A K. ANJINAPPA

v.

K.C. KRISHNA REDDY AND ANR.

(Civil Appeal No. 7478 of 2019)

B DECEMBER 17, 2021

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Advocates Act, 1961 – ss.35, 36, 36B – Held: Disposal of a complaint received by a State Bar Council u/s.35 within a period of C *one year from the date of receipt of such complaint is mandatory – Only in an exceptional case, by giving valid reasons to be recorded as to why the complaint could not be disposed of within one year, such complaints are required to be transferred to the Bar Council of India as provided u/s.36B – Thus, the transfer of the complaint(s) received u/s.35 from the State Bar Council to the Bar Council of* D *India is an exception – Further, on such transfer the Bar Council of India shall also dispose of the transferred proceedings/complaints within one year from receipt thereof – In the present case, the complaint filed by appellant against an advocate before the Andhra Pradesh State Bar Council was not decided for one year and, therefore it was transferred to the Bar Council of India which* E *dismissed it without considering it on merits – However, now subsequently the complaint has been disposed of by the State Bar Council – Revision is pending before the Bar Council of India – Thus, no further order is required on the complaint made by the appellant.*

F *Advocates Act, 1961 – s.36B – Object and purpose of – Discussed.*

Advocates Act, 1961 – Bar Council of India/State Bar Councils – Duty cast upon – Discussed – Judicial Deprecation.

G *Advocates Act, 1961 – s.36B – Disposal of complaints – Mechanism for – Directions and suggestions – Discussed.*

Disposing of the appeal, the Court

HELD: 1.1 An affidavit has been filed on behalf of the Bar Council of India wherein it is stated that in last five years, 1,273

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complaints filed under Section 35 of the Advocates Act, 1961 have been transferred to the Bar Council of India as the concerned State Bar Council(s) did not dispose of the complaint(s) under Section 35 of the Advocates Act within one year. During the years 2020 and 2021, there have been lesser number of complaints filed. But earlier from 2016 to 2019, the number of complaints transferred from the State Bar Councils to Bar Council of India have been steadily increasing from 171, 242, 214 and 490 respectively. These statistics not only reflect on the increasing number of complaints being filed against the advocates but also the fact that the State Bar Councils have not discharged their duty in disposing of these complaints within a period of one year and have simply allowed the complaints to be transferred by operation of law from the State Bar Councils to the Bar Council of India in terms of Section 36B of the Advocates Act. The object and purpose of the said provision must be understood in its right perspective. It is not simply to pass on the responsibility from the State Bar Councils to the Bar Council of India and thereby avoid their responsibility of inquiry into the complaints that are filed before them. The aforesaid section states that the disciplinary committee of a State Bar Council shall dispose of a complaint received by it under Section 35 expeditiously and the proceedings shall be concluded 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, as the case may be, failing which, such proceedings shall stand transferred to the Bar Council of India. The object of transfer of such proceedings to the Bar Council of India is an intimation that the State Bar Council has failed to dispose of the complaint within a period of one year as aforesaid. In such circumstance, the Bar Council of India will have to dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of Section 36 of the Act. Sub-section (3) of Section 36 of the Advocates Act states that the disciplinary committee of the Bar Council of India in disposing of any case under Section 36 shall observe as far as may be the procedure laid down in Section 35 the references to the Advocate General in that section be considered as references to the Attorney General of India. Under sub-section (3) of Section 35 of the Advocates Act, there is a mandate for the disciplinary

committee of a State Bar Council giving notice to the Advocate General and opportunity of being heard before making an order under the said sub-section. Having regard to sub-section (3) of Section 36 in respect of a transferred complaint, possibly notice may have to be given to the Attorney General of India before disposing of the complaint as per sub- section (2) of Section 36 of the Act. Then in such a case the inquiry proceedings would not only become complicated but also delay the entire proceeding. [Paras 5, 8.1][1041-C-D; 1043-C-F; 1044-D-F; 1055-D-G]

1.2 The delay on the part of the respective State Bar Council(s) in not disposing the complaint(s) within a period of one year is not approved and appreciated. Disposal of a complaint received by the State Bar Council under Section 35 within a period of one year from the date of receipt of such complaint is mandatory and the concerned State Bar Council(s) have to dispose of such complaints as expeditiously and in each case the proceeding shall have to be concluded within a period of one year. Only in an exceptional case, by giving valid reasons to be recorded as to why the complaint could not be disposed of within a period of one year, such complaints are required to be transferred to the Bar Council of India as provided under Section 36B of the Advocates Act. Therefore, the transfer of the complaint(s) received under Section 35 of the Advocates Act from the State Bar Council to the Bar Council of India is an exception. However, for reasons best known to the concerned State Bar Councils, the complaints are not being disposed received by them under Section 35 within one year. This may be because the complaints are filed against the fellow Advocates and they would not like to displease the Advocates against whom the complaints are made. There could also be some valid reasons for not disposing of the complaint(s) within a period of one year. But for the same, the reasons have to be assigned/recorded as to why the complaint(s) could not be disposed of within a period of one year. In many cases, the complaints are deliberately kept pending for more than one year, so that the same shall be transferred to the Bar Council of India as provided under Section 36B of the Advocates Act, by passing the buck. [Para 9][1045-G-H; 1046-C-F]

1.3 It is the duty of the Bar Council of India/State Bar council to improve its functioning on the disciplinary side. Thus, under the Advocates Act, a duty is cast upon the Bar Council of India/ State Bar Councils to safeguard the integrity of the legal profession. It is duty of the Bar Council of India/respective State Bar Councils to ensure the nobility of the legal system at all costs. The powers to conduct disciplinary proceedings against members of the Bar are provided under Section 35 and 36B of the Advocates Act. The mandate is to dispose of the complaint received under Section 35 and/or Section 36 within a period of one year from the date of receipt of the said complaint and/or from the date of such proceeding to the Bar Council of India. By not disposing of the complaint within the stipulated time provided under the Act would tantamount to failure on their part to perform the duty cast under the Advocates Act. [Paras 9.1, 10][1046-F; 1049-E-G]

R. Muthukrishnan v. Registrar General, High Court of Judicature at Madras, **(2019) 16 SCC 407 : [2019] 1 SCR 589;** *In re: Sanjiv Datta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi; Kailash Vasdev, Advocate and Kitty Kumaramangalam (Smt.), Advocate* **(1995) 3 SCC 619: [1995] 3 SCR 450;** *Dhanraj Singh Choudhary v. Nathulal Vishwakrama*, **(2012) 1 SCC 741 : [2011] 16 SCR 240;** *V.C. Rangadurai v. D. Gopalan*, **(1979) 1 SCC 308 : [1979] 1 SCR 1054;** *Ajitsinh Arjunsinh Gohil v. Bar Council of Gujarat and Anr.,* **(2017) 5 SCC 465 : [2017] 5 SCR 984;** *J.S. Jadhav v. Mustafa Haji Mohamed Yusuf,* **(1993) 2 SCC 562 : [1993] 2 SCR 1006;** *Kokkanda B. Poondacha v. K.D. Ganapathi*, **(2011) 12 SCC 600 : [2011] 4 SCR 417;** *O.P. Sharma v. High Court of Punjab and Haryana*, **(2011) 6 SCC 86 : [2011] 6 SCR 301;** *Harishankar Rastogi v. Girdhari Sharma,* **(1978) 2 SCC 165 : [1978] 3 SCR 493 – relied on.**

1.4 The Bar Council of India is directed to issue appropriate directions as stated by the Chairman of the Bar Council of India. Even the Bar Council of India is also required to dispose of the transferred complaint(s)/transferred proceeding(s) within a period of one year from the date of receipt of such complaint(s)/

proceeding(s). Therefore, the Bar Council of India is directed to finally dispose of the transferred complaints expeditiously but not later than one year from today and for which even the Disciplinary Committee of the Bar Council of India may hold circuit hearings. The respective State Bar Councils are also directed to decide and dispose of the complaint(s) received by it under Section 35 expeditiously and to conclude the same within a period of one year from the date of receipt of the complaint as mandated under Section 36B of the Advocates Act. For an efficient and quick disposal of the complaints by the Bar Council of India vis-à-vis those complaints which have been transferred to it as per Section 36B of the Act, the Bar Council of India may consider empanelling experienced and seasoned advocates and/or retired judicial officers to act as Inquiry Officers where an inquiry would be necessitated. On such inquiry being concluded the report of the Inquiry Officers could be received by the Bar Council of India. On consideration of the said inquiry report, the Bar Council of India could pass appropriate orders on the complaint. The Bar Council of India may issue suitable directions to the State Bar Council to enlist a panel of Inquiry Officers for the purpose of conducting the inquiry on behalf of the Bar Council of India in the respective States itself and on conclusion of the said inquiry to transmit the inquiry report to the Bar Council of India for enabling it to take it further action in the matter. Now so far as the present case is concerned, it is reported that subsequently even the complaint made by the appellant-original complainant No.1 has been disposed of by the State Bar Council against which a revision application is pending before the Bar Council of India. Thus, no further order is required on the complaint made by the appellant. [Paras 11, 12, 12.1, 13 and 15][1055-D-F; 1056-B-C, E-F; 1059-B]

Markand C. Gandhi Vs. Rohini M. Dandekar, **(2008) 10 SCC 792;** *Indian Council Of Legal Aid & Advice vs. Bar Council Of India* **(1995) 1 SCC 732 : [1995] 1 SCR 304;** *Adi Pherozshah Gandhi vs. H.M. Seervai Advocate General Of Maharashtra Bombay* **(1970) 2 SCC 484 : [1971] 1 SCR 863;** *Bar Council of Maharashtra Vs. M.V. Dabholkar,* **(1976) 2 SCC 291 : [1976] 2 SCR 48;** *Mangu Sihari Vs. Bar Council of*

State of Andhra Pradesh, **AIR 1983 AP 271 – relied on.**

Case Law Reference

[2019] 1 SCR 589	**relied on**	**Para 9.1**
[1995] 3 SCR 450	**relied on**	**Para 10.1**
[2011] 16 SCR 240	**relied on**	**Para 10.2**
[1979] 1 SCR 1054	**relied on**	**Para 10.3**
[2017] 5 SCR 984	**relied on**	**Para 10.4**
[1993] 2 SCR 1006	**relied on**	**Para 10.5**
[2011] 4 SCR 417	**relied on**	**Para 10.6**
[2011] 6 SCR 301	**relied on**	**Para 10.7**
[1978] 3 SCR 493	**relied on**	**Para 10.8**
[1995] 1 SCR 304	**relied on**	**Para 14**
[1971] 1 SCR 863	**relied on**	**Para 14**
[1976] 2 SCR 48	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7478 of 2019.

From the Judgment and Order dated 12.12.2015 of the Disciplinary Committee of the Bar Council of India in B.C.I. Transfer Case No.152 of 2014.

Goli Ramakrishna, Sumanth Nookala, Advs. for the Appellant.

Manan Kumar Mishra, Sr. Adv., Shishir Pinaki, D. Mahesh Babu, Ardhendumauli Kumar Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order passed by the Disciplinary Committee of the Bar Council of India dated 12.12.2015 by which the Disciplinary Committee of the Bar Council of India has dismissed the complaint filed by the appellant against his Advocate, the appellant - original complainant No.1 has preferred the present appeal under Section 35 of the Advocates Act, 1961.

2. The appellant herein filed the Complaint Case No.20 of 2013 against his Advocate on the ground of professional misconduct. The said complaint was filed initially before the Bar Council of State of Andhra Pradesh. Though under the Advocates Act, the State Bar Council was duty bound to dispose of the complaint received by it under Section 35 expeditiously and in each case the proceedings had to be concluded within a period of one year from the date of receipt of complaint, the State Bar Council did not dispose of the said complaint. Therefore, the said complaint came to be transferred to the Bar Council of India as per Section 36B of the Advocates Act.Now by the impugned order, the complaint has been dismissed on the ground that the complaint was filed by two complainants, namely, Shri K. Anjinappa (the appellant herein) and one Shri S. Lakshmi Naryana (complainant No.2), however, the said complaint was not signed by complainant No.2 – Shri S. Lakshmi Narayana; that the matter is pending since 2013 to 2015. Having observed so, the Disciplinary Committee of the Bar Council of India dismissed the complaint, without further entering into the allegations made in the complaint, by observing that in view of the above, the complaint is not at all maintainable.

3. Feeling aggrieved and dissatisfied with the impugned order passed by the Disciplinary Committee of the Bar Council of India, the appellant - original complainant No.1 has preferred the present appeal.

4. Considering the fact that the complaint filed by the appellant herein – original complainant No.1 remained pending with the Bar Council of State of Andhra Pradesh for more than one year and therefore the same was transferred to the Bar Council of India under Section 36B of the Advocates Act, by order dated 03.12.2021, this Court passed the following:-

> "This is a case where the complaint against the Advocate was before the State Bar Council – Andhra Pradesh. However, the said complaint was not decided and disposed of by the State Bar Council – Andhra Pradesh for a period of one year and, therefore, it was transferred to the Bar Council of India. The said complaint has been dismissed without considering the complaint on merits.
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> In many cases the complaints are made before the concerned State Bar Council(s), however, for one reason or another and may be that the complaint is against an Advocate, who is a member of the concerned Bar Association/Bar Council, the complaints

are not decided and disposed of within a period of one year and ultimately they are required to be transferred to the Bar Council of India.

We, therefore, call upon and direct the Bar Council of India to place on record the particulars that in how many cases during the last five years the complaints are transferred from the concerned State Bar Council(s) to the Bar Council of India and in how many cases the transferred complaints/cases are decided and disposed of.

Put up on 13.12.2021."

5. In compliance of the order dated 03.12.2021, an affidavit has been filed on behalf of the Bar Council of India. In the affidavit, it is stated that in last five years, **1,273** complaints filed under Section 35 of the Advocates Act have been transferred to the Bar Council of India as the concerned State Bar Council(s) did not dispose of the complaint(s) under Section 35 of the Advocates Act within one year. The statement is reproduced herein below:-

Sr.	State	2016	2017	2018	2019	2020	2021	Total	Disposed
1.	Andhra Pradesh/ Telangana	4	11	45	20	2	0	82	0
2.	Assam etc.	10	0	1	0	0	1	12	0
3.	Bihar	3	1	0	1	1	0	6	0
4.	Chhattisgarh	1	0	0	1	0	0	2	0
5.	Delhi	11	0	0	25	0	1	37	6
6.	Gujarat	0	3	4	8	1	0	16	0
7.	Himachal Pradesh	0	0	0	1	1	1	3	0
8.	Jharkhand	0	0	0	0	0	0	0	0
9.	Karnataka	0	2	11	5	0	0	18	0
10.	Kerala	0	28	1	0	0	0	29	0
11.	Madhya Pradesh	3	19	20	8	0	0	50	0
12.	Maharashtra & Goa	24	76	36	5	0	0	142	1
13.	Odisha	4	3	1	0	0	0	8	1
14.	Punjab & Haryana	22	18	10	16	3	0	69	4
15.	Rajasthan	18	8	15	8	12	0	61	0
16.	Tamil Nadu	26	31	11	42	24	0	134	4
17.	Uttar Pradesh	32	38	7	346	69	31	523	11
18.	Uttarakhand	4	2	0	0	0	9	15	0
19.	West Bengal	9	2	51	4	0	0	66	
20.	Jammu and Kashmir	0	0	0	0	0	0	0	0
21.	Tripura	-	-	-	-	-	-	-	-
22.	Manipur	-	-	-	-	-	-	-	-
23.	Meghalaya	-	-	-	-	-	-	-	-
	Total	**171**	**242**	**214**	**490**	**113**	**43**	**1273**	**27**

A 6. Shri Ardhendumauli Kumar Prasad, learned counsel appearing on behalf of the Bar Council of India has submitted that amongst the aforementioned 1273 transferred cases, a total of 646 cases have been received by the Bar Council of India during the period commencing January, 2019 to December, 2021 – during the pandemic situation. It is pointed out that the aforesaid transferred cases could not be disposed of by the Bar Council of India as the hearing could not be conducted through virtual mode and the complainants were required to be physically present before the Disciplinary Committee to lead their evidences.It is pointed out that during the period starting mid-March, 2020, the State Bar Councils as well as the Bar Council of India havenot been able to hold physical sittings of the Disciplinary Committees. It is stated that pendency of transferred cases before the Bar Council of India is not intentional and that the Bar Council of India is making every possible effort to clear the pendency of such transferred cases by conducting expeditious hearings.

D 7. Shri Manan Kumar Mishra, learned Senior Advocate and Chairman of the Bar Council of India, who is also present during the hearing, has fairly conceded that State Bar Councils have to dispose of the complaint(s) received under Section 35 of the Advocates Act within a period of one year. He has stated that the Bar Council of India shall issue necessary instructions to the respective State Bar Councils in exercise of power under Section 48B of the Advocates Act directing all State Bar Councils or any Committee thereof to dispose of the complaint(s) received under Section 35 of the Advocates Act within a period of one year positively and without fail and if for any valid reason(s), the State Bar council is not able to dispose of the complaint(s) within a period of one year, then along with the reasons to be recorded as to why the said complaint(s) could not be disposed of within a period of one year, the said complaint be transferred to the Bar Council of India as per Section 36B of the Advocates Act.

8. We are not at all impressed by the reasoning given by the learned counsel on behalfof the Bar Council of Indiafor not disposing of the transferred complaint(s) by the Disciplinary Committee of the Bar Council of India. The COVID-19 pandemic commenced only in March, 2020. As per the chart submitted by the Bar Council of India, in the year 2016, a total of 171 cases; in the year 2017, a total of 242 cases; in the year of 2018, a total of 214 cases and in the year 2019, a total of 490 cases were transferred to the Bar Council of India. At-least those cases could have

been disposed of by the Bar Council ofIndia at the earliest. One can appreciate the delay in disposal of the transferred complaint(s) received in the year 2020 and 2021 due to COVID-19 pandemic but not for the earlier period.

8.1 On perusal of the table it is noted that out of a total of 1273 complaints which have been transferred from the State Bar Councils to the Bar Council of India in respect of these States, viz., Andhra Pradesh and Telangana, Madhya Pradesh, Punjab & Haryana, Rajasthan, and West Bengal, more than 50 complaints each have been transferred. Insofar as the States of Maharashtra and Goa, Tamil Nadu and Uttar Pradesh are concerned, the complaints transferred are over 100 each.

Further during the years 2020 and 2021, there have been lesser number of complaints filed, obviously for the reason that courts were not functioning in a full fledged manner owing to Covid-19 Pandemic and consequent lock down imposed from time to time by the Central Government and the State Governments. But earlier from 2016 to 2019, the number of complaints transferred from the State Bar Councils to Bar Council of India have been steadily increasing from 171, 242, 214 and 490 respectively. These statistics not only reflect on the increasing number of complaints being filed against the advocates but also the fact that the State Bar Councils have not discharged their duty in disposing of these complaints within a period of one year and have simply allowed the complaints to be transferred by operation of law from the State Bar Councils to the Bar Council of India in terms of section 36B of the Advocates Act. The object and purpose of the said provision must be understood in its right perspective. It is not simply to pass on the responsibility from the State Bar Councils to the Bar Council of India and thereby avoid their responsibility of inquiry into the complaints that are filed before them. For immediate reference, section 36B of the Act is extracted as under :

"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 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 (60 of 1973), any proceedings in the 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 commencement or within a period of one year from the date of the receipt of the 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 proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).]

The aforesaid section states that the disciplinary committee of a State Bar Council shall dispose of a complaint received by it under section 35 expeditiously and the proceedings shall be concluded 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, as the case may be, failing which, such proceedings shall stand transferred to the Bar Council of India. The object of transfer of such proceedings to the Bar Council of India is an intimation that the State Bar Council has failed to dispose of the complaint within a period of one year as aforesaid. In such circumstance, the Bar Council of India will have to dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36 of the Act. For immediate reference, section 36 of the Act is extracted as under:

"36. Disciplinary powers of Bar Council of India.—

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

(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 a State Bar Council or on 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.

(3) The disciplinary committee of the Bar Council of India, in 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.

(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 3[before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order."

Sub-section (3) of section 36 of the Advocates Act states that the disciplinary committee of the Bar Council of India in disposing of any case under section 36 shall observe as far as may be the procedure laid down in section 35 the references to the Advocate General in that section be considered as references to the Attorney General of India.

Under sub-section (3) of section 35 of the Advocates Act, there is a mandate for the disciplinary committee of a State Bar Council giving notice to the Advocate General and opportunity of being heard before making an order under the said sub-section.

Having regard to sub-section (3) of section 36 in respect of a transferred complaint, possibly notice may have to be given to the Attorney General of India before disposing of the complaint as per sub-section (2) of section 36 of the Act. Then in such a case the inquiry proceedings would not only become complicated but also delay the entire proceeding.

9. We also do not approve and appreciate the delay on the part of the respective State Bar Council(s)in not disposing the complaint(s) within a period of one year. As per Section 36B of the Advocates Act, the Disciplinary Committee of the State Bar Council have to dispose of the complaint received by it under Section 35 expeditiously and in each case the proceeding shall have to be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of

A the proceedings at the instance of the State Bar Council, as the case may be. Failing to dispose the complaint within a period of one year, such complaint is required to be transferred to the Bar Council of India for its disposal as if, it was a proceeding withdrawn for inquiry under sub-section (2) of Section 36. Therefore, disposal of a complaint received by the State Bar Council under Section 35 within a period of one year
B from the date of receipt of such complaint is mandatory and the concerned State Bar Council(s) have to dispose of such complaints as expeditiously and in each case the proceeding shall have to be concluded within a period of one year. Only in an exceptional case,by giving valid reasons to be recorded as to why the complaint could not be disposed of within a
C period of one year, such complaints are required to be transferred to the Bar Council of India as provided under Section 36B of the Advocates Act. Therefore, the transfer of the complaint(s) received under Section 35 of the Advocates Act from the State Bar Council to the Bar Council of India is an exception. However, for reasons best known to the concerned State Bar Councils, the complaints are notbeing disposed
D received by them under Section 35 within one year. This may be because the complaints are filed against the fellow Advocates and they would not like to displease the Advocates against whom the complaints are made. There could also be some valid reasons for not disposing of the complaint(s) within a period of one year. But for the same, the reasons
E have to be assigned/recorded as to why the complaint(s) could not be disposed of within a period of one year. In many cases, the complaints are deliberately kept pending for more than one year, so that the same shall be transferred to the Bar Council of India as provided under Section 36B of the Advocates Act, by passing the buck so to say.

F 9.1 It is the duty of the Bar Council of India/State Bar council to improve its functioning on the disciplinary side. This Court in the case of **R. Muthukrishnan Vs. Registrar General, High Court of Judicature at Madras, (2019) 16 SCC 407** had occasion to consider the object and purpose of enactment of the Advocates Act; role of Bar Council of India/State Bar Councils as well as the role of lawyers. In
G paragraphs 15, 16, 17, 25, 26, 33 and 44, it is observed as under:-

> **"15.** The Advocates Act has been enacted pursuant to the recommendations of the All India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of the reforms of judicial administration.

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The main features of the Bill for the enactment of the Act include the creation of autonomous Bar Council, one for the whole of India and one for each State. The Act has been enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of the Bar Council and an All India Bar.

16. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.

17. It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the courts in evolving jurisprudence by doing hard labour and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.

25. The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause.

A **26.** The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is
B behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge
C and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time.

33. The legislature has reposed faith in the autonomy of the Bar
D while enacting the Advocates Act and it provides for autonomous Bar Councils at the State and Central level. The ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the dignity of the legal profession and independence of the Bar. The disciplinary control has been
E assigned to the Disciplinary Committees of the Bar Councils of various States and the Bar Council of India and an appeal lies to this Court under Section 38 of the Act.

44. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great
F responsibility. The court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmastra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to
G be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and
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sail with the oar of hard work, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental."

In the aforesaid decision, this Court also further observed in paragraph 85 as under:-

"85. Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its Disciplinary Committees so as to make the system more accountable, publish performance audit on the disciplinary side of various Bar Councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheep from the profession to preserve the rich ideals of the Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of the Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is an important pillar of democracy."

10. Thus, under the Advocates Act, a duty is cast upon the Bar Council of India/State Bar Councils to safeguard the integrity of the legal profession. It is duty of the Bar Council of India/respective State Bar Councils to ensure the nobility of the legal system at all costs. The powers to conduct disciplinary proceedings against members of the Bar are provided under Sections 35 and 36B of the Advocates Act. The mandate is to dispose of the complaint received under Section 35 and/or Section 36 within a period of one year from the date of receipt of the said complaint and/or from the date of such proceeding to the Bar Council of India. By not disposing of the complaint within the stipulated time provided under the Act would tantamount to failure on their part to perform the duty cast under the Advocates Act.

10.1 Under the Advocates Act, a duty is cast upon the Bar Council of India/State Bar Councils to safeguard the integrity and nobility of the legal profession. On the nobility of the legal profession, in the case of**, In**

re: Sanjiv Datta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi;Kailash Vasdev, Advocate and Kitty Kumaramangalam (Smt.), Advocate (1995) 3 SCC 619, taking note of various instances, which can be described as unfortunate, both for the legal profession and the administration of justice, it is observed as under:-

> "*20*. 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 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."
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> The Court further stated: (SCC pp. 634-35, para 20)
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> "*20*. … 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."

10.2 In **Dhanraj Singh Choudhary Vs. Nathulal Vishwakrama, (2012) 1 SCC 741**, 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.

10.3 Krishna Iyer J. has stated in **V.C. Rangadurai Vs. D. Gopalan, (1979) 1 SCC 308**, as under:-

> "*5.* Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community."

10.4 After referring to the aforesaid decisions of this Court as well as the scheme of the Advocates Actin **Ajitsinh Arjunsinh Gohil Vs. Bar Council of Gujarat and Anr., (2017) 5 SCC 465**, it is observed in paragraphs 39 and 40 as under:-

> "**39.** …….. A lawyer is treated as a part of the noble profession and expected as an elite member of the society, to be professionally 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* [*Pandurang Dattatraya Khandekar* v. *Bar Council of Maharashtra*, (1984) 2 SCC 556] , 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.
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> **40.** 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 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 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, tantamounts to irresponsibility and the prestige of an institution or a statutory body inhere in carrying out the responsibility. One may not be always right in the decision but that does not mean to be shirking away

A from taking a decision and allow the matter to be transferred by operation of law to 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 perform its duty within a time-frame and not to create a blameworthy situation. It is better to remember that 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."

C 10.5 In **J.S. Jadhav Vs. Mustafa Haji Mohamed Yusuf, (1993) 2 SCC 562,** this Court has observed as under:-

"Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one."

10.6 In **Kokkanda B. Poondacha Vs. K.D. Ganapathi, (2011) 12 SCC 600,** this Court has observed as under:-

E "The relationship between a lawyer and his client is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfil all his obligations towards his client with care and act in good faith. Since the client entrusts the whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides i.e. the utmost faith, integrity, fairness and loyalty."

10.7 In **O.P. Sharma Vs. High Court of Punjab and Haryana, (2011) 6 SCC 86,** this Court has observed as under:-

G "An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal H profession has an element of service also and associates with

legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules."

10.8 In **Harishankar Rastogi Vs. Girdhari Sharma, (1978) 2 SCC 165,** this Court has observed as under:-

"(…) the Bar is an extension of the system of justice; an advocate is an officer of court. He is master of an expertise but more than that, accountable to the court and governed by a high ethic. The success of the judicial process often depends on the services of the legal profession."

10.9 In **Bar Council of Maharashtra Vs. M.V. Dabholkar, (1976) 2 SCC 291,** this Court has observed as under:-

"The vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice – social justice."

10.10 On the role of the Bar Council of India, the Andhra Pradesh High Court in the case of **Mangu Sihari Vs. Bar Council of State of Andhra Pradesh, AIR 1983 AP 271** has observed in paragraphs 7 and 13 as under:-

"7. In this context it must be noticed that the Advocates Act and the rules framed by the Bar Council of India are calculated to maintain high standard of professional conduct. Towards this end, it is provided that any allegation of professional misconduct should be enquired into by senior members of the said profession in whom professional body has reposed confidence electing them R. 36-B of the Rules made under Advocates Act envisages expeditious disposal of any such complaint by prescribing a period of one year for the disposal of the complaint and laying down that if the enquiry is not so disposed of it would stand transferred to the Bar Council of India. Neither the Act nor the rules governing the disciplinary proceedings envisage stay of these proceedings having

A regard to the pendency of a criminal or civil case before any court or other authority. The complainant himself cannot withdraw the proceeding. Even the death of the complainant does not terminate the disciplinary proceedings before the Bar Council. It is only a decision of the Disciplinary Committee that terminates the proceeding. Disposal of such a proceeding with utmost B expedition is in the interests of the advocate whose professional integrity is under a cloud as a result of the initiation and pendency of the disciplinary proceedings.

13. XXXXXXXXXX

C A professional body, such as the Bar-Council, has the exclusive jurisdiction to enquire into the allegations of misconduct against the members of the legal profession and it is enjoined to dispose of enquiry into such allegations expeditiously within a period of one year. That provision is intended not merely to clear the cloud cast on the particular advocate at the earliest but also intended to D keep the noble profession itself clear of such members. Advocates owe a duty not only to their clients but to the court as well in the administration of law and justice. It is in the interest of the Advocate and in particular that the proceedings conclude with the least possible delay. Merely because some civil or criminal proceeding E is pending before a court or Authority in respect of some issue common to that proceeding and the proceeding before the disciplinary committee of the Bar Council and stay of proceedings before the Bar Council would result in serious interference with the discharge of the statutory functions of the professional body unless allowing such proceeding to go on would result in F miscarriage of justice. Such a step should in our view, be avoided."

We are in complete agreement with the view taken by the Andhra Pradesh High Court.

10.11 In **Markand C. Gandhi Vs. Rohini M. Dandekar, (2008) 10 SCC 792,** it was found that a complaint was filed before the State G Bar Council in the year 1984 and transferred to the Bar Council of India, which remained pending before it for 22 years, this Court observed that the Chairman of the Bar Council of India would see that, in future, complaints are disposed of with reasonable dispatch and not in a leisurely fashion so that people may repose confidence in the Bar Council of H India, which is a statutory and autonomous body.

We are constrained to observed that despite the above observations, still the complaints are not disposed of with reasonable dispatch and firstly, kept pending by the State Bar Councils for one year and thereafter by the Bar Council of India.

11. As observed hereinabove, Shri Manan Kumar Mishra, learned senior counsel and Chairman of the Bar Council of India has stated that necessary guidelines/directions in exercise of the powers under Section 48B shall be issued by the Bar Council of India to all the State Bar Councils to dispose of the complaint(s) received under Section 35 of the Advocates Act within a period of one year and only in exceptional case and for the reasons to be recorded by the concerned State Bar Council and if for valid reasons, the said complaint could not be disposed of within a period of one year, then and then only such complaint/proceeding be transferred to the Bar Council of India as mandated under Section 36B of the Advocates Act. The Bar Council of India is directed to issue appropriate directions as stated by the Chairman of the Bar Council of India. Even the Bar Council of India is also required to dispose of the transferred complaint(s)/transferred proceeding(s) within a period of one year from the date of receipt of such complaint(s)/proceeding(s).

12. Therefore, we direct the Bar Council of India to finally dispose of the transferred complaints, the particulars of which are referred to hereinabove expeditiously but not later than one year from today and for which even the Disciplinary Committee of the Bar Council of India may hold circuit hearings.

12.1 We also direct the respective State Bar Councils to decide and dispose of the complaint(s) received by it under Section 35 expeditiously and to conclude the same within a period of one year from the date of receipt of the complaint as mandated under Section 36B of the Advocates Act.

12.2 Only in exceptional case and for the reasons to be recorded where it is found that for valid reasons, the proceedings could not be completed within the period stipulated under Section 36B of the Advocates Act, then and then only such proceedings shall stand transferred to the Bar Council of India and on such transfer the Bar Council of India shall also dispose of the such transferred proceedings/complaints within a period of one year from receipt of such transferred proceedings.

A 13. Having regard to the aforesaid provisions and bearing in mind the fact that 1273 complaints (minus 27 complaints which are disposed) are pending before the Bar Council of India, it is just and necessary that a mechanism be found for disposal of the said complaints in accordance with the procedure prescribed.

B For an efficient and quick disposal of the complaints by the Bar Council of India vis-à-vis those complaints which have been transferred to it as per section 36B of the Act, the Bar Council of India may consider empanelling experienced and seasoned advocates and/or retired judicial officers to act as Inquiry Officers where an inquiry would be necessitated. On such inquiry being concluded the report of the Inquiry Officers could C be received by the Bar Council of India. On consideration of the said inquiry report, the Bar Council of India could pass appropriate orders on the complaint.

The aforesaid suggestion is being made bearing in mind the number of complaints that are pending before Bar Council of India, that is, the D transferred complaints which would act as the disciplinary authority on such transfer as it would be highly impossible for the said complaint to be disposed of within a reasonable time if the inquiry is also to be conducted by the Bar Council of India.

Hence the Bar Council of India may issue suitable directions to E the State Bar Council to enlist a panel of Inquiry Officers for the purpose of conducting the inquiry on behalf of the Bar Council of India in the respective States itself and on conclusion of the said inquiry to transmit the inquiry report to the Bar Council of India for enabling it to take it further action in the matter.

F This would also enable the complainants and the concerned advocates against whom the complaints are made to appear before the Inquiry Officers wherever such an inquiry is instituted in the State where the complaint has been filed. This would also remove the difficulties caused to the parties to travel from various parts of the country to Delhi G for appearing before the inquiry, if any, to be conducted on the complaints filed by the complainants.

Further and as directed hereinabove, the Bar Council of India to also issue suitable directions to the State Bar Council to conclude the proceedings from the complaints filed against the advocates within a H period of one year since the intention of the Parliament appears to be to

decide on the said complaint within the said period which is a reasonable period. The object and purpose of section 36B of the Act is not to encourage delay in the disposal of the complaint so as to enable the complaints to be transferred to the Bar Council of India by operation of law and thereby increase the burden on the All India body and at the same time create a leeway for the State Bar Council to not act on the complaints and to simply wait for the passage of time so that by operation of law the said complaint would stand transferred to the Bar Council of India.

In fact, section 36B of the Act mandates that there should be no tardiness by the State Bar Council in completion of the proceedings on the complaints received by them within a period of one year as stated in the said provision. When the number of complaints transferred from the State Bar Councils to Bar Council of India is noted from the aforesaid statistics, it implies that the States Bar Council have not been discharging their duties by not disposing the complaints within a period of one year as provided under section 36B of the Act.

Further in order to enable the State Bar Council to dispose of the complaints within a period of one year as provided under section 36B of the Act, it is incumbent for the respective disciplinary committees of the State Bar Councils meet on a regular basis.

The State Bar Council could also enlist a panel of Inquiry Officers who could be entrusted with the conduct of the inquiry as and when the same is necessitated on a complaint.

The disciplinary committee of the State Bar Council on consideration of the said inquiry report may pass orders in accordance with the provision of section 35 of the Act.

14. We are constrained to issue the aforesaid directions and suggestions having regard to the observations of this Court which are extracted as under:-

(i) "The Bar Councils are enjoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council and the Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practice granted under the

A Act is not misused or abused by a person who is enrolled as an advocate. The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized."

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[Indian council of Legal Aid and Advice v. Bar Council of India, (1995) 1 SCC 732]

(ii) "The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession."

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[Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702]

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(iii) "Every Bar Council is a body corporate. The functions of the State Bar Council are inter alia to admit persons as advocated, on its roll; to prepare and maintain such roll; to entertain and determine cases of misconduct against advocates on its roll; to safeguard the rights, privileges and interest of advocates on its roll. The functions of the Bar Council of India are to lay down standards of professional conduct and etiquette for advocates, to lay down the procedure to be followed by the Disciplinary Committee of the Bar Council of India and the Disciplinary Committees of the State Bar Councils, to safeguard the rights, privileges and interests of advocates. A Bar Council is empowered under the Act to constitute one or more Disciplinary Committees."

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[Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484]

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(iv) "The Bar Council has a very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee."

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[Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2SCC 702] A

15. Now so far as the present case is concerned, it is reported that subsequently even the complaint made by the appellant – original complainant No.1 has been disposed of by the State Bar Council by order dated 11.03.2017 against which a revision application is pending before the Bar Council of India. In that view of the matter, no further order is required on the complaint made by the appellant. B

16. In view of the above and for the reasons stated above, the present appeal stands disposed of with the above directions to the Bar Council of India and the respective State Bar Council(s).

Divya Pandey Appeal disposed of.