವಿದಾರರು ಪ್ರಸ್ತಾಪಿಸಿರುವ ವಾದವನ್ನು ಸೂಕ್ಷ್ಮವಾಗಿ ಗಮನಿಸಿದೆ. ಮೇಲ್ಮನವಿದಾರರು ತಮ್ಮ ವಾದವನ್ನು ಸಮರ್ಥಿಸಲು ಈ ಕೆಳಕಂಡ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ.

> ➢ Tushar and Others v. Internal Complaints Committee, Christ University, 2019 (5) Kar. L.J. 1368 [Relevant Portion: Para No. 13]

ಅಂತರಿಕ ದೂರು ಸಮಿತಿಯು ವರದಿಯನ್ನು ನೀಡಿದ ನಂತರ 6ನೇ ಪ್ರತಿವಾದಿ ಕಛೇರಿಯಿಂದ ಮೇಲ್ಮನವಿದಾರರು ಹಲವು ಕೆವಿಟ್ ಅರ್ಜಿ ಪ್ರತಿ ಇವುಗಳನ್ನು ಸ್ವೀಕರಿಸಿದ್ದು, ಅಂದರೆ ಅಶಿರಾ ಲಾ, ಇವರು 1ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯ ವಕೀಲರು ಮತ್ತು ಅದರ ಮುಖ್ಯ ಕಾರ್ಯ ನಿರ್ವಹಣಾಧಿಕಾರಿ ಶ್ರೀ ಗ್ರೆಗೊರಿ ಬ್ರಾಡ್ಫೋರ್ಡ್ ಮೊರನ್ ಆಗಿದ್ದು, 6ನೇ ಪ್ರತಿವಾದಿ ಕಛೇರಿ ಈ ಮೇಲ್ಮನವಿ ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ 1 ರಿಂದ 6ನೇ ಪ್ರತಿವಾದಿಗಳನ್ನು ಪ್ರತಿನಿಧಿಸುತ್ತಿರುವುದು ಕಂಡುಬರುತ್ತದೆ. ಇದರಿಂದ ಅಂತರಿಕ ದೂರು ಸಮಿತಿ ವರದಿಯಲ್ಲಿ 6ನೇ ಪ್ರತಿವಾದಿ ಪಕ್ಷಪಾತ ಸದಸ್ಯ ಎಂಬುದು ಮೇಲುನೋಟಕ್ಕೆ ಕಂಡುಬರುತ್ತೆ. ಇದರಿಂದ ಸುಳ್ಳು ಆರೋಪದಲ್ಲಿ ದೋಷಾರೋಪಣೆ ಮಾಡಲು ಅನುಕೂಲಕರ ವರದಿಯನ್ನು ಪಡೆಯಲು 1ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಗೆ ಸಹಾಯ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ 6ನೇ ಪ್ರತಿವಾದಿ ಪೂರ್ವನಿರ್ಧರಿತ ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯ ವರದಿಯನ್ನು ತಯಾರಿಸಿರುತ್ತಾರೆ. ಪಕ್ಷಪಾತದ ವಿರುದ್ಧದ ನಿಯಮವು ನೈಸರ್ಗಿಕ

ನ್ಯಾಯ ಕತ್ವದ ಮೂಲಭೂಸ ತತ್ವ ಆಗಿದೆ ಎಂಬುದು ಕಾನೂನಿನ ನಿಲುವಾಗಿರುತ್ತದೆ. ಇದರಿಂದ ಪ್ರತಿವಾದಿ ನೈಸರ್ಗಿಕ ನ್ಯಾಯ ತತ್ವಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿ ಕಾರ್ಯನಿರ್ವಹಿಸಿದೆ ಎಂಬುದು ಸ್ಪಷ್ಟವಾಗುತ್ತದೆ.

ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ವರದಿಯಲ್ಲಿ "ಅವಳ ಹತ್ತಿರ ಬರುವುದು, ಸಂದೇಶಗಳಿಗಾಗಿ ಆಕೆಯ ಫೋನ್ ಅನ್ನು ಪರಿಶೀಲಿಸುವುದು, ಅವಳನ್ನು ಕೂಗುವುದು, ಕಿರುಚುವುದು, ರಜಾದಿನಗಳಲ್ಲಿ ಕಿರುಕುಳ ನೀಡುವುದು ಮತ್ತು ಆಕೆ ಹೇಗೆ ಕೆಲಸ ಮಾಡಬೇಕೆಂದು ತಿಳಿದಿಲ್ಲವೆಂದು ದೂರಿರುತ್ತಾರೆಂದೂ; ಎಲ್ಲವೂ ಕಂಪನಿಯ ದೂರುದಾರರು (7ನೇ ಪ್ರತಿವಾದಿ) ಮತ್ತು ಇತರರಿಗೆ ಪ್ರತಿಕೂಲವಾದ ಕೆಲಸದ ವಾತಾವರಣವನ್ನು ಸೃಷ್ಟಿಸಿರುತ್ತದೆನ್ನುವುದು" ಈ ಮೇಲಿನ ಅವಲೋಕನಗಳನ್ನು ಒಂದೇ ಪುರಾವೆಗಳೊಂದಿಗೆ ಬೆಂಬಲಿಸುವುದಿಲ್ಲವೆಂದು ಹೇಳುವುದು ಸೂಕ್ತವಾಗಿದೆ. ವಾದಗಳಿಗಾಗಿ ಹೋಲಿಸಿದಲ್ಲಿ ಮೇಲಿನವುಗಳು ಕೆಲಸದ ಸ್ಥಳದ ಕಿರುಕುಳವಾಗಬಹುದು. ಆದರೆ 2013ರ ಉದ್ಯೋಗಸ್ಥ ಮಹಿಳೆಯರಿಗೆ ಕೆಲಸದ ಸ್ಥಳದಲ್ಲಿ ಲೈಂಗಿಕ ಕಿರುಕುಳ (ತಡೆಗಟ್ಟುವಿಕೆ, ರದ್ದತಿ ಮತ್ತು ಪರಿಹಾರ) ಕಾಯ್ದೆಯಡಿ ವ್ಯಾಖ್ಯಾನಿಸಲಾದ ಮತ್ತು ಅರ್ಥಮಾಡಿಕೊಂಡಂತೆ ಲೈಂಗಿಕ ಕಿರುಕುಳವಲ್ಲ ಎಂದು ಮೇಲ್ಮನವಿದಾರರು ಮತ್ತು 7ನೇ ಪ್ರತಿವಾದಿ ನಡೆದ ಯಾವುದೇ ವಾಗ್ವಾದಗಳು ಲೈಂಗಿಕ ಕುರುಕುಳವಾಗಿದ. ಎಂಬುದನ್ನು ಸಾಬೀತುಪಡಿಸಲು ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ವಿಫಲವಾಗಿದೆ ಎಂದು.

ಈ ಪ್ರಕರಣದಲ್ಲಿನ ಇ-ಮೇಲ್ ದಾಖಲೆಗಳನ್ನು ಗಮನಿಸಿದಾಗ ಮೇಲ್ಮನವಿದಾರರು ಮತ್ತು 7ನೇ ಪ್ರತಿವಾದಿ ನಡುವೆ ಆದ ಎಲ್ಲಾ ಸಂವಹನಗಳೆಂದರೆ ಉನ್ನತ ಮತ್ತು ತನ್ನ ಅಧೀನ ಅಧಿಕಾರಿಗಳ ನಡುವೆ ಕೆಲಸದ ಗುಣಮಟ್ಟದಲ್ಲಿ ಸುಧಾರಣೆಯನ್ನು ಕೋರಿ ರಚನಾತ್ಮಕ ಟೀಕೆಗಳನ್ನು ನೀಡಲಾಗಿದೆ. ಎಂದು ಪರಿಗಣಿಸಬಹುದಾಗಿದೆ. ಆದ್ದರಿಂದ ಮೇಲ್ಮನವಿದಾರರು ಮತ್ತು 7ನೇ ಪ್ರತಿವಾದು ನಡವೆ ಯಾವುದೇ ಆಪಾದಿತ ಘಟನೆಗಳು 2013ರ ಉದ್ಯೋಗಸ್ಥ ಮಹಿಳೆಯರಿಗೆ ಕೆಲಸದ ಸ್ಥಳದಲ್ಲಿ ಲೈಂಗಿಕ ಕಿರುಕುಳ (ತಡೆಗಟ್ಟುವಿಕೆ, ರದ್ದತಿ ಮತ್ತು ಪರಿಹಾರ) ಕಾಯ್ದೆಯ ಕಲಂ2(ಎನ್) ಅಡಿಯಲ್ಲಿ ಲೈಂಗಿಕ ಕಿರುಕುಳ" ವ್ಯಾಖ್ಯಾನದಡಿಯಲ್ಲಿ ಬರುವುದಿಲ್ಲವೆಂದು ತೀರ್ಮಾವಿಸುತ್ತೇವೆ. ಈ ಹಿನ್ನಲೆಯಲ್ಲಿ ಮೇಲ್ಮನವಿದಾರರು ಹಾಜರುಪಡಿಸಿರುವ ಈ ಕೆಳಕಂಡ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಬಗ್ಗೆ ಈ ಪ್ರಾಧಿಕಾರದ ಸಹಮತವಿರುತ್ತದೆ.

- *Vishaka and Others v. State of Rajasthan and Others, (1997) 6 SCC 241. [Relevant Portion: Paragr No. 17.2]*
- *Shanta Kumar v. Council of Scientific and Industrial Research (CSIR) and Others,* ***2018 Cri. LJ 1697****. [Relevant Portion: Paras. 13, 15, 16)*

- *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others,* ***(2015) 8 SCC 519*** *[Relevant Portion: Paragraph No.21]*

- *P.D. Dinakaran v. Judges Inquiry Committee and Others* ***(2011) 8 SCC 380*** *[Relevant Portion: Paragraph Nos. 32. 41, 71]*

ಈ ಪ್ರಕರಣದಲ್ಲಿ ದೂರುದಾರರು ಮೊದಲ ಪ್ರತಿವಾದಿಗೆ ನೀಡಿರುವ ದೂರು ಮತ್ತು ಅದರ ಸತ್ಯಾಸತ್ಯತೆ ಇವುಗಳನ್ನು ಪರಿಶೀಲಿಸುವುದಾಗಿದೆ. ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ಘಟನೆ ಬಗ್ಗೆ ತನಿಖೆ ನಡೆಸಿ ವಿಚಾರಣೆ ನಡೆಸಿರುತ್ತದೆ. ಸಾಕ್ಷಿಗಳನ್ನು ಸಹ ವಿಚಾರಣೆ ಮಾಡಿರುತ್ತದೆ. ಆದರೆ ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ನೀಡಿರುವ ವರದಿಯು ಮೇಲು ನೋಟಕ್ಕೆ ಸಮಂಜಸವಾಗಿ ಕಂಡುಬರುತ್ತಿಲ್ಲ. ದೂರುದಾರರೇ ತಿಳಿಸಿದಂತೆ ಇದರಲ್ಲಿ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಪೂರಕ ಸಾಕ್ಷಿಗಳ ವಿಚಾರಣೆ ಮಾಡದೇ ಇರುವುದು ಮತ್ತು ಮೇಲ್ಮನವಿದಾರರಿಗೆ ದಿ: 15.5.2019 ರ ದೂರಿನ ಪ್ರತಿ ನೀಡದೇ ಇರುವುದು ಮತ್ತು ದಿ:23.5.2019 ರ ದೂರಿನ ಪ್ರತಿಯನ್ನು ಸಂಸ್ಥೆಯ ನಿಯಮಗಳಂತೆ 7 ದಿನಗಳೊಳಗೆ ಒದಗಿಸದೇ ವಿಳಂಬವಾಗಿ ಅಂದರೆ 67 ದಿನಗಳ ನಂತರ ಒದಗಿಸಿರುವುದು, ಮೇಲ್ಮನವಿದಾರರಿಗೆ ತಮ್ಮ ಪರ ಸಾಕ್ಷಿ ಪಾಟಿಸವಾಲು ಮಾಡಲು ಅವಕಾಶ ನೀಡದೇ ಇರುವುದು ಅತ್ಯಂತ ಪ್ರಬಲವಾದ ಹಾಗು ಗುರುತರವಾದ ಅಂಶಗಳೆಂದು ಈ ಪ್ರಾಧಿಕಾರ ಗಮನಿಸುತ್ತದೆ. ಇದನ್ನು ಸ್ಪಷ್ಟವಾಗಿ ದೃಢಪಡಿಸಲು ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ವಿಫಲರಾಗಿರುತ್ತಾರೆಂದು ಈ ಪ್ರಾಧಿಕಾರ ಭಾವಿಸುತ್ತದೆ. ಇಂತಹ ಸೂಕ್ಷ್ಮ ವಿಷಯಗಳು ದಂಡನಾರ್ಹವೇ ಸರಿ, ಆದರೆ ದಂಡನೆಗೊಳಪಡಿಸುವ ಪೂರ್ವದಲ್ಲಿ ಸತ್ಯವೇನು ಎಂಬುದನ್ನು ಸರಿಯಾಗಿ ದೃಢಪಡಿಸಿಕೊಳ್ಳಬೇಕಾಗುತ್ತದ. ಅಸ್ಪಷ್ಟವಾದ ಮಾಹಿತಿಗಳ ಆಧಾರದಲ್ಲಿ, ಸಾಕ್ಷ್ಯ ಆಧಾರಗಳಿಲ್ಲದೇ ನಿರ್ಧಾರಕ್ಕೆ ಬರುವುದು ಕಾನೂನುಬಾಹಿರವಾಗುತ್ತದಲ್ಲದೇ, ಅದು ಏಕಪಕ್ಷೀಯ ನಿರ್ಧಾರವೆಂದು ಪರಿಗಣಿಸಬೇಕಾಗುತ್ತದೆ. ಸೂಕ್ಷ್ಮತರವಾದ ಯಾವುದೇ ವಿಷಯಗಳ ಬಗ್ಗೆ ವಿಚಾರಣೆ ನಡೆಸುವಾಗ ಅಪಾದಿತರಿಗೆ ತಮ್ಮ ಅಭಿಪ್ರಾಯಗಳನ್ನು ವ್ಯಕ್ತಪಡಿಸಲು ಸಾಕಷ್ಟು ಅವಕಾಶ ನೀಡಬೇಕಾಗುತ್ತದೆ. ಆದರೆ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಮೇಲ್ಮನವಿದಾರರ ವಿರುದ್ಧ ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ವಿಚಾರಣೆ ನಡೆಸುವಾಗ ಸಾಕಷ್ಟು ಸಮಯ ನೀಡದಿರುವ ಬಗ್ಗೆ ಮೇಲ್ಮನವಿದಾರರು ಆಕ್ಷೇಪ ಎತ್ತಿರುವುದನ್ನು ಗಮನಿಸಿದಾಗ, ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸ್ವಾಭಾವಿಕ ನ್ಯಾಯಕತ್ವದ ಉಲ್ಲಂಘನೆಯಾಗಿದೆ ಎಂಬ ಅಂಶವನ್ನು ಈ ಪ್ರಾಧಿಕಾರ ಗಮನಿಸುತ್ತದೆ.

ಪ್ರಕರಣದ ಮೂಲ ಅಂಶದ ಬಗ್ಗೆ ಗಮನ ಹರಿಸಿದಾಗ, ಸಂಸ್ಥೆಯ ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ನಡೆಸಿದ ವಿಚಾರಣೆಯಲ್ಲಿ ಸಹ ಮೇಲ್ಮನವಿದಾರರು ತಾನು ಈ ಕೃತ್ಯವನ್ನು ಎಸಗಿರುವುದಿಲ್ಲ ತಾನು ವೃತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿರುವುದಾಗಿ ಹೇಳಿರುವುದು ಕಂಡುಬರುತ್ತದೆ. ಈ ಬಗ್ಗೆ ಕೇವಲ ದೂರುದಾರರ ದೂರು ಅಥವ ಸಂಸ್ಥೆಯ ಪಾಲಿಸಿಯಂತೆ ಕ್ರಮ ಜರುಗಿಸದೇ ಇರುವುದು ಮತ್ತು ಸಾಕ್ಷಿಗಳ ಹೇಳಿಕೆ ಪಡೆಯದಿರುವುದು ಮತ್ತು ಪಾಟಿಸವಾಲಿಗೆ ಅವಕಾಶ ನೀಡದೇ ಇರುವುದು ಮತ್ತು 6ನೇ ಪ್ರತಿವಾದಿಯು ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯ ಒಬ್ಬ

ಸದಸ್ಯರಾಗಿರುವುದು ಮತ್ತು ಅವರು ಈ ಪ್ರಕರಣದಲ್ಲಿ 1ನೇ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯನ್ನು ಪ್ರತಿನಿಧಿಸುತ್ತಿರುವುದು ಮೇಲುನೋಟಕ್ಕೆ ಒಪ್ಪಬಹುದಾದ ಹಾಗು ಗಂಭೀರವಾದ ಲೋಪಗಳೆಂದದಿ ಪ್ರಾಧಿಕಾರವು ಪರಿಗಣಿಸುತ್ತದೆ. ಈ ವಿಷಯವಾಗಿ ಯಾವುದೇ ಕಣ್ಣಾರೆ ನೋಡಿದ ಸಾಕ್ಷಿಯಾಗಲೀ ಅಥವ ನಿರ್ದಿಷ್ಟ ವ್ಯಕ್ತಿ ಎಂದು ಹೇಳಲು ಯಾವುದೇ ಸಾಕ್ಷಿಗಳು ಇರುವುದಿಲ್ಲವೆಂಬುದು ಈ ಪ್ರಕರಣದಲ್ಲಿ ಗಮನಿಸಬೇಕಾದ ಮತ್ತೊಂದು ಅಂಶವಾಗಿ ಮೇಲುನೋಟಕ್ಕೆ ಕಂಡುಬರುತ್ತದೆ. ಅಲ್ಲದೇ ಘಟನೆ ನಂತರ ಸಂಸ್ಥೆಗೆ ಹಾಗು ಸಂಸ್ಥೆಯ ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯಲ್ಲಿ ಸಹ ದೂರುದಾರರು ಇದೇ ವಿಷಯವನ್ನು ಸ್ಪಷ್ಟವಾಗಿ ಹೇಳಿದ್ದು ಇದನ್ನು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಯಾವುದೇ ಸಾಕ್ಷಿ ಆಧಾರಗಳು ಇರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ ಎಂಬ ಅಭಿಪ್ರಾಯಕ್ಕೆ ಈ ಪ್ರಾಧಿಕಾರ ಬಂದಿರುತ್ತದೆ. ಮೇಲ್ಮನವಿದಾರರು ಲೈಂಗಿಕ ಕಿರುಕುಳ ನಡೆಸಿರುತ್ತಾರೆಂದು ಸಾಬೀತುಪಡಿಸುವ ಯಾವುದೇ ಪೂರಕ ಅಂಶಗಳು ಈ ಪ್ರಾಧಿಕಾರದ ಗಮನಕ್ಕೆ ಕಂಡುಬರುತ್ತಿಲ್ಲ. ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ನಿರ್ವಹಿಸಿರುವ ರೀತಿನೀತಿಗಳು ಸಂಶಯಾಸ್ಪದವಾಗಿರುತ್ತವೆ. ಮೇಲ್ಮನವಿದಾರರಿಗೆ ಕಂಡುಬರುತ್ತಿಲ್ಲ. ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯು ನಿರ್ವಹಿಸಿರುವ ಸಂಶಯಾಸ್ಪದವಾಗಿರುತ್ತವೆ. ಮೇಲ್ಮನವಿದಾರರಿಗೆ ವಿಚಾರಣೆಯಲ್ಲಿ ಸಾಕಷ್ಟು ಅವಕಾಶ ನೀಡದೇ ಸ್ವಾಭಾವಿಕ ನ್ಯಾಯ ತತ್ವದ ಉಲ್ಲಂಘನೆಯಾಗಿರುವುದನ್ನು ಗಮನಿಸಲಾಗಿದೆ. ಪೂರ್ಣ ಪ್ರಮಾಣದಲ್ಲಿ ದೂರುದಾರರ ಸಾಕ್ಷಿ ವಿಚಾರಣೆ ಪಾಟೀ ಸವಾಲು ನಡೆದಿಲ್ಲದಿರುವುದು ಕಂಡುಬರುತ್ತದೆ. ಈ ಎಲ್ಲಾ ಅಂಶಗಳನ್ನು ಪುನರಾವಲೋಕನ ಮಾಡಿದಾಗ ವಿಚಾರಣೆಯು ದೋಷಪೂರಿತ ಹಾಗು ಪಕ್ಷಪಾತದಿಂದ ಕೂಡಿರುತ್ತದೆಂಬುದನ್ನು ಈ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಮನವರಿಕೆಯಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ, ದೋಷಪೂರಿತವಾದ ಆಂತರಿಕ ದೂರು ಸಮಿತಿಯ ವರದಿಯು ತಿರಸ್ಕರಿಸಲು ಯೋಗ್ಯವಾದ ಪ್ರಕರಣವೆಂದು ಈ ಪ್ರಾಧಿಕಾರವು ಪರಿಗಣಿಸುತ್ತದೆ. ಪ್ರತಿವಾದಿಯು ಪ್ರಸ್ತಾಪಿಸಿದ ವಿಷಯಗಳಾದ ಪ್ರಾಧಿಕಾರದ ಕಾರ್ಯವ್ಯಾಪ್ತಿಯ ಬಗ್ಗೆಯೂ ಸಹ ಈಗಾಗಲೇ ಉತ್ತರಿಸಲಾಗಿದೆ. ಪ್ರತಿವಾದಿಗಳಿಗೆ ತಮ್ಮ ವಾದ ಮಂಡಿಸಲು ಸಾಕಷ್ಟು ಅವಕಾಶಗಳನ್ನು ಈ ಪ್ರಕರಣದಲ್ಲಿ ನೀಡಲಾಗಿದೆ. ಮೇಲ್ಕಂಡ ಎಲ್ಲಾ ಅಂಶಗಳ ಆಧಾರದಲ್ಲಿ ಮೇಲ್ಮನವಿದಾರರು ಸಕಾರಾತ್ಮಕವಾಗಿ ಪರಿಗಣಿಸಲು ಹಾಗೂ ಪ್ರತಿವಾದಿಗಳ ವಾದವನ್ನು ಪರಿಗಣಿಸದಿರಲು ಈ ಪ್ರಾಧಿಕಾರವು ನಿರ್ಧರಿಸಿರುತ್ತದೆ.

ಅದರಂತೆ ಮೇಲ್ಮನವಿದಾರರು ದೂರುದಾರರಾದ ಕು ಅಲ್ಕಾ ಸಿಂಗ್ (7ನೇ ಪ್ರತಿವಾದಿ) ಇವರಿಗೆ ಲೈಂಗಿಕ ಕಿರುಕುಳ ನೀಡಿರುವುದನ್ನು ಸಾಬೀತುಪಡಿಸಲು / ಗ್ರಹಿಸಲು ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ವಿಫಲವಾಗಿರುತ್ತದೆಂದು ಭಾವಿಸಿ ಆಂತರಿಕೆ ದೂರು ಸಮಿತಿಯ ವರದಿಯು ಲೋಪದೋಷಗಳಿಂದ ಕೂಡಿದ್ದು, ಕ್ರಮಬದ್ಧವಾಗಿರುವುದಿಲ್ಲವೆಂಬ ತೀರ್ಮಾನಕ್ಕೆ ಬಂದಿರುತ್ತೇನೆ.

ಮೇಲೆ ವಿವರಿಸಿದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

<u>ಆದೇಶ</u>

2013ರ ಉದ್ಯೋಗಸ್ಥ ಮಹಿಳೆಯರಿಗೆ ಕೆಲಸದ ಸ್ಥಳದಲ್ಲಿ ಲೈಂಗಿಕ ಕಿರುಕುಳ (ತಡೆಗಟ್ಟುವಿಕೆ, ರದ್ದತಿ ಮತ್ತು ಪರಿಹಾರ) ಕಾಯ್ದೆಯಡಿ ಮೇಲ್ಮನವಿ ಪ್ರಾಧಿಕಾರಿ, ಆದ ನಾನು ಕಾಯ್ದೆಯ ನಿಯಮ 11 ರಡಿಯಲ್ಲಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ, ಅಪರ ಕಾರ್ಮಿಕ ಆಯುಕ್ತರು (ಕೈಗಾರಿಕಾ ಬಾಂಧವ್ಯ) ಹಾಗೂ 2013ರ ಉದ್ಯೋಗಸ್ಥಮಹಿಳೆಯರಿಗೆ ಕೆಲಸದ ಸ್ಥಳದಲ್ಲಿ ಲೈಂಗಿಕ ಕಿರುಕುಳ (ತಡೆಗಟ್ಟುವಿಕೆ, ರದ್ದತಿ ಮತ್ತು ಪರಿಹಾರ) ಕಾಯ್ದೆಯಡಿ ಮೇಲ್ಮನವಿ ಪ್ರಾಧಿಕಾರಿ ಆದ ನಾನು ಮೇಲ್ಮನವಿದಾರರಾದ ಶ್ರೀ ಮನಿಷ್ ಕುಮಾರ್, 39 ವರ್ಷ, ನಂ.18, ಕಯಿಲ್, 6ನೇ ಮೈನ್, ವಾಸಾ ಲೇಔಟ್, ದೊಡ್ಡನೆಕ್ಕುಂದಿ, ಬೆಂಗಳೂರು-560 037 ಇವರು ಸಲ್ಲಿಸಿರುವ ಮೇಲ್ಮನವಿಯನ್ನು ಮೇಲೆ ಚರ್ಚಿಸಿ ನಿರ್ಣಯಿಸಿದಂತೆ ಪುರಸ್ಕರಿಸಿರುತ್ತೇವೆ. 2ನೇ ಪ್ರತಿವಾದಿಯಾದ ಆಂತರಿಕ ದೂರು ಸಮಿತಿ ದಿನಾಂಕ: 06.08.2019 ರಂದು ಹೊರಡಿಸಿರುವ ಆದೇಶವು ಕ್ರಮಬದ್ಧವಲ್ಲವೆಂದು ತಿರಸ್ಕರಿಸಿದೆ. ಮುಂದುವರೆದು. ಮೊದಲ ಪ್ರತಿವಾದಿಯಾದ ಮೆ: ಜೂಮ್ ಕಾರ್ ಇಂಡಿಯಾ ಪ್ರೈ.ಲಿ., ಯೂನಿಟ್ ನಂಬರ್ಸ್: 701 ರಿಂದ 717, 7ನೇ ಮಹಡಿ, ಟವರ್-ಬಿ ಡೈಮಂಡ್ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ನಂ:150 ಏರ್‌ಪೋರ್ಟ್ ರಸ್ತೆ ಕೋಡಿಹಳ್ಳಿ ಬೆಂಗಳೂರು – 560008 ಇವರು ಸಂಸ್ಥೆಯ ಆಂತರಿಕ ದೂರು ದೂರು ಸಮಿತಿಯ ದಿನಾಂಕ: 06.08.2019 ರ ವರದಿ ಆಧರಿಸಿ ಮೇಲ್ಮನವಿದಾರರನ್ನು ದಿನಾಂಕ: 09.08.2019 ರಂದು ಕೆಲಸದಿಂದ ವಜಾ ಮಾಡಿರುವುದು ಸಮಂಜಸವಲ್ಲವೆಂದು ಪರಿಗಣಿಸಿ ಆದೇಶಿಸಿರುತ್ತೇನೆ. ಮೇಲ್ಮನವಿದಾರರ ಪರಿಹಾರದ ಕೋರಿಕೆ ಬಗ್ಗೆ ಯಾವುದೇ ಆದೇಶ ಇರುವುದಿಲ್ಲ. ಈ ಆದೇಶವನ್ನು ಇಂದು ದಿನಾಂಕ:18.04.2020 ರಂದು ಹೊರಡಿಸಲಾಗಿದೆ."

8. The order so made by the Additional Labour Commissioner was called in question before this Court in W.P.No.8237 of 2020. A coordinate bench of this Court allows the petition in terms of its order dated 19-04-2023 by expunging all the observations. The order reads as follows:

> "The petitioner was appointed as an Independent External Member of the Internal Complaints Committee (for short `ICC') in the respondent No.3 - Company. The ICC conducted an enquiry into the complaint of sexual harassment and recommended termination from employment, following which, the respondent No.2 was terminated. Being aggrieved, the respondent No.2 filed an

appeal under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short `Act, 2013') before the 1st respondent.

2. The respondent No.1 passed the impugned order dated 18.4.2020 setting aside the termination of respondent No.2, and also made an adverse remark that, the petitioner herein had prepared a pre-determined internal complaint committee report to favour the respondent No.3 - Company. Taking exception to the adverse remarks made, this petition is filed.

3. Sri K N Phanindra, learned Senior counsel for the petitioner's counsel submits that, in the absence of any material to substantiate that petitioner favoured Respondent No. 3, the adverse remark made is without any substance..

4. The respondent No.2/party-in-person is present before this Court, and submits that he has no objection for quashing/ expunging the adverse remark made against the petitioner by the respondent No.1 in the impugned order.

5. The said submission is placed on record.

6. In view of the submission of the party-in-person/respondent No.2, the adverse remarks made against the petitioner requires to be expunged without going into the legality of the adverse remarks made against the petitioner by the respondent No.1 in the impugned order. Accordingly, the following:

ORDER

i) Writ petition is allowed.

ii) The adverse remark made by the 1st respondent in the impugned order dated 18.4.2020 vide Annexure-A against the petitioner is hereby expunged."

In the interregnum, the 1st respondent had complained to the Bar Council alleging profession misconduct against the petitioner. The complaint so registered reads as follows:

> "Now the Complaint against **Respondent** is as below:
>
> 1. Respondent being an external member on the ICC was expected to conduct herself fairly and unbiased to parties. However, the Respondent openly took sides with ABC in the ICC proceedings and tried to falsely implicate the Complainant.
>
> 2. Respondent had joined the ICC as independent external member but completely played the role of an advisor and consultant to the Company. She held multiple meetings/calls with Mr. Greg Moran (CEO of the Company) before and after the signing of ICC findings/report.
>
> 3. **As stated above, subsequent to the issuance of the ICC Report on 06.08.2019, the Respondent held a meeting with CEO of the Company on 07.08.2019 to discuss on the ICC Report and significantly, even prior to the ICC Report was made available / communicated to the Complainant herein. This clearly indicates that the Respondent was not acting independently or impartially during the ICC proceedings/inquiry. This wrongful act on the part of Respondent falls squarely under the category of professional misconduct. The snapshot of the one of the calendars of CEO of the Company fixed with Respondent, is attached herewith as Annexure-2.**
>
> **4. Respondent, contrary to the provisions of POSH made her junior colleague accompany her to ICC proceedings and allowed her junior colleague (who was not an ICC member) to remain inside**

the meeting room during the ICC proceedings. The relevant extracts of the mail sent by Complainant to Respondent on 01.08.2019 recording presence of her junior colleague to during ICC proceedings is attached herewith as Annexure-3.

5. Respondent flaunted her superiority during ICC inquiry by being abusive, extremely brash, and abrasive towards the Complainant herein.

6. **Respondent before and after the ICC proceedings actively advised the Company on ways to deal with termination of the Complainant herein from the services of the Company. By creating this dispute, the Respondent earned business and revenue for her law firm "Ashira Law" and her practicing lawyer kin, Mr. Rohan Kothari, who has served four caveat petitions on the Complainant herein on behalf of the Company and Mr. Gregory Bradford Moran (i.e. the CEO of the Company). The copies of above-mentioned caveat served through 'Ashira Law' is attached herewith as Annexure-4 This wrongful and improper act of Respondent falls under the category of professional misconduct namely conflict of interest and alluring clients to get business for her office "M/s Ashira Law."**

7. Respondent also guided Company and CEO of the Company to persuade and intimidate the Complainant herein, so that he must be deprived from challenging the ICC findings. Through one of her colleagues in M/s Ashira Law the Complainant was offered to resign (after illegally terminating the Complainant from employment) and not to challenge the ICC findings and was pressured to take monetary settlement in lieu of not challenging the ICC report.

8. On the advice of the Respondent, the CEO of the Company met the Complainant in a restaurant in Indira Nagar on 17.08.2019 and pressurised and

intimidated the Complainant to agree for a monetary settlement and accept the report of the ICC.

9. Respondent by not exhibiting her independent role during ICC proceedings has worked as an agent and consultant for the Company with a pre-determined motive to earn money, without keeping the highest standard of ethics and transparency as a senior lawyer.

10. Respondent has even advised and helped Company and CEO of the Company, in preparation of false records, the details of which can be shared before the disciplinary committee of Karnataka Bar Council (KBC) during hearing of this complaint.

2. DOCUMENTS IN SUPPORT OF MISCONDUCT:

All the minimum relevant Annexures are enclosed herewith, while submission of Complaint. Once the disciplinary committee of Karnataka Bar Council (KBC) deems it fit, Complainant undertakes to produce the ICC findings and other evidences which establishes the failure of Respondent as an independent member of ICC besides her gross professional misconduct, more particularly specified under Para No 1. above.

3. PRAYERS:

Since, Respondent, is a designated senior counsel, she has grossly abused her position and ill-treated the Complainant.

She has chosen wrong means to earn money for her office M/s Ashira Law, hereby Complainant is humbly praying for appropriate action against her in law for the professional misconduct of the Respondent demonstrated above. Despite being a designated senior counsel, the continuance of the Respondent as a practicing lawyer would be a threat to the sacred institution. Besides that, the conduct of the Respondent which resulted in ruining the career of a male earning hands like the Complainant is required to be discouraged.

> "Hence, Complainant is humbly requesting the Bar Council of Karnataka to send a strong message by cancelling or suspending the membership of the Respondent for life time, for the gross wrongful actions of the Respondent, which are against the principles laid down under the spirit of Advocates Act, 1961."
>
> A complaint fee of Rs. 3,000/- (Rupees Three Thousand only) is paid by cash/D.D. on 11.09.2019."

(Emphasis added)

The reason for registering the complaint is, that the petitioner who was the external member at the Committee did not act fairly and her brother an Advocate has an active part in the Company, therefore, there is conflict of interest. The petitioner replies to the said complaint threadbare. Nothing is heard for 3 years, it is only then the petitioner comes to know that the complaint is not closed and approaches this Court.

9. The issue now would be, **whether the petitioner accepting the role of an external member of the Internal Complaint's Committee of the Company, in her individual capacity and not as an Advocate, would amount to professional misconduct under the Advocates Act, 1961?**

10. It therefore, becomes germane to notice the provisions of Section 35 of the Advocates Act, 1961. It reads as follows:

> "**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.
>
> [(1-A) 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 [* * *] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and 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.
>
> (4) Where an advocate is suspended from practice under clause (*c*) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

> (5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf."

Section 35 of the Advocates Act deals with punishment of advocates for misconduct. The petitioner admittedly had no privity of contract with the 1st respondent/complainant, she was not his counsel, she was appointed as an external member, as observed hereinabove, under the provisions of the Act. It therefore, becomes necessary to notice the law, as enunciated by different High Courts and the Apex Court, as to what would amount to professional misconduct.

11. Jurisprudence is replete with the Apex Court and other High Courts considering as to what is professional misconduct in the cases of:

(i) R. JANARDHANA RAO v. G. LINGAPPA[1],

> **"3.** …….It is pertinent to note that the appellant, while taking the loan from the respondent on any pretext, was not acting in his professional capacity qua the complainant. He

[1] **(1999) 2 SCC 186**

was acting as a needy person and persuaded the creditor to give him an amount of Rs 3000. If that amount was not paid back, civil remedy was available to the complainant and if the cheque had bounced after the coming into force of Section 138 of the Negotiable Instruments Act, 1881, it might have resulted in criminal litigation, but, however, so far as the professional misconduct is concerned, we fail to appreciate as to how the Disciplinary Committee of the State Bar Council held that the appellant qua the complainant had committed any professional misconduct because he had taken a hand loan from the complainant-respondent and not repaid it…."

(ii) NORATANMAL CHOURARIA v. M.R. MURLI[2],

"*Misconduct*

7. Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

8. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

9. In *Delhi Cloth & General Mills Co. Ltd.* v. *Workmen* [(1969) 2 LLJ 755 : AIR 1970 SC 919 (SC)] Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

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[2] **(2004) 5 SCC 689**

10. This Court in *State of Punjab* v. *Ram Singh, Ex-Constable* [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] noticed: (SCC pp. 57-58, paras 5-6)

> **"*5*. Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. at p. 999 thus:**
>
> **'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'**
>
> **Misconduct in office has been defined as:**
>
> **'Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'**
>
> **Aiyar, P. Ramanatha: *Law Lexicon*, Reprint Edn., 1987, at p. 821 defines 'misconduct' thus:**
>
> **'The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor.**

Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.'

***6*. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."**

(See also *Probodh Kumar Bhowmick* v. *University of Calcutta* [(1994) 2 Cal LJ 456] and *B.C. Chaturvedi* v. *Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] .)

11. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain a standard in a dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. This Court in *Bar Council of Maharashtra* v. *M.V.*

Dabholkar **[(1976) 2 SCC 291 : AIR 1976 SC 242] observed: (SCC p. 300, para 20)**

> **"The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order, has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline."**

12. Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regards initiation of a proceeding for misconduct of a member of the profession.

13. In *'M', an Advocate, Re* [AIR 1957 SC 149 : 1957 Cri LJ 300] however, this Court emphasised the requirement of maintaining a high standard stating: (AIR p. 163, para 14)

> "As has been laid down by this Court in *'G' a Senior Advocate of the Supreme Court, Re* [AIR 1954 SC 557 : 1954 Cri LJ 1410] the Court, in dealing with cases of professional misconduct is 'not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character … he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action'."

(Emphasis supplied)

(iii) N.S.VARADACHARI v. BAR COUNCIL OF TAMIL NADU[3]

"…. …. ….

12. In the case on hand, first of all, the petitioner did not offer any opinion to the respondents 3 to 7, and in no way, he is connected with them as they had not engaged him for professional opinion. Instead , legal opinion was given only to Mr.V.G.Jayaraman. That opinion is also based on judgements of the civil courts and certain other deeds. The said opinion cannot be stated to be baseless. Further, when the said opinion was offered only to Mr.V.G.Jayaraman and he has got no grievance over the said opinion, the respondents 3 to 7, who are utter strangers to the petitioner cannot make any allegation that the opinion amounts to professional misconduct."

(iv) S. DIWAKAR v. BAR COUNCIL OF TAMIL NADU[4]**,**

"…. …. ….

16. Therefore, it Appears that the line of control or the line of demarcation is very thin. **While being a member of the profession (once upon a time noble), an Advocate is also a member of the Society in which he lives. Therefore, his interaction with the other members of the Society may arise out of a variety of relationships contractual or otherwise. He could be a Landlord/Tenant, borrower/lender/parent/ward and a neighbour (though not a good samaritan). If his conduct and behaviour with persons with whom he comes into contact in his daily routine, could be the subject matter of an enquiry by the Bar Council, it would be impossible for the members of the profession to practice. Therefore, some rationale approach has to be evolved by the Bar Council while dealing with such Complaints relating to "other misconduct" on the part of the members of the Bar."**

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[3] **MANU/TN/3969/2010**

[4] **2012 SCC OnLine Mad 2365**

(Emphasis supplied)

(v) R. SWAMINATHAN v. BAR COUNCIL OF TAMIL NADU[5]

"…. …. …..

> **6. At the outset, it should be pointed out that the second respondent, who was the complainant before the Bar Council, was not the client of the writ petitioners. Even according to his complaint, he was only one of the several shareholders of a Company, whose property was purchased by another Company, on the basis of the legal opinion tendered by the writ petitioners. In other words, the petitioners were not the complainant's Lawyers. The petitioners and the second respondent never had any jural or contractual relationship of lawyers and litigant. Therefore, I do not know how the second respondent could make a complaint of professional misconduct of giving a wrong opinion against the petitioners herein, when the clients of the petitioners were satisfied with such an opinion and have not raised an issue so far. This is an aspect which the Bar Council appears to have completely overlooked before passing a Resolution to refer the matter to the Disciplinary Committee."**

(Emphasis supplied)

12. This Court in the case of **PARAS JAIN v. KARANATAKA STATE BAR COUNCIL**[6] considers this very issue and holds as follows:

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[5] **2014 SCC OnLine Mad 12777**

[6] **2024 SCC OnLine Kar 21042**

"…. …. ….

13. It is not in dispute that the entire proceedings have sprung from the complaint. This Court considering the issue of locus in the case of **MOHAMMED BASHU v. HOSPET BAR ASSOCIATION(**2008 SCC OnLine Kar. 748) **,** has held as follows:

"…. …. ….

> **19.** At this stage it is relevant to state that the genesis and the cause for the plaintiffs expulsion is the plaintiff himself who gave a complaint against another advocate to the Bar Association and also against the Presiding Officer which ultimately led to his expulsion from the Defendant Bar Association. **Any professional mis-conduct by an advocate has to be complained by persons who have the <u>locus standi</u> to complain against the said mis-conduct and the Bar Council of the State is a statutory authority empowered to enquire into any mis-conduct of an advocate and pass appropriate orders and a member of the Bar has no locus standi to complain about any other member of the bar in the realm of professional mis-conduct unless the said member of the bar is a litigant himself**."
>
> (Emphasis supplied)

This Court holds that any professional misconduct of an Advocate has to be complained by persons who have locus to complain, as the Bar Council of a State being a statutory authority is empowered to enquire into any misconduct of an Advocate and pass appropriate orders. The Apex Court considering the locus of a person to register a complaint not concerning professional misconduct of an Advocate, in the case of **AYAAUBKHAN NOORKHAN PATHAN v. STATE OF MAHARASHTRA** ((2013) 4 SCC 465)**,** holds as follows:

"…. …. ….

> **10.** A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person

> aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387: AIR 1974 SC 1719] and State of Rajasthan v. Union of India [(1977) 3 SCC 592: AIR 1977 SC 1361].)
>
> … … …
>
> **17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."**
>
> (Emphasis supplied)

The Apex Court holds that a passer-by cannot complaint on a caste certificate issued to a particular person unless he becomes a person aggrieved. It becomes apposite to refer to the judgment of the Apex Court in the case of **BHARAT LAL PANDEY v. RAMJI PRASAD YADAV** ((2009) 17 SCC 644), wherein the Apex Court has held as follows:

> **"1.** Heard the learned counsel for the parties. The Uttar Pradesh Bar Council allowed the complaint filed by the respondent and suspended the licence of the appellant, who was practising as an advocate in the civil court at Deoria for a period of ten years. The said order has been confirmed in appeal filed by the All-India Bar Council. Hence, this appeal.
>
> **2. From a bare perusal of the impugned order, it would appear that the only allegation against the appellant was that he had filed a large number of cases on behalf of the wife of the respondent against the respondent. In our view, this allegation does not amount to any professional misconduct and the State Bar Council was not justified in suspending the licence of the appellant and the appellate authority has committed an error in confirming the same.**

> **3.** Accordingly, the appeal is allowed, the impugned orders are set aside and the complaint filed by the respondent is dismissed."
>
> (Emphasis supplied)

The Apex Court holds that the Advocate is alleged to have filed large number of cases on behalf of the wife of the respondent against the respondent. This would not amount to professional misconduct. The High Court of Madras in the case of **N.S. VARADACHARI v. BAR COUNCIL OF TAMIL NADU** (W.P.No.14284 of 2000 decided on 23-12-2010)**,** holds as follows:-

> "…. ….. …..
>
> 5. The profession of an Advocate is a dignified profession. Undoubtedly, it is noble. Their role in the justice delivery cannot be underestimated. Their participation in the nation building cannot go unnoticed. They play a vital role in the preservation of the independence of the judiciary which is one of the basic structures of the constitution. **The Advocates are expected to conduct themselves in a dignified manner without losing even a very small amount of reputation and the confidence which the public, more particularly, their clients repose in them. Their conduct, be it professional or otherwise, should be above board.** Whenever there is a complaint regarding the conduct of an Advocate alleging that such conduct is a misconduct, either professional or otherwise, the Bar Council of Tamil Nadu has to act upon the said complaint under Section 35 of The Advocates Act, 1961 [hereinafter referred to as "the Act"]. Sub-section (1) of Section 35 of the Act reads as follows:-
>
> > "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."
>
> **6. A close reading of the above provision would make it clear, without any doubt, that there are to be two essential ingredients available on record which form the basis for the reasons to**

believe that such Advocate is guilty of professional or other misconduct. The term "reasons to believe" in the given context is stronger than the term "mere satisfaction". In order to find out whether there are reasons to have such belief , the Bar Council is required to apply its mind. The requirement of 'reasons to believe' cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous inquiries [Vide Bar Council of Maharashtra v. M.V.Dabholkar, AIR 1975 SC 2092]. There should be some rational and intelligible nexus between the reasons and belief. The belief entertained by the Bar Council should not be either arbitrary or irrational. But, it must be reasonable and in other words it must be based on reasons which are based on relevant materials [Vide Nandlal Khodidas Barot v. Bar Council of Gujarath and others, AIR 1981 SC 477].

7. Then, what is misconduct either professional or otherwise needs to be understood. The term "misconduct" has not been defined anywhere in the Act. However, it came up for consideration before a Full Bench of this court in **U.Dakshinamoorthy v. The Commission of Inquiry, 1980 (I) MLJ 121** wherein the Full Bench of this Court has held as follows:-

> "26. As misconduct has not been defined, we have to be guided by the meaning which is obtainable for the expression in ordinary and common parlance. 'Misconduct', as explained in the dictionary, is improper conduct. The propriety of the conduct of the Advocate is to be inquired into by the Commission. Whether it is professional misconduct or misconduct otherwise has to be judged by the Bar Council which has to be satisfied about the commission of such misconduct, as technically understood under the Advocates Act. Every misconduct may not be professional misconduct or other misconduct contemplated by Section 35."

8. When a similar question arose before the Hon'ble Supreme Court in **Ratnam v. Kanikaram A.I.R. 1965 S.C. 244** wherein the Hon'ble Supreme Court has held as follows:-

> " From the resume of the understanding of the term "professional or other misconduct", as it appeared in the Bar Councils Act, or, as it is found in the Advocates Act, it appears that the term 'misconduct' appearing in the respective sections has to be examined, with the lens of propriety, decency and worthy living and the fitness of the person to be on the rolls as an Advocate. It therefore appears that an accent is laid at every stage by the highest Court of our land on the fitness of the person to continue on the rolls, which has to be decided with reference to his conduct in general or with reference to his conduct touching upon a particular incident."

9. I do not wish to refer to the other judgements cited at the bar on this aspect because the same would only add to the length of this order. From the above judgements, it is crystal clear that it is not every conduct of an advocate which shall be the subject matter of disciplinary proceedings against him under Section 35 of the Act. But, it is a conduct, either professional or otherwise, which will render him unfit to be a part of the dignified fraternity of legal profession shall alone be the subject matter of disciplinary proceedings.

10. In this case, the allegation is that the opinion offered by the petitioner to Mr.V.G.Jayaraman regarding the so-called title claimed by Mr.V.G.Jayaraman was wrong. Now, the question is as to whether this will amount to misconduct or conduct unbecoming of an Advocate. In this regard I may refer to a judgement of the Hon'ble Supreme Court in **Noratanmal chouraria v. M.R.Murli and another , AIR 2004 SC 2440** wherein, after having analysed various judgements on this aspect right from the year 1957, the Hon'ble Supreme Court in para 12 has held as follows:-

> "12. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of legal profession which is a noble one is expected to maintain a standard in dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with nobility thereof. A Lawyer is obligated to observe those

> norms which make him worthy of the confidence of the community in him as an officer of the court. ....."

11. In **Pandurang Dattatraya Khandekar v. The Bar council of Maharashtra, Bombay and others, AIR 1984 SC 110**, the Hon'ble Supreme Court in para 9 has held as follows:-

> "9. Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. For an advocate to act towards his client otherwise than with utmost good faith is unprofessional. It is against professional etiquette for a lawyer to give out that an advocate should accept employment with such motive, or so long as his client has such understanding of his purpose. It is professionally improper for a member of the bar to prepare false documents or to draw pleadings knowingly that the allegations made are untrue to his knowledge. Thus the giving of improper legal advice may amount to professional misconduct. That however may not be so by the giving of wrong legal advice."

In the above judgement, the Hon'ble Supreme Court has referred to a Full Bench of this court in In Re a Vakil, AIR 1926 Mad 568 (FB) wherein the FB has held as follows:-

> "Negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. Of that there is no suggestion here, and we are therefore able to say that there is no case to investigate, and that no reflection adverse to his professional honour rests upon Mr. M."

12. In the case on hand, first of all, the petitioner did not offer any opinion to the respondents 3 to 7, and in no way, he is connected with them as they had not engaged him for professional opinion. Instead , legal opinion was given only to Mr.V.G.Jayaraman. That opinion is also based on judgements of the civil courts and certain other deeds. The said opinion cannot be stated to be baseless. Further, when the said opinion was offered only to Mr.V.G.Jayaraman and he has got no grievance over the said opinion, the respondents 3 to 7, who are utter strangers to the

> **petitioner cannot make any allegation that the opinion amounts to professional misconduct. Further , it is not known as to how the said opinion offered by the petitioner is stated to be wrong. Assuming that it is a wrong opinion, as held by the Full Bench of this Court in the judgement cited supra and the Hon'ble Supreme Court that will not amount to professional misconduct warranting proceedings under Section 35 of the Act. But, the 1st respondent has not applied its mind at all into the allegations made against the petitioner to find out whether there was any professional misconduct or other misconduct or not. From the materials available on record, I have got no hesitation to hold that there is total non application of mind on the part of the Bar Council. When there are no materials available on record to form the basis for reasons to believe that the petitioner had committed anything unbecoming of an Advocate amounting to a misconduct either professional or otherwise, the 1st respondent ought not to have referred the matter to the 2nd respondent - Disciplinary Committee for enquiry. Thus, the impugned disciplinary proceedings is unwarranted and the same is liable to be quashed."**
>
> (Emphasis supplied)

The High Court of Madras holds after analyzing the facts that the petitioner therein did not offer any opinion to respondents 3 to 7 and is in not connected with them as they had not engaged him for his professional opinion. Therefore, the complaint could not have been maintained before the Bar Council. The High Court of Madras, in a subsequent judgment, in the case of **R.SWAMINATHAN v. BAR COUNCIL OF TAMIL NADU HIGH COURT CAMPUS CHENNAI** (2014 SCC OnLine Mad 12777)**,** elaborates the issue and holds no client can be permitted to intimidate the Advocate, as follows:

"…. …. ….

> **6.** At the outset, it should be pointed out that the second respondent, who was the complainant before the Bar Council, was not the client of the writ petitioners. Even according to his complaint, he was only one of the

several shareholders of a Company, whose property was purchased by another Company, on the basis of the legal opinion tendered by the writ petitioners. **In other words, the petitioners were not the complainant's Lawyers. The petitioners and the second respondent never had any jural or contractual relationship of lawyers and litigant. Therefore, I do not know how the second respondent could make a complaint of professional misconduct of giving a wrong opinion against the petitioners herein, when the clients of the petitioners were satisfied with such an opinion and have not raised an issue so far. This is an aspect which the Bar Council appears to have completely overlooked before passing a Resolution to refer the matter to the Disciplinary Committee.**

7. As and when a complaint is made against any Advocate, by a litigant alleging professional misconduct, the Bar Council is obliged to consider at least, prima facie, whether the allegations constitute a professional or other misconduct. Sections 35 of the Advocates Act, 1961, enables the Bar Council to inquire into (i) complaints of professional misconduct and (ii) complaints of other misconduct**. In the case on hand, the second respondent has not alleged against the petitioners, any "other misconduct". He has alleged professional misconduct against the petitioners. But he did not have any relationship with the petitioners.**

8. The expression "misconduct" is not defined in the Act. Therefore, the Supreme Court held in R.D. Saxena v. Balram Prasad Sharma [2001-1-L.W. 284 : (2000) 7 SCC 264] that the word "misconduct" is a relative term and that it had to be considered with reference to the subject matter and the context in which it appears.

9. It is true that in R.D. Saxena, as well as in D.P. Chadha v. Triyugi Narain Mishra [(2001) 2 SCC 221], the Supreme Court held the expression "misconduct" to have a wide connotation. It need not necessarily involve moral turpitude. But it has to be understood with reference to the subject matter and the context in which it is employed.

10. In Noratanmal Chouraria v. M.R. Murli [2005-2-L.W. 772 : (2004) 5 SCC 689], an Advocate was a party litigant in a Rent Control Proceeding. The opposite party made a complaint to the Bar Council that as a party appearing in the Rent Control Proceedings, the Advocate entered into an altercation with him. The Bar Council refused to entertain the complaint, as the conduct complained of, was not against any act of omission or commission by the Advocate in his professional capacity. The opposite party appealed. The Supreme Court dismissed the appeal, pointing out that to constitute misconduct, there must be improper behaviour or intentional wrong doing or deliberate violation of a rule or a standard of behaviour.

11. As pointed out earlier, the second respondent herein did not engage the services of the petitioners, for rendering any professional assistance. On the contrary, the petitioners were engaged by persons against whom the second respondent herein is actually waging a war over a property. Therefore, if any action is initiated against the petitioners, on a complaint made by a person like the second respondent, against whose interests the petitioners are engaged as advocates, no advocate can carry out his professional duties and responsibilities without fear. A professional is obliged to render services to his client. The services rendered by an Advocate to his client, would naturally invite the displeasure and wrath of such client's opposite party. Therefore, if parties to a litigation are allowed to take up the battle to the door steps of the counsel for the opposite party, the profession itself will be in jeopardy.

… … …

24. In Central Bureau of Investigation v. K. Narayana Rao [(2012) 9 SCC 512], the Supreme Court was concerned with an appeal filed by the Central Bureau of Investigation against a decision of the Andhra Pradesh High Court, quashing the criminal proceedings against an Advocate, who was arrayed as sixth accused in a special case filed for various offences punishable under Sections 120(b), 419, 420, 467, 468, 471, IPC, read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The gist of the complaint against several officers of the bank and the borrowers of

the bank was that the officers of the bank, the borrowers and the advocate colluded with each other and defrauded the bank by getting housing loans sanctioned and disbursed to about 22 borrowers. The specific charge against the advocate was that he was a panel advocate for Vijaya bank and that he gave a false legal opinion in respect of 10 housing loans. The advocate filed a petition under Section 482, Cr. P.C. on the file of the Andhra Pradesh High Court for quashing the proceedings and the High Court allowed the petition. When the Central Bureau of Investigation took the matter on appeal to the Supreme Court, the Supreme Court pointed out in paragraph 23 of its decision that a lawyer does not tell his client that he shall win the case in all circumstances. Like a surgeon who cannot and does not guarantee the result of any surgery, a lawyer does not guarantee the result. The only assurance that a professional can give is that he is possessed of the requisite skill in that branch of profession which he is practising and that while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. Therefore, the Supreme Court, after referring to the decision in Pandurang Dattatraya Khandekar, held that a professional can be held liable for negligence only on one of the two findings, namely (a) either that he was not possessed of the requisite skill that he professed to have possessed, or (b) that he did not exercise with reasonable competence, the skill which he did possess. Not stopping at that, the Supreme Court pointed out in paragraph 27 that a lawyer owes an "unremitting loyalty" to the interests of his client and that it is the lawyer's responsibility to act in a manner that would best advance the interest of his client. The Supreme Court pointed out that even if his opinion may not be acceptable (to his own client) he cannot be mulcted with liability. When such is the case, the second respondent cannot accuse the petitioners of misconduct merely because their opinion to their own clients, was not palatable or in tune with his own interests.

25. As I have pointed out earlier, what the second Respondent expected from the petitioner in W.P. No. 18479 of 2009, is spelt out by him in paragraph 7 of his counter affidavit to that writ petition, which reads as follows:—

> "It is not my case that the petitioner rendered any professional service to me and that there is counsel-client relationship between the petitioner and myself. The petitioner gave legal opinion in respect of the property in which I am having a share and based on that legal opinion, sale transaction took place and they are promoting flats in the above property involving innocent public. Therefore, due to the legal opinion given by the petitioner, I was put to severe hardship since it affects my rights in the property."

26. Similarly, what the second Respondent expected from the petitioner in W.P. No. 18478 of 2009, is spelt out by him in paragraph 25 of his counter affidavit to that writ petition, which reads as follows:

> "…The petitioner do admit that the company is the owner of the property in which I am having a share. Therefore, he should have advised the purchasers to have negotiations with me with regard to the sale of the property before giving legal opinion. The petitioner cannot claim that he is a counsel appearing for the company defending in the cases. Admittedly based on the wrong legal opinion given by the petitioner, the sale deeds were executed. The sale deeds were drafted by Mr. N. Kishorekumar, who is appearing for the petitioner in the present writ petition. Therefore it is not known as to whether the counsel for the petitioner who drafted the sale deeds and who is also involved in all the transactions, can represent the petitioners in the present writ petition.…"

27. From the portion of the counter affidavits of the second Respondent extracted above, it is clear that the second Respondent is unhappy about the petitioners continuing to appear for their clients. This shows that the complaint made by the second Respondent against the petitioners before the Bar Council, is motivated, with a desire to keep the petitioners away from their clients. The Bar Council ought to have seen this game plan on the part of the second Respondent. No litigant can be permitted to intimidate a lawyer appearing for his opponent. If a litigant does so, it will pollute the stream of administration of justice. Allowing the Bar Council to proceed with the enquiry into the complaint

> **lodged by the second Respondent against the petitioners will only weaken the morale of the petitioners and prevent them from the honest and courageous discharge of their duties to their own clients. Such a sinister move on the part of the second Respondent cannot be permitted."**
>
> (Emphasis supplied)

The aforesaid judgments of the High Court were considering Section 35 of the Advocates Act, the soul of which is 'reason to believe".

14. In the light of afore-said judgments of the Apex Court, this Court and that of the High Court of Madras, the considered view of this Court is that the complainant had no locus to file the complaint against the petitioner, as he was neither his Advocate nor there was any engagement of the petitioner by the 2nd respondent at any point in time. He was the counsel who had appeared against the 2nd respondent. The complaint, at best, was maintainable by the decree holders, if there was any allegation against the petitioner and not at the instance of Judgment Debtor. Since the issue of locus cuts at the root of the matter and the root is found to be contrary to law, all other submissions of the petitioner in-person that there should be reason to believe, for initiation of proceedings under Section 35 of the Act, need not be gone into, notwithstanding the fact that certain judgments which inter alia consider the issue of reason to believe, found in Section 35 of the Act, are noted hereinabove, as the complaint was not even maintainable at the hands of the complainant before the Bar Council. Therefore, no other contention advanced either by the petitioner or the respondent on the merit of the matter has been gone into."

13. In the light of the law as laid down by the Apex Court, different High Courts and that of this Court in **PARAS JAIN** *supra*, the complaint itself ought not to have been entertained by

the Bar Council, as Section 35 mandates that to entertain a complaint against an Advocate, the Bar Council must have reason to believe that the Advocate is guilty of misconduct. A perusal at the complaint would clearly indicate that it was a product of mala fides or suffering from want of bona fides. The 1st respondent/complainant having chosen to file an appeal before the Additional Labour Commissioner, Bengaluru succeeds and also contemporaneously complains to the Bar Council. The observations of the Labour Commissioner have been expunged by the coordinate bench. The foundation in the complaint, *inter alia*, touches upon the merits of the opinion of the Committee which decided to terminate the services of the 1st respondent. To wreak vengeance the complaint is registered before the Bar Council, without having any locus to do so, as there is no contract or a client-advocate relationship between the petitioner and the 1st respondent. In that light, permitting the complaint to proceed any further would amount to becoming an abuse of the process of the law and result in miscarriage of justice.

14. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is ***allowed.***

(ii) The complaint filed by the 1st respondent/ complainant before the 2nd respondent/Bar Council in D.C.E.No.66 of 2022 and also the notice dated 17-07-2022 issued by the 2nd respondent stand quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ