D. Saibaba vs Bar Council Of India & Anr on 6 May, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2502, 2003 AIR SCW 2582, 2003 (2) UJ (SC) 1178, (2003) 7 ALLINDCAS 290 (SC), (2003) 4 ALLMR 1186 (SC), (2003) 95 REVDEC 183, (2003) 3 JCR 116 (SC), 2003 (4) ALL MR 1186, 2003 (4) SCALE 546, (2003) 3 SCR 1209 (SC), 2003 (7) ALLINDCAS 290, 2003 (6) SCC 186, 2003 (5) ACE 397, (2003) 4 JT 435 (SC), 2003 (3) SLT 530, 2003 (3) COM LJ 123 SC, 2003 (7) SRJ 532, 2003 UJ(SC) 2 1178, 2003 (3) ALL CJ 2032, 2003 ALL CJ 3 2032, 2003 (2) BLJR 1293, 2003 (2) UPLBEC 1434, (2003) 4 MAD LW 24, (2003) 4 GUJ LR 3676, (2003) 6 INDLD 546, (2003) 4 KCCR 2673, (2003) 96 CUT LT 473, (2003) 4 SUPREME 154, (2003) 4 SCALE 546, (2003) 51 ALL LR 609, (2003) 3 ALL WC 2495, (2003) 3 CIVLJ 785, (2003) 1 WLC(SC)CVL 761, (2003) 2 KER LT 669, (2003) 2 UPLBEC 1434, (2003) 3 PAT LJR 154, (2003) 3 JLJR 162, (2003) 4 CAL HN 79, (2003) 104 DLT 658, (2003) 69 DRJ 116, (2003) 3 MAHLR 106, 2003 BLJR 2 1193

Author: R.C. Lahoti

Bench: R.C. Lahoti, Ashok Bhan

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           CASE NO.:
Writ Petition (civil)  528 of 2002

PETITIONER:
D. Saibaba

RESPONDENT:
Bar Council of India & Anr.

DATE OF JUDGMENT: 06/05/2003

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
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J U D G M E N T WITH C.A.No.3986/2003 (@S.L.P.(C) No.4477/2002) C.A.No.4010/2003 (@S.L.P.(C) No.23108/2002) R.C. Lahoti, J.

Leave granted in SLP(C) Nos.4477/2002 and 23108/2002.

This common judgment disposes of two appeals by special leave under Article 136 of the Constitution, an appeal under Section 38 of the Advocates Act, 1961, and a civil writ petition laying

challenge to the constitutional validity of Section 48AA of the Advocates Act, 1961, hereinafter, the Act for short.

Smt. D. Anuradha, the respondent No.1 in the Civil Appeals is the wife of D. Saibaba, the appellant. The marriage has broken down and the spouses have fallen apart. On 25.8.1999, the wife filed a complaint under Section 35 of the Act complaining of professional misconduct committed by the appellant, alleging that in spite of his being a duly enrolled advocate, he was running a telephone booth allotted to him in the handicapped person's quota. After hearing the appellant's response the State Bar Council of India, vide its order dated 6.11.1999, directed the complaint to be dropped forming an opinion that no case for proceeding against the appellant was made out. On 30.12.1999, the wife lodged yet another complaint making almost identical averments. The appellant filed a detailed reply. He submitted that the complaint was malicious, originating from a disgruntled wife who has even lodged criminal case against him and was out to harass the appellant. The appellant's defence was that he is a handicapped person. Pressed by family circumstances, including financial stringency, he applied for a STD booth being licensed to him in the handicapped persons quota, which, on consideration of the merits of the prayer, was allowed to him. He did operate the STD booth. On 4.12.1997 he was married to the respondent no.1. Thereafter, sometime in mid-1998, he applied for his enrolment as an advocate and commenced apprenticeship under a senior lawyer. Eversince that day he stopped sitting at the telephone booth which was thenceforth operated by his parents. His father had retired by that time.

By order dated 20.2.2001, the Bar Council of India directed the appellant to surrender the STD booth, presumably forming an opinion that whosoever might be conducting the STD booth actually, yet the booth was allotted in the name of the appellant and the surrender would bring to an end the controversy so far as the appellant's conduct as an advocate is concerned. The appellant sought some time for surrendering the licence of telephone booth because certain dues were to be realised from customers which would be difficult to do in the event of the business being suddenly discontinued. As the appellant failed to surrender the STD booth, the Bar Council of India passed an order dated 31.3.2001 advising the State Bar Council to delete the name of the appellant from the rolls of advocates. On 26.4.2001, the appellant surrendered the booth. The appellant sought for a review of the order of the Bar Council of India based on the subsequent event of the telephone booth having been surrendered. Vide order dated 26.8.2001, the Bar Council of India has rejected the petition for review on the ground that the same was barred by time. As against the order dated 26.8.2001 the appellant has filed appeal by special leave. As against the order dated 31.3.2001 the appellant has filed a statutory appeal under Section 38 of the Advocates Act, 1961 and also an appeal by special leave.

Section 48AA of the Advocates Act, 1961 reads as under:-

> "48AA. Review. The Bar Council of India or any of its committees, other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order, passed by it under this Act."

In the opinion of the Bar Council of India the limitation commences from 'the date of that order' which is sought to be reviewed. The submission of the review-petitioner was that he could not have sought for review of the order unless the order was communicated to him and therefore the expression 'the date of that order' should be construed as meaning the date of communication of the order. The Bar Council of India formed an opinion that there is a lacuna in the provision which cannot be removed by it. The Bar Council in its impugned order compared the provisions of Section 48AA with the provisions contained in Sections 37 and 38 of the Act. Section 37 provides for an appeal against an order of the disciplinary committee of a State Bar Council being preferred to the Bar Council of India within 60 days of 'the date of the communication of the order' to the person aggrieved. Section 38 provides for an appeal by any person aggrieved by an order contemplated therein being preferred to the Supreme Court within 60 days of 'the date on which the order is communicated to him'. The opinion formed by the Bar Council is that the employment by Parliament of different phraseology in Sections 37 and 38 and Section 48AA is suggestive of the legislative intent that while the limitation for an appeal under Sections 37 or 38 is to be calculated from 'the date of the communication of the order', the limitation for review under Section 48AA commences from 'the date of the order' sought to be reviewed and not from the date of communication of the order. The review petition was dismissed as barred by limitation without going into the merits.

During the pendency of these appeals the appellant has filed an original petition laying challenge to the constitutional validity of Section 48AA on the ground that the provision (as construed by the Bar Council of India) is unworkable and hence liable to be struck down. The appeals and the civil writ petition were placed for hearing analogously.

We have heard the learned counsel for the appellant/writ- petitioner and the respondents, Bar Council of India and Smt. D. Anuradha, the complainant. At the hearing of the appeals it was urged that there was a doubt whether the Bar Council of India has committed an arithmetical error in calculating the period of limitation and therefore whether the review petition could at all be held barred by time. So, the learned counsel for the Bar Council of India sought to support the order dismissing the review petition on the alternative ground that on the language of Section 48AA, the Bar Council of India becomes functus officio on the lapse of 60 days from the date of the order and its jurisdiction to exercise power of review comes to an end, and therefore also the impugned order dated 26.8.2001 has to be sustained. However, the learned counsel for the parties agreed that the two questions relating to interpretation of Section 48AA are of frequent occurrence and the Bar Council of India is also feeling difficulty in several cases, and therefore desires both the questions may be answered by the Court. Accordingly, the appeals have been heard.

So far as the commencement of period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression 'the date of that order' as occurring in Section 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for

implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.

An identical point came up for the consideration of this Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr., (1962) 1 SCR 676. Section 18 of the Land Acquisition Act, 1894, contemplates an application seeking reference to the Court being filed within six months from the date of the Collector's award. It was held that 'the date of the award' cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office. It must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position, then placing a literal and mechanical construction on the words 'the date of the award' occurring in the relevant section would not be appropriate. It is fair and just that a decision is communicated to the party whose rights will ultimately be affected or who will be affected by the decision. The knowledge, either actual or constructive, of the party affected by such a decision, is an essential element which must be satisfied before the decision can be brought into force. Thus construed, the making of the award cannot consist merely of the physical act of writing an award or signing it or even filing it in the office of the Collector ; it must involve the communication of the said award to the party concerned either actually or constructively. A literal or mechanical way of construing the words 'from the date of the Collector's award' was held to be unreasonable. The court assigned a practical meaning to the expression by holding it as meaning the date when the award is either communicated to the party or is known by him either actually or constructively.

The view taken in Raja Harish Chandra Raj Singh's case (supra) by two-Judges Bench of this Court was affirmed by a three- Judges Bench of this Court in State of Punjab Vs. Mst. Qaisar Jehan Begum & Anr., (1964) 1 SCR 971. This Court added that the knowledge of the award does not mean a mere knowledge of the fact that an award has been made ; the knowledge must relate to the essential contents of the award.

In The Assistant Transport Commr., Lucknow & Ors. Vs. Nand Singh, (1979) 4 SCC 19, the question of limitation for filing an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act, 1935, came up for the consideration of this Court. It provides for an appeal being preferred 'within thirty days from the date of such order'. The taxation officer passed an order on October 20/24, 1964 which was received by the person aggrieved on October 29, 1964. The appeal filed by him was within thirty days __ the prescribed period of limitation, calculated from October 29, 1964, but beyond thirty days of October 24, 1964. It was held that the effective date for calculating the period of limitation was October 29, 1964 and not October 24, 1964.

In Raj Kumar Dey & Ors. Vs. Tarapada Dey & ors., (1987) 4 SCC 398, this Court pressed into service two legal maxims guiding and assisting the Court while resolving an issue as to calculation of the period of limitation prescribed, namely, (i) the law does not compel a man to do that which he could not possibly perform, and (ii) an act of the court shall prejudice no man. These principles support the view taken by us hereinabove. Any view to the contrary would lead to an absurdity and anomaly. An order may be passed without the knowledge of anyone except its author, may be kept in the file and consigned to record room or the file may lie unattended, unwittingly or by carelessness. In

either case, the remedy against the order would be lost by limitation though the person aggrieved or affected does not even know what order has been passed. Such an interpretation cannot be countenanced.

How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words 'the date of that order', therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed.

In O.N. Mohindroo Vs. The District Judge, Delhi & Anr, (1971) 3 SCC 5, interpreting the pari materia provision contained in Section 44A of the Act, this Court held that the word 'otherwise' used in the context of the power of review exercisable "of its own motion or otherwise" must be assigned a wide meaning and it will cover a case where the review jurisdiction is sought to be exercised by a reference made to the Bar Council. The provision entitles a person aggrieved to invoke review jurisdiction of the Bar Council by moving an appropriate petition for the purpose. It was also held that the review jurisdiction conferred on the Bar Council is wide and reference cannot be made to the provisions of the Civil Procedure Code so as to limit the width of review jurisdiction by drawing an analogy from the provisions of the Civil Procedure Code or the Criminal Procedure Code.

Placing such a construction, as we propose to, on the provision of Section 48AA is permitted by well settled principles of interpretation. Justice G.P. Singh states in Principles of Statutory Interpretation (Eighth Edition, 2001), "It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed." (p.45) The rule of literal interpretation is also not to be read literally. Such flexibility to the rule has to be attributed as is attributable to the English language itself.

The learned author states again, "In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' as it may be presumed 'that the Legislature should have used the word in that interpretation which least offends our sense of justice'. (p.113, ibid) "The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative 'on the principle expressed in the maxim: ut res magis valeat quam pereat'." (p.36, ibid) "If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."(pp.112-113, ibid).

Reading word for word and assigning a literal meaning to Section 48AA would lead to absurdity, futility and to such consequences as the Parliament could have never intended. The provision has an

ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning ___ and so read it ___ as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised.

On the same principle the provision has to be interpreted from the point of view of exercise of the power by the Bar Council. The interpretation ought to be directed towards giving the expression a meaning which will carry out the purpose of the provision and make the remedy of review conferred by the provision meaningful, practical and effective. How can the Bar Council of India or any of its Committees exercise their power to review unless the matter is before them? The jurisdiction to exercise power of review does not come to an end merely by lapse of sixty days from the date of the order sought to be reviewed. In view of the construction which we have placed hereinabove, in our opinion, the expression 'sixty days from the date of that order' prescribes the period of limitation for invoking the power of review. It has nothing to do with the actual exercise of power by the Bar Council. In other words, merely by lapse of sixty days from the date of the order sought to be reviewed, the Bar Council of India or any of its Committees is not divested of its power to exercise review jurisdiction. That is the only reasonable construction which can be placed on the provision as framed; though we cannot resist observing that the provision is not happily drafted.

In ordinary course, having held that the application filed by the petitioner for invoking review jurisdiction was well within limitation and that the jurisdiction to review was not lost by the Bar Council of India merely by lapse of sixty days from the date of the order sought to be reviewed, we would have left this matter to be heard and decided on merits by the Bar Council of India. However, in the peculiar facts and circumstances of the case, we are not inclined to remand the matter and we feel that the ends of justice would be better satisfied if the controversy is set at rest here itself, fully and finally. During the course of hearing, the learned counsel for the parties too agreed to such a course being appropriate to follow. We, therefore, take up the merits of the controversy as well.

The undisputed facts and the material brought on record clearly show that the present one is a case which can be called an attempt to make a mountain out of a molehill. The appellant is a handicapped person. He was allotted an STD booth in the quota of handicapped persons for earning his livelihood much before he was enrolled even as a lawyer and commenced apprenticeship. He firmly claims to have kept himself busy in his legal profession from 10 to 5 p.m. by attending the Courts in morning and evening in the chambers of his senior. His father had retired from service. The parents took up looking after of the STD booth. As the allotment stood in the name of the appellant, he was advised by the Bar Council to surrender the booth. The only ground on which he sought for time for acting on the counsel tendered by the Bar Council was that outstanding dues were to be collected which it would have been difficult to do if he had abruptly surrendered the booth licence. However, the Bar Council was not inclined to give more time. Faced with this situation, the appellant, within a few days of the order of the Bar Council, surrendered the licence to operate the STD booth and invited the attention of the Bar Council for taking this event into consideration and recalling or suitably modifying its earlier order. The appellant, a handicapped person, whose marriage also unfortunately broke down, was keen on pursuing his career as an advocate and was still under apprenticeship when the series of events forming subject matter of this litigation happened. We have no reason to form any opinion other than this that the Bar Council, if

only it had exercised its review jurisdiction, would have formed no opinion other than the one of condoning the innocuous lapse on the part of the appellant who permitted the allotment of STD booth to continue in his name though he had actually discontinued the operation of the STD booth by himself. The Bar Council would certainly have taken a sympathetic view and would not have deprived the appellant of the source of his bread and butter and nipped in the bud the opportunity of blooming into an independent advocate to an apprentice.

In our opinion, all the appeals filed by appellant deserve to be allowed and are allowed accordingly. The impugned orders of the Bar Council are set aside. The enrolment of the appellant as an advocate shall stand restored.

So far as the civil writ petition is concerned, the vires of Section 48AA of the Act were sought to be challenged only on the ground that the provision was unworkable and unreasonable and, therefore, suffered from inherent infirmity. In view of the construction which we have placed on the language of Section 48AA, the challenge to the constitutional validity of the provision does not survive and the petition is held liable to be dismissed. It is dismissed accordingly.