

(2019) 10 JH CK 0033

Jharkhand High Court

Case No: Wirt Petition (c) No. 675 Of 2017

Commercial Taxes Bar
Association, Sakchi, Jamshedpur

APPELLANT

Vs

Jharkhand State Bar Council And
Ors

RESPONDENT

Date of Decision: Oct. 14, 2019

Acts Referred:

- Bar Council Of India Rules - Rule 40

Hon'ble Judges: Sujit Narayan Prasad, J

Bench: Single Bench

Advocate: M.S Mittal, Rahul Lamba, Ashutosh Anand, Rishi Bharati

Final Decision: Disposed Of

Judgement

1. Learned senior counsel for the petitioner is submitting rejoinder to the counter affidavit which is being kept on record.

2. Mr. M.S Mittal, learned senior counsel appearing for the petitioner at the outset, has submitted that at present here surviving relief is only at

paragraph 1(d) and 1(e) of the prayer, which is for issuance of writ of certiorari for quashing the order as contained in letter being reference

no.1699/2019 dated 20.05.2019 by which the petitioner, who are members of the advocate association, has been directed to give up their membership

in District Bar Association, Jamshedpur or in any other association for getting affiliation of the petitioner Association by the respondent no.1.

The prayer made at paragraph 1(e) pertains to quashing of the letter contained in letter no.4001/2019 dated 16.08.2019 by which the decision taken by

the respondent no.1 as on 20.05.2019 has been reiterated and reconfirmed the compulsion on the member of the petitioner Association to leave their membership in other Association.

3. It is the case of the petitioner that the Association of the lawyers who are practicing in the Commercial Sale Tax has constituted an Association and has made an application for getting affiliation under the relevant rule i.e. under the Bihar State Advocates' Welfare Fund Act, 1983 and the Model for Advocate Bar Association within the State of Jharkhand framed by the Jharkhand State Bar Council. The affiliation has been granted but provisionally, subject to certain conditions i.e. declaration is to be given by the Association about the members of the Association to the effect that none of the members of the petitioners' Association is member of the other Association. The said part of the order has been questioned by the petitioner, inter alia, on the ground that the Jharkhand State Bar Council being statutory body is supposed to follow the statute and only Model Rule of provision as has been made under Rule 58, whereby and whereunder no such embargo has been made restraining the other members of the Association to be member of the other Association but contrary to the aforesaid provision the provisional affiliation although has been made with the rider that the members of one Association will not be members of the other Association.

4. Mr. Ashutosh Anand, learned counsel for the Jharkhand State Bar Council by putting reliance on detailed counter affidavit filed on his behalf has referred certain paragraph more particularly paragraph 15 whereby and whereunder the statement has been made that the Council is required to keep the record of the names of the advocate of the list of the Association voluntarily chosen by the Advocate and for that purpose the petitioner was asked to furnish the names of Advocates who were desirous to get their names enlisted as members of the petitioner Association which would require as a matter of practice that the names of such members be deleted from the list of any other Association at District Bar Association, Jamshedpur, and the stipulation to that effect has been made in the impugned order, however, the said stipulation has nothing to do with the right of the Advocate to be

or not to be member of several Association so long as he may not claim the right to vote at multiple Association or the right to contest elections at multiple Associations or the right to avail welfare benefits from multiple Associations. Such statement has been made at paragraph 24 to the said counter affidavit.

Learned counsel by putting reliance upon such stand of the respondent-Council, has submitted that since the specific stand has been taken which will not create any rider, therefore, the impugned order may not be interfered with.

5. Mr. M. S. Mittal, learned senior counsel appearing for the petitioner in response, has submitted that whatever stand has been taken in the counter affidavit, as would appear from paragraph 15 and 24 thereof, now the respondent-Council is admitting their fault and as such they are not in a position to justify the stand which they have taken in the impugned order and further in the statute there is no provision of according any provisional affiliation since no such provision has been made under the statute.

He has further submitted that the contention as has been raised by the learned counsel appearing for the respondent-Council that since the statement with respect to observance of the provision as contained under Rule 58 of the Model Rule, the impugned order may not be interfered with, if that would be accepted, that would be contrary to the legally position that if any discrepancy has been crept up in the order it has to be rectified and herein since it is admitted case of the respondent-Council that the impugned order is not in consonance to the Model Rule and as such the same is required to be quashed.

6. Mr. Ashutosh Anand, learned counsel for the respondents in course of argument has submitted that requirement which is required to be followed has also been complied with by the petitioner as would appear from the letter dated 05.08.2019 vide Annexure-A.

7. In response to the said statement Mr. M.S. Mittal, learned senior counsel appearing for the petitioner by putting reliance upon the rejoinder wherein the said letter dated 11.10.2019 has been withdrawn on the ground that any undertaking if undertaken it is not binding upon the party and keeping that into consideration the said letter has been recalled.

8. This Court before parting with the order, deem it fit to answer the question which has been agitated by the respondent-Council to the effect that the conditions as required to be followed as reflected in the impugned order since has been complied with, therefore, petitioner has ceased his right.

This Court taking into consideration the fact that if any wrong concession has been given by any counsel, the same does not bind the Court on the

ground of settled position of law that the rule will prevail and not the concession of the parties as has been decided by the Honâ€™ble Apex Court in

the case of Union of India and Ors. Vs. Mohanlal Likumal Punjabi And Ors. reported in (2004) 3 SCC 62 8and Himalayan Coop. Group Housing

Society vs. Balwan Singh and Ors. (2015) 7 SCC 373, wherein at para 32, it reads as under:

â€™32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists

as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorized by his

principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorized to make.

A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial

legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was

employed. We hasten to add neither the client nor the court is bound by the lawyerâ€™s statements or admissions as to matters of law or legal

conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the clientâ€™s instructions rather than

substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in

others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the

client has a right to make decisions that can affect his rights.â€™

9. This Court after having heard learned counsel for the parties and after going across the pleading made on their behalf as also the finding recorded in

the impugned order, deem it fit and proper first to deal with the provision of Rule 58 of the Model Rules of the Advocate/Bar Association as has been

framed by the Jharkhand State Bar Council which reads here as under:

“58. An Advocate may become member of as many as Association, he may like but he has to indicate that in one financial year, he shall vote in

only one Association. If he is member of more than one Association before exercising his vote he has to file an affidavit/declaration that in that

particular financial year he has not exercised his vote in any other Association of Advocates. In case it is found that the information supplied was

wrong then it would be treated as “misconduct” and may loose his membership and disciplinary action may be taken against him.”

It is evident from the provision of Rule 58 of the Model Rules of the Advocate/Bar Association, which pertains to the provision of getting affiliation by

an Association of an advocate and the very first line starts by the word “An Advocate may become member of as many as Association, be may

like, subject to the condition that he has to indicate that in one financial year, he shall vote in only one Association. If he is member of more than one

Association before exercising his vote he has to file an affidavit/declaration that in that particular financial year he has not exercised his vote in any

other Association of Advocates, if any wrong declaration to that effect is furnished, it would be treated to be “misconduct” and the consequence

would be losing of membership and inviting disciplinary action against him. It is thus evident that there is no restriction that an Advocate will only

become a member of the Association for getting affiliation from the Bar Council. It has further been found that there is no such provision for granting

any provisional affiliation.

10. Mr. Ashutosh Anand, learned counsel appearing for the respondent has also fairly submitted that there is no such provision for granting provisional

affiliation as has been explained at paragraph 27 to the counter affidavit.

11. This Court has proceeded to examine the legality and propriety of the impugned order wherefrom it has been found that the provisional affiliation

has been granted subject to approval made by the Jharkhand State Bar Council with a request to send a report as to when an office bearer whether

they were allocated membership and under what rules.

Further request was made to provide office records/signature of the acceptance of Advocate of the Association whereby the voluntarily accepted that

their names may be deleted from the names at District Bar Association, Jamshedpur.

Further the communication dated 16.08.2019, Annexure-12 which stipulates the other list of Jharkhand State Bar Council has to be maintained and any

Advocates name can be maintained more than one time.

(i) The place where the concerned advocate regularly practices (though he may visit other places for cases from time to time).

(ii) The payment and dues under Rule-40 of BCI Rules which is mandatory contribution and where non- payment is "misconduct".

The very last line to the effect "it is necessary to ensure that no advocate's name is listed on the list of more than one association". As would

appear from the provision of Rule 58 of the Model Rule which stipulates from the word that "an Advocate may become member of as many as

Association" specifically demonstrates that "it is necessary to ensure that no advocate's name is listed on the list of more than one

association" which is held contrary to the provision as contained under Rule 58.

Accordingly, the part of the stipulation in the order impugned to the effect that no advocate's name is listed on the list of more than one

association is not sustainable and accordingly that part is quashed.

So far as granting approval provisionally subject to approval made by Jharkhand State Bar Council as has been admitted by the learned counsel

appearing for the respondent-Council that there is no provision of granting any provisional affiliation but even though assertion has been made in the

counter affidavit that the provisional affiliation is subject to provision has been granted subject to approval made by the Jharkhand State Bar Council

and to that effect specific stand has been taken at paragraph 27 to the counter affidavit, therefore, the matter is remitted before the Council to get

approval of the provisional affiliation making it final affiliation subject to fulfilment of other conditions stipulated under Rule 58 to the Model Rule and

other conditions which are necessary to be followed within four weeks from the date of receipt of copy of the order.

12. Needless to say that Bar Council being the Apex Body can always look into the eligibility of one or the other members for taking decision in this

regard but in accordance with law.

13. Accordingly the writ petition stands disposed of.