

A AJITSINH ARJUNSINH GOHIL

v.

BAR COUNCIL OF GUJARAT AND ANR.

(Civil Appeal No. 8307 of 2015)

B APRIL 06, 2017

[DIPAK MISRA AND A. M. KHANWILKAR, JJ.]

Advocates Act, 1961:

C *s.36B(1) – Complaint against Advocate – Transfer of disciplinary proceedings, to the Bar Council of India (BCI) from the State Bar Council as per mandate enshrined u/s.36B(1) – Whether the BCI, instead of enquiring into the complaint and adjudicating thereon, can send it back to the State Bar Council with direction to decide the controversy within a stipulated time – Held: When the language employed u/s. 36B(1) and s.36 are read in juxtaposition,*
D *it is clear that the legislature desired that the disciplinary proceedings are to be put to an end within a particular time frame by the State Bar Council and if that is not done, the whole thing gets transferred to the BCI, which is obliged to cause an enquiry –*
E *Once original jurisdiction to deal with complaint stands transferred to the BCI, it cannot be said that disposal by BCI would include remand – The legislature never intended either from the perspective of the complainant or from the delinquent advocate that a complaint transferred to BCI, be again sent back to the State Bar Council.*

F *s.36B(1) and s.37 – Distinction between – Held: BCI exercises appellate jurisdiction u/s.37 and original jurisdiction u/s.36B(1) – While exercising appellate jurisdiction u/s.37, the BCI can remand the matter to the State Bar Council whereas, u/s.36B(1) original jurisdiction to deal with complaint stands transferred to the BCI thus, it cannot be remanded back to State Bar Council – BCI, while*
G *exercising original jurisdiction on transfer of a complaint, cannot exercise appellate jurisdiction.*

Supreme Court – Directions – Performance of duty by statutory body – Disciplinary authority of State Bar Councils found to be not disposing of complaints within stipulated period – Held: Responsibility to deal with the disciplinary proceedings is cast on

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*the State Bar Council, which constitutes its disciplinary committee – A
A statutory authority is obliged to constantly remind itself that the
mandate of the statute is expediency and the stipulation of time is
mandatory – State Bar Councils asked to take periodical stock of
cases with regard to the progress of the Disciplinary committee and
find out the cause of delay and guide themselves to act with
expediency so that the Councils, as statutory bodies, do their duty
as commanded under the Act. B*

*Interpretation of Statutes – On the text and context –
Discussed.*

*Advocates – Nobility of legal profession – Held: An advocate C
stands in a loco parentis towards the litigants – He has a paramount
duty to his client and client is entitled to receive disinterested, sincere
and honest treatment.*

Allowing the appeal, the Court

**HELD: 1. To understand the language employed in a D
statutory provision, stress has to be given on textual
interpretation that would match context and further to explore
the intention of the legislature. The words have to be understood
regard being had to the purpose behind it and hence, the concern
with the intention is basically to decipher the meaning of the word E
that the legislature has placed on it. When the language employed
under Section 36B(1) and Section 36 are read in juxtaposition,
there remains no scintilla of doubt that the legislature desired
that the disciplinary proceedings are to be put to an end within a
particular time frame by the State Bar Council and if that is not
done, the whole thing gets transferred to the BCI, which is obliged F
to cause an enquiry. Thus understood, there can be no trace of
doubt that the original jurisdiction to deal with the complaint stands
transferred to the BCI. Once the original jurisdiction is
transferred, to rely upon the language that the BCI may dispose
of would include any manner of disposal which would include a
remand, cannot be thought of. That is neither the legislative G
intendment nor the legislative purpose. The legislature never
intended a complaint made against an Advocate either from the
perspective of the complainant or from the delinquent to be
transferred to BCI, again to be sent back. [Paras 23, 27] {1996-E;
998-D-F} H**

A **2.1 Once a complaint is made by a litigant, it has to follow a definite procedure and is required to be dealt with as per the command of the Act to conclude the disciplinary proceeding within a period of one year from the date of receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council. On many occasions, it has come to the notice of this Court that disciplinary authority of the State Bar Council is not disposing of the complaint within the stipulated period, as a consequence of which the proceeding stands transferred to the BCI. The responsibility to deal with the disciplinary proceedings is cast on the State Bar Council which constitutes its disciplinary committee. Every member of the Disciplinary Committee is aware that the proceeding has to be concluded within one year. The complainant and the delinquent advocate are required to cooperate. Not to do something what one is required to do, tantamount to irresponsibility and the prestige of an institution or a statutory body inheres in carrying out the responsibility. One may not be always right in the decision but that does not mean to be shirking away from taking a decision and allow the matter to be transferred by operation of law to the BCI. A statutory authority is obliged to constantly remind itself that the mandate of the statute is expediency and the stipulation of time is mandatory. The Disciplinary Committee is expected to perform its duty within a time frame and not to create a blameworthy situation. When duties are given by law, duties are required to be performed. [Para 42] [1003-D-G]**

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F **2.2 It is advisable that the State Bar Councils take a periodical stock of cases in each meeting with regard to the progress of the Disciplinary Committee, find out the cause of delay and guide themselves to act with expediency so that the Council, as a statutory body, does its duty as commanded under the Act. [Para 43] [1004-A-B]**

G *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others* (1987) 1 SCC 424: [1987] 2 SCR 1; *Atma Ram Mittal v. Ishwar Singh Punia* (1988) 4 SCC 284 : [1988] 2 Suppl. SCR 528; *S. Gopal Reddy v. State of A.P.* (1996) 4 SCC 596 :

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[1996] 3 Suppl. SCR 439; *High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others* (2003) 4 SCC 712 : [2003] 2 SCR 799; *Narendra Singh v. Chhotey Singh and another* (1983) 4 SCC 131; *Raja Ram Mahadev Paranjyape v. Aba Maruti Mali* [1962] Suppl. 1 SCR 739; *R v. Boteler* (1864) 33 LJMC 101 : 122 ER 718; *O.N. Mahindroo v. District Judge, Delhi* (1971) 3 SCC 5; [1971] 2 SCR 11; *Sanjiv Dutta, Dy. Secretary, Ministry of Information & Broadcasting, In re* (1995) 3 SCC 619 : [1995] 3 SCR 450; *Sudha v. President, Advocates Association, Chennai and others* (2010) 14 SCC 114 : [2010] 14 SCR 289; *Dhanraj Singh Choudhary v. Nathulal Vishwakarma* (2012) 1 SCC 741 : [2011] 16 SCR 240; *V.C. Rangadurai v. D. Gopalan and others* (1979) 1 SCC 308 : [1979] 1 SCR 1054; *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and others* (1984) 2 SCC 556 : [1984] 1 SCR 414 – referred to.

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Case Law Reference

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|-------------------------|-------------|---------|
| [1987] 2 SCR 1 | referred to | Para 23 |
| [1988] 2 Suppl. SCR 528 | referred to | Para 24 |
| [1996] 3 Suppl. SCR 439 | referred to | Para 25 |
| [2003] 2 SCR 799 | referred to | Para 26 |
| (1983) 4 SCC 131 | referred to | Para 28 |
| [1962] Suppl. 1 SCR 739 | referred to | Para 29 |
| 122 ER 718 | referred to | Para 29 |
| [1971] 2 SCR 11 | referred to | Para 29 |
| [1995] 3 SCR 450 | referred to | Para 32 |
| [2010] 14 SCR 289 | referred to | Para 35 |
| [2011] 16 SCR 240 | referred to | Para 38 |
| [1979] 1 SCR 1054 | referred to | Para 39 |
| [1984] 1 SCR 414 | referred to | Para 41 |

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8307 of 2015.

From the Judgment and Order dated 20.06.2015 of the Disciplinary Committee of the Bar Council of India, New Delhi in B. C. I. Tr. Case No. 197 of 2011.

B M. L. Lahoty, Adv., (A.C.).

Anup Kumar, Mrs. Neha Jaiswal, Advs. for the Appellant.

D. N. Ray, Lokesh K. Choudhary, Mrs. Sumita Ray, Preet Pal Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. The singular issue that is required to be addressed in this appeal is whether after transfer of a disciplinary proceeding, as per the mandate enshrined under Section 36B(1) of the Advocates Act, 1961 (for brevity, “the Act”) to the Bar Council of India (BCI) from the State Bar Council, can the BCI, instead of enquiring into the complaint and adjudicating thereon, send it back to the State Bar Council with the direction to decide the controversy within a stipulated time. It is interesting to note that Mr. Preet Pal Singh, the learned counsel for BCI would concede that the said statutory authority has no such power. Mr. D.N. Ray, learned counsel appearing for the Gujarat State Bar Council would propound with all the thrust at his command that BCI has unfettered jurisdiction to pass such an order inasmuch as it is the apex statutory body under the Act and it possesses plenary powers and, in any case, the language of the statutory provision does not create any impediment for the same. Mr. Anup Kumar, learned counsel for the appellant, as is expected, concurs with the proponement of Mr. Singh and further submits that the time consumed in disposal of the disciplinary authority has put the appellant in a situation of misery and, therefore, this Court should quash the initiation of the disciplinary proceedings so that efflux of time can give the appellant a healing touch and put an end to the agony he has already endured.

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2. In such a situation, thinking it apposite, the Court appointed Mr. M.L. Lahoty, learned counsel, as the friend of the Court, who submitted with immense assurance that acceptance of the stand of the State Bar Council would not only run counter to the language employed by the legislature but shall cause immense violence to the same and the duty of this Court is to give full meaning to the legislative intendment.

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3. We may, in brief, state the factual score. The appellant, who was enrolled as an Advocate with the Bar Council of Gujarat, got elected to the post of Secretary of Gandhinagar Bar Association in 2007 and subsequently he was elected as the President of the Bar Association in 2008. One Mr. P.D. Kanani, who was the Secretary of the Bar Association due to differences leveled false allegations and filed false civil and criminal cases against the appellant and also wrote a letter dated 04.09.2008 in this regard to the Secretary, Bar Council of Gujarat alleging that he was denied access to certain records and the accounts and there was misappropriation of huge amount of the Bar Association. The differences and the misunderstanding between the appellant and Mr. P.D. Kanani was resolved and a settlement was arrived at between the parties on 18.09.2008 and the book of accounts and other records were handed over by the appellant to Mr. Kanani.

4. When everything appeared to have been put to rest, after expiry of one year and three months, Bar Council of Gujarat vide its B.C. Resolution No. 176 of 2009 dated 06.12.2009 resolved to call for an explanation from the appellant with regard to complaint preferred by Mr. P.D. Kanani and further putting forth an allegation that it had received a letter dated 01.06.2010 from the Registrar, High Court of Gujarat regarding complaint against the appellant. On the basis of letter dated 01.06.2010, Bar Council of Gujarat took *suo motu* cognizance against the appellant and referred the matter to Disciplinary Committee III. The complaint was registered as DC Case No. 25/2010.

5. It is worthy to note that the Bar Council of Gujarat decided to conduct trial of D.C. case No. 25/2010 along with D.C. Case No. 15/2010 before the Disciplinary Committee No. I. The case of the appellant was again transferred to Disciplinary Committee No. XII and again to Disciplinary Committee No. IX.

6. As the factual matrix would depict, the appellant, upon filing of application, was granted time to file his written arguments but without waiting for the reply of the appellant, the Bar Council of Gujarat vide its order dated 17.05.2011 decided D.C. Case No. 15/2010 against the appellant and directed removal of the name of the appellant from roll of Bar Council of Gujarat and imposed costs of Rs.50,000/-. However, as no order could be passed in D.C. Case No. 25/2010 during the statutory period, subsequently, the Disciplinary Committee of the Bar Council of Gujarat vide letter dated 24.08.2011, transferred the D.C. Case No. 25/2010 to the BCI which was registered as BCI Tr. Case No. 197/2011.

A 7. The appellant contended before the Disciplinary Committee of
the BCI that there was no such letter dated 01.06.2010 purported to be
written by the Registrar (Inspection), High Court of Gujarat on the basis
of which cognizance against appellant had been taken. The Disciplinary
Committee, after hearing the appellant, vide order dated 20.06.2015
B remanded the matter to the Bar Council of Gujarat with a direction to
dispose of the case within a period of one year. Being aggrieved, the
appellant has filed the present appeal.

C 8. As indicated earlier, Mr. Anup Kumar, learned counsel for the
appellant submitted that the Disciplinary Committee of the BCI could
not have remanded the matter to the Disciplinary Committee of the Bar
Council of Gujarat as the same is not permissible in a case that has been
transferred to the BCI by operation of law under Section 36B(1) of the
Act.

D 9. Mr. Ray, learned counsel for the respondent No. 1, in his turn,
would contend that if the language employed in Section 36B(1) and Section
36(2) are read in juxtaposition, it is abundantly clear that the power to
deal with the proceedings upon transfer by the BCI is different, for the
statute confers plenary power on the BCI and such plenary powers in
its ambit and sweep would include the power to remand. He would
emphasise on the words “may dispose of the same as if it were a
E proceeding withdrawn for inquiry under sub-section (2) of section 36”
and on that basis propound that the said words confer wide jurisdiction
on the BCI and do not restrict its jurisdiction only to decide the matter.

F 10. To appreciate the rival submissions raised at the Bar, it is
necessary to keenly scrutinize various provisions of the Act and the
rules framed by the BCI. Prior to that, it has to be kept in mind that the
Act was brought into force to amend and consolidate the law relating to
legal practitioners and to provide for the constitution of Bar Councils
and an All-India Bar. The statement of objects and reasons of the Act
describes the main features, which are as follows:-

G “The main features of the Bill are, -

1. The establishment of an All India Bar Council and a common
roll of advocates, and advocate on the common roll having a
right to practice in any part of the country and in any Court,
including the Supreme Court;

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2. The integration of the bar into a single class of legal practitioners know as advocates; A

3. The prescription of a uniform qualification for the admission of persons to be advocates;

4. The division of advocates into senior advocates and other advocates based on merit; B

5. The creation of autonomous Bar Councils, one for the whole of India and one for each State.

Following the recommendations of the All India Bar Committee and the Law Commission, the Bill recognized the continued existence of the system known as the dual system now prevailing in the High Court of Calcutta and Bombay, by making suitable provisions in that behalf: It would, however, be open to the two High Courts, if they so desire, to discontinue this system at any time. C

The Bill, being a comprehensive measure, repeals the Indian Bar Council Act, 1926, and all other laws on the subject.” D

11. Section 2(e) defines “Bar Council of India” as follows:-

“Bar Council of India” means the Bar Council constituted under Section 4 for the territories to which this Act extends.” E

12. Section 3 deals with State Bar Councils. Section 4 provides that there shall be Bar Council for the territories to which this Act extends to be known as the Bar Council of India and stipulates who shall be the members of the said Bar Council. Section 6 enumerates the functions of the State Bar Councils. Section 6(1)(c) empowers the State Bar Councils to entertain and determine cases of misconduct against advocates on its roll. Section 7 engrafts the functions of the Bar Council of India. Section 9 deals with the Disciplinary Committees. The said provisions is reproduced below:- F

“Section 9. Disciplinary Committees. – G

(1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be a person co-opted by the Council from amongst its members and the other shall be a person co-opted by the Council H

A from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of Section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

B (2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964, (21 of 1964) may dispose of the proceeding pending before it as if this section had not been amended by the said Act.”

C 13. Chapter V contains the heading “Conduct of Advocates”. Section 35 deals with punishment of advocates for misconduct. Section 35(1) lays down that 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 misconduct, it shall refer the case for disposal to its disciplinary committee. Section 35(1A) empowers the State Bar Council to 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. Sub-section (3) of Section 35 provides for nature of orders to be passed by the disciplinary committee of a State Bar Council. The said provisions reads as follows:-

“**Section 35(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:-

F (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;

G (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.”

H 14. Section 36 deals with the disciplinary powers of Bar Council of India. The said provision is as follows:-

“Section 36. Disciplinary powers of Bar Council of India- A

(1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall be refer the case for disposal to its disciplinary committee. B

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may either of its own motion or on a report by any State Bar Council or an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same. C

(3) The disciplinary committee of the Bar Council of India disposing of any case under this section, shall observe, so far as may be, the procedure laid down in Section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India. D

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section, 35 and where any proceedings have been withdrawn for inquiry before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order.” E

15. Section 36B that has come into force w.e.f. 31.01.1974 provides for disposal of disciplinary proceedings. The said provision is reproduced hereinbelow:- F

“Section 36B. Disposal of disciplinary proceedings-

(1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under Section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India G
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A which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub section (2) of section 36.

(2) Notwithstanding anything contained in sub section (1) where on the commencement of the Advocates (Amendment) Act, 1973, any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such complaint, or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such other proceeding shall stand transferred to the Bar Council of India for disposal under sub-section.”

16. Relying on the said provision, it is urged by learned counsel for the appellant that if any disciplinary proceeding against a delinquent advocate initiated under Section 35 of the Act is not concluded within a period of one year, by operation of law, the same stands transferred to BCI and BCI is authorized to dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of Section 36 of the Act and, therefore, the State Bar Council ceases to have jurisdiction. Emphasis has also been laid on the language employed in sub-section (2) of Section 36 that the BCI has the authority either of its own or on a report by any State Bar Council or an application made to it by the Disciplinary Committee of the person interested to withdraw for enquiry before itself any proceeding for disciplinary action against the advocate. Stress is laid on the language used in sub-section (4) of Section 36 to highlight that the Disciplinary Authority of the BCI is entitled to make an order that the Disciplinary Committee of a State Bar Council can make under sub-section (3) of Section 35 and further where any proceeding has been withdrawn for inquiry before the Disciplinary Committee of the BCI, the State Bar Council concerned shall give effect to any such order.

17. Learned counsel would further urge that if the interpretation sought to be placed by the appellant is accepted, the BCI would be overburdened with original proceedings from various State Bar Councils and the mischief sought to be corrected under Section 36B(1) of the Act, namely, timely disposal of the complaint, would defeat the statutory purpose.

18. Learned Amicus Curiae submits that once a case is transferred by operation of law, it is obligatory on its part to decide the same on its merits, for the language employed under sub-section (1) of Section 36B encapsulates two concepts, namely, (i) transfer of proceedings on failure to conclude the same within one year, and (ii) the BCI is to dispose of the same as if it were the proceedings withdrawn for enquiry under sub-section (2) of Section 36. Elaborating further, he would urge that there is a transfer by operation of law and the disposal has to be done as if it is a proceeding withdrawn for enquiry under sub-section (2) of Section 36. According to learned counsel, once by operation of law the case is transferred, it has to be disposed of by the BCI and the manner of disposal will not confer jurisdiction on it to send back the case to the State Bar Council.

19. In this context, it is appropriate to refer to Section 37 of the Act that provides for appeal to the BCI. It stipulates that any person aggrieved by an order passed by the Disciplinary Committee of a State Bar Council may prefer an appeal to the BCI within 60 days of the date of communication of the order to him and further such appeal shall be heard by the Disciplinary Committee of the BCI which may pass such other order including the order varying the punishment awarded by the Disciplinary Committee of the State Bar Council as it deems fit.

20. Section 42 of the Act that deals with the power of the Disciplinary Committee. The Disciplinary Committee of a Bar Council has the same powers as are vested in a civil court under the Code of Civil Procedure in respect of certain matters that pertain to enquiry. It has been highlighted by the learned counsel for the respondent No. 1 that all proceedings before the Disciplinary Committee of the Bar Council shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860 and every such Disciplinary Committee shall be deemed to be a civil court for the purposes of Sections 480, 482 and 485 of the Code of Criminal Procedure. Learned counsel has drawn our attention to sub-section (3) of Section 42 which reads as follows:-

“For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission

A which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.”

B 21. Relying on the said provisions, it is contended by the learned counsel for the 1st respondent that the BCI has plenary powers to pass an order as it feels appropriate and in certain cases of statutory transfer or transferred by operation of law, is not remanded, there would be enormous practical difficulties and injustice is likely to be caused and sometimes due to delinquent advocate. In essence, the submission of the learned counsel for the said respondent is that after transfer of inquiry, C the BCI is not mandatorily commanded by law to complete the enquiry and pass an order as provided under Section 35(3) of the Act. He has also drawn inspiration from Section 49 that confers power on the BCI for discharging the functions under the Act. It is urged by him that Rule 18(5) of Part VII of the Bar Council of India contemplates an order of remand if the language used is properly appreciated. Rule 18(5) reads as follows:- D

“**Rule 18(5)**. On a consideration of the report of a State Bar Council or otherwise the Disciplinary Committee of the Bar Council of India shall pass such orders as it considers proper.”

E 22. Thus, the question, as posed earlier, fundamentally centres around the jurisdiction of the BCI. As is discernible from the language employed in Section 36B(1), the transfer takes place by operation of law. There is a further command to BCI to dispose it off as if it were a proceeding withdrawn for enquiry under sub-section (2) of Section 36. Thus, the jurisdiction for conducting the enquiry and disposal of the complaint is conferred on the BCI by the mandate of the Act. F The context, the intention and the purpose is clear as crystal. The BCI is required to exercise original jurisdiction that was to be exercised by the State Bar Council.

G 23. To understand the language employed in a statutory provision, one may recapitulate what Chinnappa Reddy, J. had to say in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others*¹ :-

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is

H ¹ (1987) 1 SCC 424

the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. ...” A

24. Sabyasachi Mukharji, J. (as His Lordship then was) in *Atma Ram Mittal v. Ishwar Singh Punia*², emphasizing on the intention of Parliament or, in other words, the will of the people, observed:- B

“9. ... Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. (emphasis by the court) See *Commentaries on the Laws of England* (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in *Poppattal Shah v. State of Madras*³ said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words as was said by Lord Reid in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.*⁴. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. ...” C D E

25. In *S. Gopal Reddy v. State of A.P.*⁵, the Court observed:- F

“It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.” G

² (1988) 4 SCC 284

³ AIR 1953 SC 274

⁴ 1975 AC 591

⁵ (1996) 4 SCC 596 H

A 26. In *High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others*⁶ while discussing about the importance of the context, the Court stated thus:-

B “38. In *The Interpretation and Application of Statutes* by Reed Dickerson, the author at p. 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

C “... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called ‘conceptual map of human experience’.”

D 27. The aforesaid authorities give stress on textual interpretation that would match context and further to explore the intention of the legislature. The authorities further emphasise the words have to be understood regard being had to the purpose behind it and hence, the concern with the intention is basically to decipher the meaning of the word that the legislature has placed on it. When the language employed under Section 36B(1) and Section 36 are read in juxtaposition, there remains no scintilla of doubt that the legislature desired that the disciplinary proceedings are to be put an end to within a particular time frame by the State Bar Council and if that is not done, the whole thing gets transferred to the BCI, which is obliged to cause an enquiry. Thus understood, there can be no trace of doubt that the original jurisdiction to deal with the complaint stands transferred to the BCI. Once the original jurisdiction is transferred, to rely upon the language that the BCI may dispose of would include any manner of disposal which would include a remand, cannot be thought of. That is neither the legislative intendment nor the legislative purpose. The legislature, as we find, never intended a complaint made against an Advocate either from the perspective of the complainant or from the delinquent to be transferred to BCI, again to be sent back.

G 28. At this stage, we think it appropriate to state that there is a distinction between an appellate jurisdiction which the BCI exercises under Section 37 and the original jurisdiction under Section 36B(1). While exercising the appellate jurisdiction, the BCI can remand the matter to the State Bar Council. In this context, reference to a three-Judge Bench in *Narendra Singh v. Chhotey Singh and another*⁷, would be apt. In

⁶ (2003) 4 SCC 712

H ⁷ (1983) 4 SCC 131

the said case, the question arose with regard to ambit and jurisdiction of the Disciplinary Committee of the BCI hearing an appeal against an order of Disciplinary Committee of a State Bar Council made under Section 35. Dealing with the same, the Court held:-

“8. ... appellate body enjoys very wide jurisdiction because it is competent to pass any order as it may deem fit. This jurisdiction of widest amplitude takes within its sweep the power to vary the punishment which would imply enhancement of punishment and the only obligation, while varying or enhancing the punishment, on the appellate body is to hear the person who is likely to be prejudicially affected by such an order.”

29. The Court thereafter addressed the issue of scope and ambit of jurisdiction of a quasi-judicial body whose jurisdiction is defined in such as “as it deems fit”. It referred to the authorities in *Raja Ram Mahadev Paranjype v. Aba Maruti Mali*⁸ and *R v. Boteler*⁹ and opined that the discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion. A reference was made to the decision in *O.N. Mahindroo v. District Judge, Delhi*¹⁰ wherein this Court has held that dealing with an appeal under Section 38, the jurisdiction of the Court was not restricted, for the Court is dealing with an appeal not only on law but also on appeal on facts. In the said decision, examining the amplitude of power including the power to review, the Court observed:-

“Such powers may be exercised in a suitable case for or against an advocate even after the matter has gone through the hands of the Disciplinary Committee at some stage or even through this Court. These matters are also not governed by the analogy of autrefois convict or autrefois acquit in the Code of Criminal Procedure. Disciplinary proceedings against a lawyer involve not only the particular lawyer but the entire profession. The reputation of the legal profession is the sum total of the reputation of the practitioners. The honour of the lawyer and the purity of the profession are the primary considerations and they are intermixed.”

⁸ 1962 Supp. 1 SCR 739; AIR 1962 SC 753

⁹ (1864) 33 LJMC 101 : 122 ER 718

¹⁰ (1971) 3 SCC 5

A After so stating, the Court observed that a disciplinary proceeding against a member of a profession whose services are made available to society as a whole is to be involved as between the profession and its erring member and not between the complainant and delinquent advocate. Emphasis has been laid on the said aspect to determine the jurisdiction of the bodies set up to carry out the purposes of the Act.

B
C 30. Thereafter, the Court adverted to the facts of the case and found that the Disciplinary Committee of the Bar Council of India was not satisfied with reference to the disposal of third head of charge by the Disciplinary Committee of the State Bar Council, and merely remanded the matter to the Disciplinary Committee of the State Bar Council to assign reasons for its decision. The said direction, as the Court held, was certainly within the powers of the appellate body as it had jurisdiction to decide an appeal 'as it deems fit', and while so deciding, it was not hedged in by the technical rule of appeal against acquittal.

D 31. Learned counsel for the 1st respondent would submit that the words "pass such orders as it considers appropriate" would clothe the BCI with the jurisdiction to remand the matter to the State Bar Council. We have already referred to the statutory scheme and the purposes of the legislation. As has been held in *Narendra Singh* (supra) the disciplinary authority can remand the matter in exercise of appellate jurisdiction. There can be no shadow of doubt that the BCI, while exercising original jurisdiction on transfer of a complaint, cannot exercise the appellate jurisdiction. Therefore, the order passed by the disciplinary authority by placing reliance on its rules is wholly unsustainable.

E
F 32. Having expressed our opinion, ordinarily we would have proceeded to record the formal part of the judgment. But a significant aspect deserves to be addressed. It pertains to the nobility of legal profession. In *Sanjiv Dutta, Dy. Secretary, Ministry of Information & Broadcasting, In re*¹¹, the Court, taking note of various instances which deserve to be described as unfortunate, both for the legal profession and the administration of justice, observed thus:-

G "The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the

H ¹¹ (1995) 3 SCC 619

honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour.”

33. The Court further stated:-

“If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside.”

34. With the aforesaid observations, the Court expected that aberration will be less. Though the said observations had its impact, the misconduct on the part of some Advocates still continues.

35. In *Sudha v. President, Advocates Association, Chennai and others*¹², the Court, while dealing with the directions issued by the High Court of Madras regarding the management of Madras High Court Advocates Association, noted various facts, adverted to the resolutions passed by the Tellers Committee, devices adopted by the Committee constituted for peaceful meeting, and observed:-

“Many a time it is noticed that those who are not lawyers get entry into the Association room by putting on merely black coat as at the time of election the feelings are running high. Such elements take undue advantage of the situation and bring a bad

¹² (2010) 14 SCC 114

A name to the Association of the advocates. Therefore, to deter such elements the amendments have been carried out in the bye-laws. Those amendments carried out in the bye-laws of the Association can hardly be regarded as against the legal fraternity in general and as against junior members of the Bar in particular.”

B 36. In the context of the said case, the two-Judge Bench felt obliged to say:-

C “The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life.”

D 37. The aforesaid expression shows nature of the profession and the expectation from the society from the members of the legal profession.

E 38. In *Dhanraj Singh Choudhary v. Nathulal Vishwakarma*¹³, it has been observed that an Advocate’s attitude towards dealing with his client has to be scrupulously honest and fair and the punishment for professional misconduct has twin objectives – deterrence and correction.

39. Having noted these authorities, we may recapitulate what Krishna Iyer, J. had to say in *V.C. Rangadurai v. D. Gopalan and others*¹⁴:-

F “5. Law’s nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community.”

40. In this regard, a speech from *Eulogy of Judges* by Piero Calamandrei¹⁵ would be seemly:-

G “The difference between the true lawyer and those men who consider the law merely a trade is that the latter seek to find ways to permit their clients to violate the moral standards of society without over-stepping the letter of the law, while the

¹³ (2012) 1 SCC 741

¹⁴ (1979) 1 SCC 308

H ¹⁵ Princeton, New Jersey: Princeton University Press, 1946), p.45.

former look for principles which will persuade their clients to
keep within the limits of the spirit of the law in common moral
standards.” A

41. We have a purpose in referring to the aforesaid
pronouncements. A lawyer is treated as a part of the noble profession
and expected as an elite member of the society, to be professionally B
responsible and constantly remind himself that his services are rendered
to the consumers of justice. As has been held in *Pandurang Dattatraya
Khandekar v. Bar Council of Maharashtra, Bombay and others*¹⁶,
an advocate stands in a *loco parentis* towards the litigants. He has a
paramount duty to his client and client is entitled to receive disinterested,
sincere and honest treatment. C

42. Once a complaint is made by a litigant, it has to follow a
definite procedure and is required to be dealt with as per the command
of the Act to conclude the disciplinary proceeding within a period of one
year from the date of receipt of the complaint or the date of initiation of
the proceedings at the instance of the State Bar Council. On many an D
occasion, it has come to the notice of this Court that disciplinary authority
of the State Bar Council is not disposing of the complaint within the
stipulated period, as a consequence of which the proceeding stands
transferred to the BCI. The responsibility to deal with the disciplinary
proceedings is cast on the State Bar Council which constitutes its E
disciplinary committee. Every member of the Disciplinary Committee is
aware that the proceeding has to be concluded within one year. The
complainant and the delinquent advocate are required to cooperate. Not
to do something what one is required to do, tantamount to irresponsibility
and the prestige of an institution or a statutory body inheres in carrying
out the responsibility. One may not be always right in the decision but F
that does not mean to be shirking away from taking a decision and allow
the matter to be transferred by operation of law to the BCI. A statutory
authority is obliged to constantly remind itself that the mandate of the
statute is expediency and the stipulation of time is mandatory. It will not
be erroneous to say that the Disciplinary Committee is expected to G
perform its duty within a time frame and not to create a blameworthy
situation. It is better to remember offering an explanation to one's own
conscience is like blaming everything on "accident". When duties are
given by law, duties are required to be performed.

¹⁶ (1984) 2 SCC 556

A 43. In view of what we have stated above, we think it will be advisable that the State Bar Councils take a periodical stock of cases in each meeting with regard to the progress of the Disciplinary Committee, find out the cause of delay and guide themselves to act with expediency so that the Council, as a statutory body, does its duty as commanded under the Act.

B

44. In view of the aforesaid, we allow the appeal, set aside the order passed by the Disciplinary Committee of the BCI and remand the matter to the Disciplinary Committee of the BCI to decide the same in accordance with law within a period of three months from the date of receipt of copy of this judgment. Registry is directed to send a copy of this judgment to all the Secretaries of each of the State Bar Council, who in turn can apprise the members of the State Bar Council so that appropriate steps are taken. There shall be no order as to costs.

C

Ankit Gyan

Appeal allowed.