

POWERS OF DISCIPLINARY COMMITTEE UNDER STATE BAR COUNCIL**Author's Name – Harsh****ABSTRACT**

“Discipline is part of my professional training as a lawyer” - *MOHAMED EIBAREDEI*

This Particular article manifests the role, powers and functions of the disciplinary committee under state bar council. To understand the independent and restricted powers of the disciplinary committee of State Bar Council and Bar council of India under section 42 of The Advocates Act, 1961 and other provisions under the said act has been elaborated concisely and efficiently. The article brings forth the constitution of Disciplinary committee under Section 9 of The Advocates Act, 1961, powers similar to Civil Court, Miscellaneous Powers etc. The paper exhibits the Review, Revision and power of appeal dealt under various provisions of The Advocates Act, 1961 and under Part VII Chapter I of Bar Council of India Rules. Various landmark Judgement of the apex court has been incorporated in the assignment to remove the ambiguity in deciding the powers of disciplinary committee.

KEY WORDS

Disciplinary Committee, The Advocates Act, 1961, Section 42, Bar Council of India Rules, incorporated, Ambiguity, Civil Court

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1. INTRODUCTION

The Bar Council of India is a statutory body that was created and established by Parliament under the Advocates Act, 1961 to regulate the legal practice and legal education in India. The Bar Council of India consists of 18 members. The Attorney General of India and the Solicitor General of India are Ex-officio members of the council and the other 16 members represent the 16 State Bar Councils in the country. The members are elected for five years and the chairman and vice-chairman are elected for two years from among the members of the Bar Council of India. The Bar Council further consists of various committees viz., Legal Education Committee, Disciplinary Committee, Executive Committee, Legal Aid Committee, Advocates Welfare Fund Committee, Rules Committee and various other committees forms to look into specific issues arising from time to time. Disciplinary committee means a person or a group of people who are empowered to hear cases and proceedings involving professional or other misconduct of an advocate upon a complaint, revision or Suo moto. The disciplinary committee is mainly formed to ensure that the members of the bar council of India or the bar council of any state are maintaining professional ethics and standards. Section 42 of Advocates Act 1961, provides the Powers of Disciplinary Committee of a Bar Council. The Provisions of this Section are same for both, the State Bar Council as well the Bar Council of India.¹

1.1 HYPOTHESIS

- Whether appeal can be made against the decision of Disciplinary committee of state Bar council or Bar Council of India or not?

2. Constitution of the Disciplinary Committee

The Bar Council shall constitute a disciplinary committee as per **Section 9** of the Advocates Act, 1961. This section provides that the one or more disciplinary committees are required to be formed and each of these disciplinary committee shall consist of three members. The election of two from the three members of the disciplinary committee shall be done by the Council from the members of the Bar Council of India itself. The third member shall be colected by the Council outside of the members of the Bar Council but who shall be an

¹ Dr. Kailash Rai, Legal Ethics, 91(11th ed. 2013).

advocate and possess qualifications as prescribed in **Section 3(2)** of the Advocates Act, 1961.

The

section further states that the **senior most advocate** shall be the **chairman** of the committee.

The term of members of this committee shall be **not more than 3 years**.²

3.Powers of Disciplinary Committee

The section 42 of the Advocate's Act, 1961 provides powers of disciplinary committee.

The section states that the disciplinary committee shall have the same powers as vested in a **Civil Court** as per the Code of Civil Procedure, 1908 which are as follows:

- Summoning and enforcing the attendance of any person and examining him on oath.
- Requiring discovery and production of any documents.
- Receiving evidence on affidavits.
- Requisitioning any public record or copies thereof from any court or office.
- Issuing commission for the examination of witness or documents.
- Any other matter which may be prescribed.

3.1 Restricted Powers of the Disciplinary Committee

The disciplinary committee can exercise these powers only with a prior approval of certain authorities as per section **42 proviso (1) (a) & (b)**. These are as follows:

- Attendance of any **presiding officer of a court** shall be allowed only with a **prior approval** of the **High Court** to which such court is subordinate.
- Attendance of any **officer of revenue court** shall be allowed only with **prior approval** of the **State Government**.³

² S. 9, The Advocates Act, 1961.

³ Dr. Kailash Rai, Legal Ethics, 98(11th ed. 2013).

4. Miscellaneous Powers of disciplinary committee

- The proceedings before the disciplinary committee shall be deemed to be **judicial proceedings**.
- The disciplinary committee shall be deemed to be a civil court.
- If a **chairman or any member of the disciplinary committee** is **unavailable** on the date fixed for hearing the matter then the disciplinary committee may if it thinks fit proceed with the hearing and pass necessary orders provided that the order passed

shall not be the final order. The proceedings and the order passed by such a committee shall not be invalid merely because the chairman or all three members of the disciplinary committee were not present.

- Where the **final orders cannot be made** because of want of majority among the disciplinary committee or is not in accordance with the opinion of the Chairman or the members of the disciplinary committee then such matter or case shall be placed before the Chairman of the Bar Council. If the Chairman of the Bar Council is acting as the chairman of the disciplinary committee, then the case shall be placed before the Vice Chairman of the Bar Council. After hearing the case, the **Vice Chairman** shall deliver his opinion and the disciplinary committee shall follow such **final order**.⁴

5. Power to hear appeals and order stay

Any person aggrieved by an order of the disciplinary committee of a state Bar Council made under **section 35**⁵ may **within sixty days** of the date of the communication of the order to him, prefer an **appeal** to the **Bar Council of India**. Every such appeal is to be heard by the disciplinary committee of the Bar Council of India under **section 37**⁶ which may pass such order thereon as it deems fit. In case of *Adi Phirozshah Gandhi v. H.M. Seervai*,⁷ before the Supreme Court was one in which suo motu action was taken against the advocate by the Bar

⁴ Stuti Hasmukh, Role & Powers of Disciplinary Committee, Advocates Act, 1961, Oswal, Law insider, 27 May 2021. <https://www.lawinsider.in/columns/role-and-power-of-disciplinary-committee-advocates-act1961> retrieved on 3-11-22

⁵ S. 35, The Advocates Act, 1961.

⁶ S. 37, The Advocates Act, 1961

⁷ *Adi Phirozshah Gandhi v. H.M. Seervai*, AIR 1971 SC 385

Council of Maharashtra. Notice was given to the Advocate-General as required under the Act. The Advocate-General appeared before the committee. The disciplinary committee was satisfied that there was no reason to hold that the advocate was guilty of professional or other misconduct. The Advocate-General filed an appeal against the said order under section 37 of the Act. The disciplinary committee of the Bar Council of India in its order allowed the appeal and suspended the advocate for a year over-ruling, inter-alia, the objection that the Advocate-General was not competent to file the appeal. The advocate appealed to the Supreme Court of

India. In its judgment by the majority Their Lordships *Hidayat-ullah, CJ., Shelat, J., Mitter,*

⁸ it was held that the appeal by the Advocate-General was incompetent.

6. Power of Review

Section 44⁹ confers powers of review on the disciplinary committee of a Bar Council by its own motion or otherwise. However, no order or review of the disciplinary committee of state Bar Council shall have effect unless it has been approved by the Bar Council of India. In *O.N. Mahindroo v. Dist. Judge*¹⁰ the Supreme Court upheld the view of the Bar Council of India that the Bar Council of India has no power to review an order made by its disciplinary committee on appeal. But the Bar Council can refer to the disciplinary committee matters for reconsideration.

As already stated the power of revision is expressly granted to the disciplinary committee of the Bar Council which may on its own motion or otherwise review any order passed by it. The word otherwise is wide enough to include a case referred by the Bar Council for review. The court was of the view that since disciplinary proceedings against a lawyer will not only involve the particular lawyer but the prestige of the legal profession as such, the powers of review of

⁸ Their Lordships Vaidyalingam, J, and Ray, J, dissenting

⁹ S. 44, The Advocates Act, 1961

¹⁰ Mahindroo V. District Judge, Delhi, AIR 1971 SC 385

the disciplinary committees should be interpreted widely so as to enable them to exercise such powers in a suitable case for or against a lawyer even after the matter had been examined by them. The analogy of the powers of review by the courts under the Civil Procedure Code or that of the *autrefois convict* or *autrefois acquit* under the Code of Criminal Procedure should not be made applicable.

7. Appeal to the Supreme Court

Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order thereon as it deems fit. Order V of the Supreme Court of India Rules deals with

appeals made to the Supreme Court against an order of the disciplinary committee of the Bar Council of India made under section 36 or section 37 of Advocates Act.

The Rules, *inter alia*, provide for a preliminary hearing on the registration of the petition for appeal. If upon such hearing the court is satisfied that no *prima facie* case has been made out for its interference it may dismiss the appeal, but if it is not so satisfied it may direct that notice of appeal be issued to the Advocate-General of the State concerned or to the Attorney-General of India or to both and to the respondent. The costs of all proceedings of an appeal shall be in the discretion of the court.¹¹

8. Some landmark Case Laws

Allahabad Bank Vs. Girish Prasad Verma¹²

Facts: A complaint was lodged by the Allahabad Bank against its advocate Girish Verma stating that the advocate was given 52 suits for filing and accordingly paid him the requisite court fee that was required for the same. The Advocate Girish Verma filed 50 out of 52 suits and misappropriated the court fees paid to him for the remaining 2 suits.

Held: The disciplinary committee of the Uttar Pradesh Bar Council held that the advocate had misappropriated the court fee paid to him by the complainant and hence ordered for striking off the advocates name from the roll of Uttar Pradesh Bar Council. It further held that “*The*

¹¹ The validity of S.38 of the Act & order V, rule 7 of Supreme Court Rules was upheld by the SC in *O.N. Mohindroo V. Bar Council*, AIR 1968 SC 888

¹² *Allahabad Bank V. Girish Prasad Verma* BCI Tr. Case No. 49/1993

legal profession is a noble profession and its members must set an example of conduct worthy of emulation.”

V. C. Rangadurai Vs. D. Gopalan¹³

Facts: The advocate Mr. V.C. Rangadurai did not disclose conflicting interest to his client and kept him in dark. By doing this the advocate deceived his client who had placed his trust with him. The disciplinary committee found the advocate guilty and suspended him for a period of six years. The same order was challenged in the Supreme Court.

Held: The Supreme Court of India upheld the order passed by the disciplinary committee as there was no doubt regarding the advocates misconducts but reduced the punishment from six years to one year.

Rajendra Pai Vs. Alex Fernandes ¹⁴

Facts: In a land acquisition matter the advocate along with 150 villagers filed a complaint. The advocate too was an interested party in the class action suit. The matter was settled and a

compensation was given to the complainants. The advocate identified some claimants in opening a bank account wherein the amount of compensation was drawn. The said amount was withdrawn upon false identification. The disciplinary committee held that advocates name from the State roll and Bar Council of India shall be removed permanently.

Held: The order was then challenged in the Supreme Court wherein the disciplinary committee's order was slightly modified. The Supreme Court was of the opinion that the punishment given was quite disproportionate to the facts and circumstances. It further stated that *“Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed”*. It reduced the punishment and directed that the advocate shall be suspended for a period of seven years.

Joginder Singh vs Bar Council of India¹⁵

Facts: In the present matter the advocate was convicted under section 473 of IPC. There were various other criminal proceedings pending and that the advocate Mr. Joginder Singh was out on bail. All these facts were concealed by him while entering his name in the state bar roll. When the advocate filed an application to the Bar Council of India to transfer his name from U.P. Bar Council to Bar Council of Delhi the Bar Council of India learnt about such concealment and issued a notice for striking of the advocate's name. The disciplinary committee passed an order of barring the advocate from practicing in any court and removed his name from the roll.

Held: The advocate being aggrieved by the order of the bar council appealed in the Delhi High Court. The Delhi High Court was of the opinion that there was no interference required in the

¹³ V. C. Rangadurai Vs. D. Gopalan 1979 SCR (1) 1054

¹⁴ Rajendra Pai Vs. Alex Fernandes AIR 2002 SC 1808

¹⁵ Joginder Singh Vs. Bar Council of India AIR 1975 Delhi 192

said matter as the order passed by the bar council was in accordance with the evidence, facts and circumstances. Thus, the appeal was rejected and the order of the disciplinary committee was upheld.

John D'Souza vs Edward Ani 1994 AIR 975¹⁶

Facts: Mrs. Mary Raymond was a client of the appellant and had got her will drafted by him. She further kept the will in the appellant's custody itself for execution. Mrs. Mary Raymond had appointed her husband as the executor of the will but unfortunately her husband passed away in the year 1974. Hence, she wished to make changes in the previous will and register a new one. Upon demanding the same, the appellant did not return the same. Mrs. Mary Raymond sent two letters claiming her previous will back but both her letters were ignored. Therefore, she was compelled to make an another will with Mr. George DaCosta. Even Mr. George DaCosta asked the appellant to return his client's previous will that was in his custody to which the appellant blatantly denied and said that he does not have any will with him. Later, after Mrs. Mary Raymond's death her son-in-law filed a complaint in the State bar council against the advocate i.e. the appellant. The said complaint was dismissed. An order or revision was obtained by the complainant and the matter was again placed before the state bar council who again dismissed the complaint stating there was no misconduct committed by the advocate. Aggrieved by such an order the complainant filed an appeal before the Bar Council of India who set aside the State Bar Council's order and suspended the Advocate for a period of one year.

Held: On being aggrieved by such an order the advocate Mr. John D'Souza filed an appeal before the Supreme Court of India. After hearing the matter in detail, the Supreme Court was of the opinion that there was no evidence to prove that the will was returned upon the demands made and that the advocate had no right to withhold the will instead it was his duty to return the same when asked as the will was placed in his hands with the trust of his client. Hence, the order of the disciplinary committee of the Bar Council of India was upheld.

¹⁶ John D'Souza Vs Edward Ani 1994 AIR 975

CONCLUSION

Hence it can be concluded that the advocates play a significant role in the Judicial system. One relies on them completely by setting their complete trust. It is important for an advocate to discharge their responsibilities in a precise and efficient manner. Being in the legal profession and an officer of the court, an advocate is required to maintain high standards and uphold the dignity of the judicial office. Any misconduct of an advocate shall not be tolerable as this shall affect the trust and attitude of the people towards the judicial environment. In order to ensure that such irresponsible and irrational behaviour does not go unpunished a disciplinary committee has been set up and given powers to conduct such matters involving fraud, misconduct and cheating committed by an advocate towards his own client. However, the hypothesis of this paper proved to be true as there lies appeal against the decision of Disciplinary committee of state Bar council or Bar Council of India under section 37 and 38 respectively of The Advocates Act, 1961.

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