2026 INSC 670

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
ARISING OUT OF SLP (C) NO. OF 2026
@ DIARY NO. 10787/2024

AJAY VIJH **...APPELLANT(S)**

VERSUS

INDIAN BANKS ASSOCIATION & ORS. **…RESPONDENT(S)**

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1. Delay condoned. Leave granted.[1]

I. The Dispute and Its Consideration.

2. The appellant, an advocate by profession, served as panel counsel for Canara Bank at the relevant time. Pursuant to a legal opinion rendered by him in the year 2015, the Bank considered it necessary, not only to remove his name from its panel of advocates but also to include his name in what is called the "Caution List", maintained by the Indian Banks' Association (IBA) as per guidelines in circulars issued by RBI. The writ petition instituted by the appellant challenging the aforesaid action of the Bank and the IBA came to be dismissed on the ground that the IBA is not a State under Article 12 of the Constitution.

2.1 Having regard to the significance of the issues involving autonomy, self-regulation and accountability of the legal profession, we permitted the learned counsels appearing for respective parties, as well as Mr. Maninder Singh, *Amicus Curiae* to address us on the maintainability of the writ petition, as also the merits of the case. For the reasons to follow, we have held that a writ petition under Article 226 is maintainable.

[1] The present Civil Appeal arises from the judgment and order dated 20.11.2023 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 12074 of 2023.

2.2 On merits, we have declared that the Caution List maintained by the IBA is intended to operate only in cases involving fraud, dishonesty, criminality, or other serious misconduct affecting the banking system. It was never designed to address cases resting merely on alleged negligence or errors of professional judgment. Consequently, we have held that inclusion of appellant's name in the Caution List solely on account of negligence is unsustainable in law.

2.3 The issues that have arisen for consideration compelled us to examine certain foundational principles, namely, independence of legal profession and the concomitant freedom of self-regulation. These principles are well recognised and have, in fact, secured statutory recognition under the Advocates Act, 1961 ('Act'). Matters relating to professional conduct or misconduct of advocates fall within the exclusive jurisdiction of the regulatory bodies constituted under the Act, namely the Bar Council of India and the respective State Bar Councils. Banks have the choice of disengaging a legal professional and also to remove his/her name from the panel if the services are not up to the mark, but an action in the nature of public declaration to all other banks about the conduct, competency or incompetency of an advocate is clearly beyond their power and jurisdiction and clearly illegal.

2.4 At the same time, this Court is of the considered view that the right and privilege of self-regulation of the Bar, through peer review, must withstand scrutiny on the touchstones of transparency, accountability, and institutional effectiveness. Public confidence in the legal profession, which is indispensable to the administration of justice, can be sustained only when disciplinary mechanisms inspire trust and credibility. We have therefore considered it appropriate to direct the Bar Council of India to undertake a performance audit of the efficacy and credibility of its disciplinary powers and to adopt such corrective and remedial measures as may be found necessary.

2.5 Further, in order to maintain the highest standards of professional competence, legal knowledge, advocacy skills, and ethical conduct expected from members of this noble profession, we have directed the Bar Council of India to initiate and institutionalise the discipline and culture of *Continuing Legal Education* (CLE). We have also suggested that the Bar Council of India may consider establishing a *National Legal Academy* (NLA) for members, like how the National Judicial Academy (NJA) was established for Judges. There is both a need and a promise in a successful collaboration among these Academies.

II. Factual Background.

3. The appellant, an advocate by profession, was enrolled in 1998 and had been on the panel of several banks and financial institutions for rendering legal advisory services. He claims to have been on the panel of the respondent Bank from September 2010, and to have continued to provide professional services. The dispute traces its origin to a communication dated 27.07.2018 issued by the regional manager of the Bank, in which it was alleged that a legal opinion furnished by the appellant on 08.08.2015 regarding certain immovable property offered as security for a credit facility was erroneous. By the said communication, the appellant was called upon to furnish his explanation. The allegation proceeded on the footing that, while the appellant had opined that the subject land which was given as collateral for a credit facility of Rs. 2.00 Crore was wholly owned by M/s Pushpanjali Buildwell Private Limited, the guarantor to the loan transaction, a portion thereof had, in fact, been alienated three years back under sale deeds dated 31.10.2012, and the opinion failed to examine this. According to the respondent bank, this omission exposed it to financial risk.

4. Upon receipt of the aforesaid communication, the appellant submitted a detailed explanation dated 17.08.2018, asserting that the legal opinion was based on a search certificate issued by the office of the Sub-Registrar, Hapur, and after inspection of the relevant records for a

substantial period. It was his case that the alleged sale transactions were not discernible from the records available at the relevant time, and that the opinion was furnished in accordance with the prevailing professional standards and the bank's own guidelines. Having considered the explanation furnished by the appellant, the respondent bank, by communication dated 31.01.2019, proceeded to remove him from their panel on the ground of negligence in verification of title.

5. Matter did not rest there. The bank proceeded to forward appellant's name to IBA for inclusion in the Caution List, pursuant to which, with effect from 05.02.2020, appellant's name came to be incorporated in the said Caution List titled "Third Party Entities Involved in Fraud". Against the appellant's name, in the remark column, it was recorded: "*Given Wrong Legal Opinion And Negligence in Conducting Search and Bank Was Exposed to Loss and Financial Risk*". The appellant asserts that such inclusion was effected without prior notice, without affording him an opportunity to be heard, and in derogation of the procedural guidelines governing such action.

6. The Caution List, as contemplated under the guidelines issued by the RBI Circular dated 16.03.2009, is a mechanism devised for the purpose of alerting banks and financial institutions about third-party entities, including advocates, valuers, chartered accountants and other

professionals, whose acts of omission or commission are perceived to have exposed banks to fraud or financial risk. The object underlying the maintenance and dissemination of information through such a list is to enable banks to exercise due caution while engaging or dealing with such entities in future transactions.

7. It is the appellant's case that the adverse consequence of such inclusion in the Caution List was not merely confined to the respondent bank, but had a cascading effect on his professional engagements, resulting in termination of his empanelment with other banking institutions, seriously denting his honour and reputation. The appellant claims to have become aware of his inclusion in the Caution List only much later, as there was no intimation of such inclusion. Immediately upon learning the same, he filed a writ petition before the High Court challenging the said action.

8. The High Court, however, declined to entertain the writ petition, holding that a writ petition under Article 226 of the Constitution is not maintainable against the respondents and proceeded to dismiss the same without entering into the merits of the dispute. It is against this order that the present appeal is pressed on the following issues:

III. Issues for Consideration.

9. The following are the issues that arise for consideration:

9.1 Whether the writ petition under Article 226 of the Constitution challenging the inclusion of the appellant's name in the IBA Caution List was maintainable?

9.2 Whether the inclusion of an advocate's name in the Caution List maintained by banks and financial institutions is merely an administrative measure confined to the contractual relationship between the bank and its panel advocate, or whether such inclusion has a bearing on legal and constitutional rights of the parties?

9.3 Whether allegations relating to professional misconduct or negligence of an advocate fall within the disciplinary domain under the Advocates Act, 1961, and the Bar Councils have exclusive jurisdiction to deal with them?

IV. Maintainability of Writ Petition under Article 226.

Re: Issue No. 1: Whether the writ petition under Article 226 of the Constitution challenging inclusion of the appellant's name in the IBA Caution List was maintainable?

10. The High Court dismissed the writ petition on the ground that the IBA is not "State" within the meaning of Article 12 of the Constitution and that, therefore, no writ petition would lie against it. In our view, the High Court approached the matter from a rather narrow perspective of the scope and ambit of Article 226.

11. The appellant is not merely aggrieved by his de-empanelment by a Bank, which may well fall within the realm of a contractual relationship. His real grievance is against the inclusion of his name in the Caution List with remarks casting aspersions on his professional competence and integrity. Such action undoubtedly carries serious consequences as it has the potential to affect his standing as an advocate and his future professional engagements, particularly by financial institutions. The appellant, therefore, asserts infringement of his fundamental right to practise the profession of law under Article 19(1)(g) of the Constitution. Once such a grievance is raised, the High Court, exercising jurisdiction under Article 226, could not have declined examination of the matter solely on the ground that the body against whom relief was sought may not strictly fall within the definition of "State" under Article 12.

12. Once upon a time, the maintainability of a petition under Articles 32 and 226 of the Constitution depended primarily upon who the respondent was. The focus has gradually shifted from the formal character of the body against whom relief is sought to the nature of the function performed, the source of power exercised, and the effect of the impugned action on legally protected rights.[2] Article 226 is not confined merely to statutory

[2] Kaushal Kishor v. State of U.P, (2023) 4 SCC 1. Held: "Once upon a time, the maintainability of a petition under Articles 32/226 depended upon "who the respondent was". Later, the focus shifted to "the nature of the duties/functions performed" by the respondent, for finding out his amenability to the jurisdiction under Article 226."

authorities or instrumentalities of the State falling within Article 12. The expression "any person or authority" occurring in Article 226 has consistently received a wider and more liberal interpretation.

13. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*[3], this Court authoritatively held that the power under Article 226 extends even to bodies discharging public duties, irrespective of whether such duties arise from statute or otherwise. What is material is the existence of a public law element and the effect of the impugned action upon the rights of persons affected thereby. This Court observed that:

> *"17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".*
>
> *20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined*

[3] (1989) 2 SCC 691.

only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

14. Similar principles were reiterated in *Zee Telefilms Ltd. v. Union of India*[4], wherein this Court recognised that even private bodies exercising functions of public significance remain amenable to judicial review under Article 226.

15. More recently, in *S. Shobha v. Muthoot Finance Ltd*.[5], this Court reiterated that where the action complained of possesses a public law character and materially affects legal rights, the remedy under Article 226 cannot be denied merely because the authority concerned is not "State" within Article 12. Relevant observations of this Court are as follows;

"9. (7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action."

[4] (2005) 4 SCC 649. Held: "33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226…."

[5] 2025 SCC OnLine SC 177. It was also observed: "8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India."

16. We must now analyse whether a writ would be maintainable against the first respondent in the facts and circumstances of the present case.

17. First respondent contends that it is neither a statutory body nor "State" within the meaning of Article 12 of the Constitution. Accepting the argument, the High Court, by the order impugned before us, declined to entertain the appellant's writ petition by placing reliance on the judgment of the Bombay High Court in *Kishor S. Bhat v. Indian Banks' Association*[6], wherein the IBA was held not to satisfy the tests necessary for being characterised as "State" under Article 12. However, in our opinion, the reliance placed on *Kishor S. Bhat* is misplaced. The decision in *Kishor S. Bhat* arose out of an inter se service dispute between an employee and the IBA and was treated as a purely private contractual matter. The present case stands on an entirely different footing. Here, the challenge concerns the maintenance and dissemination of a sector-wide Caution List, issued in accordance with RBI guidelines to maintain confidence and integrity in financial transactions.

18. The real grievance is that the Caution List operates as an industry-wide adverse accreditation mechanism having direct bearing upon the professional reputation, livelihood and future opportunities of the individual concerned. The impugned action directly impacts the

[6] 2018 SCC OnLine Bom 2857.

appellant's right to practise his profession, thereby affecting the guarantee under Article 19(1)(g) of the Constitution. Further, the Caution List has a statutory basis; we will elaborate on this aspect in the next section.

19. Similar writ petitions challenging the inclusion of a professional's name in the Caution List maintained by IBA have been entertained by several High Courts[7] across the country. The consistent judicial approach has been to recognise that the action of IBA in maintaining and operating such a Caution List possesses sufficient public law character to render it amenable to judicial review. The contrary view adopted by the High Court in the present case, solely on the basis that IBA may not strictly answer the description of "State" under Article 12, cannot therefore be sustained. This issue is answered by holding the writ petition is maintainable.

V. Scope and object of Caution List as per RBI Guidelines: *Re: Issue No. 2: Whether the inclusion of an advocate's name in the Caution List maintained by banks and financial institutions is merely an administrative measure confined to the contractual relationship between the bank and its panel advocate, or whether such inclusion has a bearing on legal and constitutional rights of the parties?*

20. Having held that the writ petition was maintainable, we must now proceed to examine the true nature and legal effect of the impugned action

[7] Including **Karnataka High Co**urt in H.T. Vasudev v. State Bank of India & Ors., 2024 SCC OnLine Kar 9402, **Madras High Court** in NR Raghuram & Co. v. Indian Banks' Association, W.P. No. 17780 of 2017, **Andhra Pradesh High Court** in R.K.L. Prasad v. SBI, 2024 SCC OnLine AP 730., and **Delhi High Court** in Simi Dua v. Bank of Baroda, 2023 SCC OnLine Del 1049.

which is whether the inclusion of an advocate's name in the Caution List maintained by the IBA is merely an internal administrative measure confined to the banking sector, or whether such inclusion travels beyond the realm of contractual and institutional regulation and conflicts with the fundamental right to practise profession and other statutory laws.

21. Before addressing this issue, it would be necessary to notice the regulatory framework within which the impugned mechanism operates. RBI, being the statutory regulator of the banking system in the country, is entrusted with the responsibility of securing and monitoring the stability of banking operations. In exercise of its regulatory powers under Section 35-A of the Banking Regulation Act, 1949, the RBI is empowered to issue directions to banking institutions in public interest and for proper management of banking affairs. Section 35-A is extracted below for ready reference:

> **"*35A. Power of the Reserve Bank to give directions***.--*(1) Where the Reserve Bank is satisfied that--*
>
> *(a) in the public interest; or*
>
> *(aa) in the interest of banking policy; or*
>
> *(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or*
>
> *(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and*

the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

22. It is in exercise of the powers under Section 35-A, that the RBI has been issuing circulars from time to time on issues concerning fraud prevention, fraud risk management and reporting of irregularities affecting banking transactions. There can be no quarrel with the proposition that the RBI, as a sectoral regulator, is entitled to devise such regulatory measures aimed at maintaining the stability of the banking system. However, the issue before us is not whether the RBI possesses the authority to issue regulatory directions in matters concerning banking discipline and fraud prevention, but whether the measures contemplated in the circulars, when applied to advocates rendering professional services, amounts to disciplinary action based on their professional conduct.

23. The respondents have sought to justify the inclusion of the appellant's name in the Caution List by placing reliance upon the regulatory framework evolved by the RBI concerning the reporting of third-party entities involved in banking frauds. Reference in this regard has been made to the Circular dated 16.03.2009. It is necessary to refer to

this Circular to examine whether it is confined to the detection of fraud or extends to matters concerning negligence or professional incompetence. Circular dated 16.03.2009 is as follows:

> "***Circulation of the names of third parties involved in frauds***
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> *As you are aware, Reserve Bank of India has been cautioning/alerting banks about unscrupulous borrowers who have defrauded banks. RBI has also been advising the banks to exercise due diligence while appraising the credit, needs of such borrower companies; partnership concerns, proprietorship concerns, directors, partners and proprietors, etc. as also their associates in case they approach any bank for fresh loans/renewal of loans.*
>
> *2. Recently we had undertaken a review of emerging trends in fraud cases in the Indian banking system. The analysis has shown an increasing trend in cases of frauds in borrowal accounts especially those pertaining to retail loans such as housing loans, commodity financing against warehouse receipts, loans for purchase of agricultural implements from dealers, vehicle loans and credit card liabilities, etc. While examining the modus operandi in these cases, one common striking feature was noted in a large number of cases evidencing questionable role played by third parties affecting the credit sanction and disbursement process at the banks. From these third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents etc. the banks call for valuable inputs/receipts/documents etc. which play a vital role in credit sanction/disbursement. Similarly, professional advices/reports/certificates etc tendered by professional such as Architects/Valuers/Chartered Accountants/Advocates etc. play a crucial role in ascertaining the progress in house construction, validity/marketability of the title of properties proposed to be mortgaged, value of assets to be financed or to be taken as mortgage, etc.*
>
> *3. The review of fraud cases undertaken by us has revealed that in many cases, the inputs provided by the third parties were misleading or distorted. Often, the third parties which had apparently issued documents/statements were found to have actively colluded with borrowers to facilitate the credit sanctions…..While banks are cautioned about the borrowers involved in such cases, the third parties, by virtue of not being borrowers of the banks, are not held accountable for their*

negligence or active involvement in the frauds. Nor are those parties specifically identified as sources of risk for the banks.

4. Similarly, Valuers, Advocates and Chartered Accountants have also been found to have facilitated perpetration of frauds by providing/certifying fake documents/certifying incorrect information/legal opinion on financial statements/statement of accounts of the borrowers/properties taken as security by the banks etc. While in certain circumstances the acts of omission/commission by the third parties could be termed as bonafide mistakes, on numerous other occasions they were the result of pure negligence or even malafide actions. In return, the third parties could draw financial gains by way of disproportionate fees collected from the borrowers. Even after being instrumental in perpetration of frauds, these professionals continue to be on the panel of other banks and continue to provide or certify incorrect information/take documents and provide legal opinion on the properties etc. taken as security by the banks….

5. It is therefore necessary that the banks build up internal database on such third parties in a systematic manner and resort to mutual exchange of those data on an ongoing basis. Banks mat, hereafter, report to Indian Banks Association (IBA) the details of such third parties, including professionals involved in frauds….”

(emphasis supplied)

It is evident from the above that the 2009 Circular deals only with fraud and has no bearing on professional advice of a lawyer.

24. Learned amicus as well as Mr. Rajesh Kumar Gautam, learned counsel for the Bank, have brought to our notice subsequent circulars issued by RBI being; (1) Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016, and also (2) Master Directions on Fraud Risk Management in Commercial

Banks and All India Financial Institutions, 2024. Clauses 8.12.4[8] and 8.12.5[9] of the 2016 Directions, as well as Clause 4.2[10] of Master Directions 2024, clearly indicate that the Caution List is confined to informing member banks about the fraudulent transactions that they must be aware of. The subsequent directions consolidate and continue the regulatory framework originally introduced through the 2009 circular and reiterate the position that where third-party entities or professionals, including advocates, are found to have played a role in facilitating *fraudulent banking transactions*, the concerned banks may report such entities to the IBA for preparation and circulation of Caution Lists amongst member banks.

25. The difficulty, however, arises when a framework intended primarily for fraud prevention is extended to cases involving alleged professional negligence or an erroneous legal opinion rendered by an advocate in

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[8] 8.12.4: In addition to above borrower- fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents, etc. and professionals such as architects, valuers, chartered accountants, advocates, etc. are also to be held accountable if they have played a vital role in credit sanction/disbursement or facilitated the perpetration of frauds. Banks are advised to report to Indian Banks Association (IBA) the details of such third parties involved in frauds.

[9] 8.12.5 Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard. In this regard the banks should follow normal procedures and the processes followed should be suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks……"

[10] **4.2 Independent confirmation from third-party service providers, including professionals**

4.2.1 Banks place reliance on various third-party service providers as part of pre-sanction appraisal and post-sanction monitoring. Therefore, banks may incorporate necessary terms and conditions in their agreements with third-party service providers to hold them accountable in situations where wilful negligence or malpractice by them is found to be a causative factor for fraud.

4.2.2 Banks shall, after complying with the principles of natural justice, report to the Indian Banks' Association ("IBA") the details of such third parties or professionals involved in frauds. The IBA would, in turn, prepare caution lists of such third parties for circulation among banks……"

discharge of professional duties. The present case does not involve any allegation of fraud, collusion, criminal misconduct, or deliberate facilitation of fraudulent activity by the appellant. The allegation, as borne out from the record, pertains only to negligence in conducting title verification and rendering a legal opinion. There can be no dispute that a bank or financial institution is entitled to internally assess the quality of services rendered by professionals engaged by it and, on that basis, take a decision regarding continuation or discontinuation of empanelment. An advocate has no right to be empanelled with a bank or to be continued so, as the relationship between the bank and the advocate is primarily contractual and also founded upon trust and confidence. Consequently, where a bank is dissatisfied with the services rendered, it is always open to it to discontinue such engagement or decline future empanelment.

26. However, the matter stands on an entirely different footing when banks, followed by the IBA, seek to place the name of an advocate on a Caution List or in a list circulated under the title "Circulation of Names of Third Parties Involved in Frauds", accompanied by remarks touching upon the professional incompetence or negligence of the concerned lawyer. The Caution List may or may not be a public document, but its circulation to all the banking institutions operates as a declaration about (in)competence, as well as the negative character of the advocate, having

serious implications on his right to practice his profession. In the present case, a careful scrutiny of the record, particularly the communication dated 27.07.2018 issued by respondent no. 2, reveals that the allegation against the appellant is not one of fraud, collusion, or deliberate wrongdoing, but something relatable to negligence in rendering a title verification opinion.

27. Fraud, by its very nature, imports an element of *mens rea* and deliberate intention and design to defraud. An erroneous legal opinion or an omission in the course of due diligence, absent any allegation of dishonest intent or deliberate facilitation of illegality, cannot be elevated to the level of fraud. Had appellant been alleged to have committed fraud and subjected to criminal prosecution, entirely different considerations would arise. That, however, is not even the case with the respondents. Their stated object is to caution member banks regarding the alleged inefficiency or professional negligence of the appellant.

28. In our considered opinion, the circulars issued by the RBI in exercise of power under Section 35A to alert member banks against fraudulent transactions, as also fraudulent professionals, cannot be interpreted to authorise banks or the IBA to include cases of alleged negligence or professional (in)competence of an advocate in the said list. While the RBI may issue directions to ensure integrity in banking transactions, such

power does not include declaring an advocate professionally negligent by including his name on a Caution List, which is meant to identify fraudulent entities. In the present case, where the allegation against the appellant pertains solely to negligence, the inclusion of his name in the Caution List is unsustainable. In view of the above discussion and analysis, we hold that the respondent Bank and IBA cannot include the name of the appellant in the Caution List. Consequently, we direct them to remove the appellant's name from the Caution List with immediate effect.

VI. Professional Independence, Self-Regulation and BCI being the Disciplinary Body. *Re: Issue No. 3: Whether allegations relating to professional misconduct or negligence of an advocate falls within the disciplinary domain under the Advocates Act, 1961 and the Bar Councils have exclusive jurisdiction to deal with them?*

29. It has been the uniform and consistent submission on behalf of the appellant, the Bar Council of India, the Ministry of Law and Justice, as well as the learned Amicus Curiae that the alleged allegations of professional negligence or misconduct on the part of the appellant-advocate, even if true, fall within the exclusive jurisdiction of the disciplinary authorities contemplated under the Advocates Act, 1961. It has been contended that neither the Bank nor IBA possess the authority to adjudicate upon the professional conduct of an advocate or to impose the consequential action of virtually blacklisting a lawyer.

30. The legal profession occupies a distinct position in the constitutional and institutional framework of this country. The position of a lawyer, in contrast to that of other professionals such as engineers, doctors, or architects, is markedly different. In *Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases,*[11] this Court elaborately considered the distinctive nature of the legal profession and held that the profession of law is *sui generis*. Lawyers frequently operate in environments where control over outcomes is elusive and where professional obligations are regulated not merely by contractual duties, but also by ethical obligations towards the Court, the client, the opponent and the justice delivery system itself. The relevant portion of the judgment is as follows:

> *"34. It is thus well recognised in a catena of decisions that the legal profession cannot be equated with any other traditional professions. It is not commercial in nature but is essentially a service oriented, noble profession. It cannot be gainsaid that the role of advocates is indispensable in the justice delivery system. An evolution of jurisprudence to keep our Constitution vibrant is possible only with the positive contribution of the advocates. The advocates are expected to be fearless and independent for protecting the rights of citizens, for upholding the Rule of Law and also for protecting the independence of judiciary. People repose immense faith in the judiciary, and the Bar being an integral part of the judicial system has been assigned a very crucial role for preserving the independence of the judiciary, and in turn the very democratic set-up of the nation. The advocates are perceived to be the intellectuals amongst the elites and social activists amongst the downtrodden. That is the reason they are expected to act according to the principles of uberrima fides i.e. the utmost good faith, integrity, fairness and loyalty*

[11] (2024) 8 SCC 430

while handling the legal proceedings of his client. Being a responsible officer of the court and an important adjunct of the administration of justice, an advocate owes his duty not only to his client but also to the court as well as to the opposite side.

35. The legal profession is different from the other professions also for the reason that what the advocates do, affects not only an individual but the entire administration of justice, which is the foundation of the civilised society. It must be remembered that the legal profession is a solemn and serious profession. It has always been held in very high esteem because of the stellar role played by the stalwarts in the profession to strengthen the judicial system in the country. Their services in making the judicial system efficient, effective and credible, and in creating a strong and impartial judiciary, which is one of the three pillars of the Democracy, could not be compared with the services rendered by other professionals. Therefore, having regard to the role, status and duties of the advocates as the professionals, we are of the opinion that the legal profession is sui generis i.e. unique in nature and cannot be compared with any other profession."

31. Independence of legal profession is as important as independence of judiciary. In fact, their independence from the executive and the legislature is the foundation of the rule of law and democracy. The independence of the legal profession is secured by the principle of self-regulation. This principle has had statutory recognition with the passing of the Advocates Act, 1961. Questions concerning the professional conduct, competence, or negligence of an advocate fall within the exclusive domain of the disciplinary mechanism contemplated under the said enactment and are to be examined by the statutory bodies constituted thereunder. Permitting external agencies or institutions to record adverse findings and opinion about the professional standing of advocates would not only

transgress the legislative framework governing the legal profession, but also undermine the independence of the Bar.

32. The Advocates Act, 1961, comprehensively deals with enrolment, right to practise, standards of professional conduct, disciplinary control and institutional supervision of advocates. The statutory scheme clearly evidences legislative intention to confer professional autonomy through self-regulation and also subjects it to structured disciplinary oversight through professional bodies, namely the State Bar Councils and the Bar Council of India. The Parliament has thus attempted to strike a balance between the independence of the profession with accountability. Chapter II of the Act deals with Bar Councils, namely the State Bar Councils and the Bar Council of India. Sections 35 and 36 vest disciplinary jurisdiction in the respective State Bar Councils and the Bar Council of India. The scheme of the Act contemplates a structured adjudicatory mechanism involving notice, framing of charges, recording of evidence and appellate remedies. The provision not only identifies the competent authority empowered to examine allegations against advocates, but also prescribes the procedure to be followed, including the issuance of a notice, an opportunity of hearing, and the participation of the Advocate-General. Sub-section (3) of Section 35 enumerates the range of punishments that may be imposed, extending from reprimand to suspension from practice

and ultimately removal of the advocate's name from the State roll itself. Sections 37 and 38 provide appellate remedies against disciplinary orders passed by the State Bar Councils and the Bar Council of India, respectively. The statute, therefore, contemplates a complete hierarchy of disciplinary adjudication culminating in appellate scrutiny by this Court under Section 38. The power to adjudicate upon professional misconduct has been consciously entrusted to specialised disciplinary committees constituted within the Bar Council framework, comprising members drawn from the legal profession itself. The principle that "*peers must regulate peers*" lies at the heart of the disciplinary framework governing the legal profession. Allegations of professional misconduct against an advocate are not adjudicated by ordinary executive authorities, but by bodies comprising members of the Bar itself.

33. The principle of self-regulation has historically been regarded as the defining feature of independence of the legal profession. The idea underlying such autonomy is that advocates, as officers of the court and participants in the administration of justice, must remain insulated from external pressures. It was on the basis of this principle that the All India Bar Committee Report, 1953 and the 14th Report of the Law Commission, 1958, endorsed the creation of an autonomous Bar governed through institutions deriving authority from the profession itself. The legislative

framework embodied in the Advocates Act, 1961, was founded upon this conception. The disciplinary control over advocates, including matters relating to enrolment, suspension, and professional misconduct, was entrusted to the Bar Councils as self-regulatory bodies by members of the profession. The underlying rationale is that independence of the Bar constitutes an indispensable condition for preservation of the rule of law; the necessary implication is that parallel adjudicatory mechanisms outside the statute are excluded. Such exclusivity of jurisdiction has succinctly been explained in *Supreme Court Bar Association v. Union of India*[12] in the following manner:

> *"57……... The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.*
>
> *58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.*

[12] (1998) 4 SCC 409

71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the enrolment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body."

34. Further, this Court in *Bar Council of Maharashtra v. M.V. Dabholkar*[13] wherein it was held as under:

"24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. 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. The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightaway commence

[13] (1975) 2 SCC 702.

disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings."

35. Reverting to the facts of present case, the inclusion of the appellant's name in the Caution List, coupled with remarks imputing negligence and wrongful legal opinion, undeniably carried serious consequences, apart from affecting appellant's fundamental right to practice the profession. Such action effectively amounted to professional blacklisting, adversely affecting the appellant's standing and future professional engagements with other banks.

36. If the Bank is of the opinion that the appellant is guilty of professional negligence or misconduct in discharge of legal duties as an advocate, the appropriate remedy is to place the relevant material before the competent State Bar Council to take necessary action under the Advocates Act, 1961. Matters concerning the professional conduct of an advocate are within the exclusive province of the disciplinary authorities contemplated under the Advocates Act. The mechanism envisaged in the Caution List under the RBI circulars cannot be invoked to determine or punish alleged professional misconduct by advocates. Permitting banks or banking associations to bypass the disciplinary process under the Advocates Act and unilaterally portray an advocate as professionally incompetent by including his name in a Caution List is illegal, unsustainable and impermissible. It would amount to circumventing the legal profession's

freedom of self-regulation, which, in turn, is an inextricable feature of the independence of the judiciary. Consequently, we hold that the action of including appellant's name in the Caution List and the consequent comment on his competency is illegal and is set aside.

VII. Duty of BCI to undertake performance audit of its disciplinary jurisdiction to ensure accountability.

37. Before parting with the issue, we deem it necessary to clarify that the present judgment ought not to be understood as undermining the need for accountability of the legal profession.

38. The concerns expressed by banks and financial institutions regarding diligence, quality and reliability of legal opinions furnished by advocates cannot be ignored. Modern banking transactions require well-considered legal opinions, and they constitute an important part of institutional decision-making. Such opinions are critical as banking and financial transactions involve substantial financial exposure. Deficiencies in professional services will have immediate and substantial financial consequences. The solution for accountability lie not in creation of parallel structures, like declarations in Caution List's, as in the present case, but in strengthening the existing regulatory mechanisms contemplated under the Advocates Act, 1961 itself.

39. The legal profession occupies a unique position in the constitutional framework of India. Advocates are not merely professionals providing services to clients; they are officers of the court and indispensable participants in the administration of justice. Public confidence in the justice delivery system depends, to a considerable extent, upon the integrity, competence, and professional conduct of advocates. Consequently, the existence of a robust, credible, transparent and efficient disciplinary mechanism for dealing with complaints against advocates is essential for maintaining the rule of law.

40. The Advocates Act, 1961 entrusts the responsibility of regulating the legal profession primarily to the State Bar Councils and the Bar Council of India. Among their most important statutory functions is the consideration and disposal of complaints relating to professional misconduct by advocates. Sections 35, 36, 36B and related provisions of the Act contemplate an institutional framework through which allegations of misconduct are investigated and adjudicated.

41. The statutory scheme recognises that professional discipline is an indispensable component of self-regulation. The authority conferred upon Bar Councils is accompanied by a corresponding duty to ensure that complaints are examined promptly, fairly and effectively. Delay in disciplinary proceedings undermines both accountability and fairness. It

erodes public confidence in the profession, causes hardship to complainants, and leaves advocates facing unresolved allegations under prolonged uncertainty.

42. Over the years, concerns have repeatedly been expressed regarding pendency, procedural delays, lack of uniformity in practices across councils, limited availability of information regarding the progress and outcome of disciplinary proceedings. While the statutory framework is well-intentioned, there appears to be insufficient publicly available information regarding whether the existing mechanisms are achieving their intended objectives in practice.

43. The need for an efficient and expeditious disciplinary system arises from multiple considerations. First, the legal profession enjoys substantial privileges, including exclusive rights of audience before courts. Such privileges must necessarily be accompanied by accountability mechanisms that inspire public trust. Secondly, disciplinary proceedings serve a protective rather than merely punitive function. Their purpose is not only to identify and sanction professional misconduct but also to preserve confidence in the administration of justice. Thirdly, delay itself may result in injustice. A complainant who approaches the disciplinary machinery expects timely consideration of grievances. Equally, an advocate against whom allegations are made is entitled to a prompt

determination so that his or her professional reputation is not indefinitely clouded by unresolved accusations. Fourthly, an ineffective disciplinary system risks encouraging frivolous complaints on one hand and shielding genuine misconduct on the other. Both outcomes are detrimental to the legal profession and the justice system.

44. The duties of the State Bar Councils and the Bar Council of India therefore extend beyond merely processing individual complaints. They include ensuring that disciplinary complaints are taken up quickly and disposed of effectively. The regulators must continuously assess whether their procedures are meeting the objectives of accountability, fairness, consistency and efficiency. While self-regulation is important, there is also a duty to ensure its effectiveness.

45. In *Yash Developers v. Harihar Krupa Co-operative Housing Society Ltd.*[14], this Court emphasised the need to assess whether a statutory framework is achieving its intended purpose or not. The Court observed that the executive has an obligation to review the implementation of a legislation by undertaking a performance audit where statutory objectives appear to be impeded by systemic delays, procedural bottlenecks, or institutional inefficiencies. It was held as under:

> "*57…… Reviewing and assessing the implementation of a statute is an integral part of Rule of Law. It is in recognition of this obligation of*

[14] (2024) 9 SCC 606.

the executive government that the constitutional courts have directed Governments to carry performance audit of statutes.
58. Four aspects for achieving justice are well founded and articulated as : (i) distribution of advantages and disadvantages of society, (ii) curbing the abuse of power and liberty, (iii) deciding disputes, and (iv) adapting to change. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of change or not to change, but of the direction and the speed of change and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system and it would require assessment of the working of the law, its accessibility, utility and abuse as well.

59. The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and a real time assessment of the impact that the statute is having. As stated above, reviewing and assessing the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that a law is working out in practice as it was intended. If not, to understand the reason and address it quickly…."

46. The principles articulated in *Yash Developers* (supra) have relevance beyond the specific statute considered in that case. They underscore the necessity of periodically evaluating whether regulatory mechanisms are functioning in practice as intended by law. If performance audits are necessary for welfare statutes and administrative frameworks, they are equally necessary for professional regulatory institutions whose functioning directly affects access to justice and public confidence in the legal system.

47. An objective assessment of the disciplinary framework governing advocates should therefore examine, among other matters; i) The number of complaints instituted annually before each State Bar Council. ii) The

number of complaints disposed of annually. iii) Average and median disposal times. iv) Age-wise pendency of cases. v) Regional variations in disposal patterns. vi) Procedural practices adopted by different Bar Councils. vii) Adequacy of staffing and administrative support. viii) Nature of outcomes and sanctions imposed. ix) Accessibility and transparency of disciplinary proceedings. x) Compliance with statutory timelines.

48. A meaningful evaluation of the existing system requires participation of multiple stakeholders, including representatives of litigants as well as experts in public administration, data analysis professionals, and individuals with experience in institutional reform. Such diversity is necessary to ensure efficiency and objectivity. Plurality in the composition of the committee will enable the regulators to avoid institutional blind spots.

49. The purpose of this exercise is not to attribute blame but to identify systemic strengths and weaknesses. The objective should be evidence-based reform aimed at improving the effectiveness of the disciplinary framework while preserving fairness and professional independence. There is also a compelling public interest in ensuring that the legal profession's regulatory mechanisms meet contemporary standards of accountability. There is no reason why the disciplinary framework governing advocates should remain exempt from similar scrutiny.

50. In view of the above discussion and having regard to the importance of maintaining public confidence in the institution of lawyers, it is desirable that the Bar Council of India undertakes a comprehensive *performance audit of the disciplinary mechanisms administered by it and the State Bar Councils* under the Advocates Act, 1961. We direct the Bar Council of India to constitute a committee and seek an objective assessment of its duties of self-regulation of professional conduct and discipline, consider the report and file an affidavit of the action proposed/taken.

VIII. Continuing Legal Education (CLE) for Lawyers: A Necessity for Strengthening Justice Delivery.

51. The maintenance of professional competence, ethical standards, and public confidence requires much more than laying down the rules and regulations for conduct and also consequences for misconduct of lawyers by laying down the procedures of enquiry, adjudication and determination by regulatory authorities.

52. In India, the statutory responsibility for maintaining standards of professional conduct and legal education rests with the Bar Council of India and the State Bar Councils under the Advocates Act, 1961. While considerable attention has been devoted to legal education at the entry level through law universities and professional examinations, there is a glaring dearth in institutionalised learning for advocates after enrolment.

53. Laws, as well as renewed knowledge of its subjects are ever evolving. Equally, the technique of persuasion-advocacy, as well as adjudicatory methods require simplification and refinement. Societal expectations of higher standards of inclusiveness, accountability and transparency require lawyers to equip themselves not only with updated legal knowledge but also with evolving ethical and social responsibilities. Statutes are amended, regulatory frameworks evolve, constitutional doctrine develop and judicial precedents continuously reshape our understanding of law. Owing to increasing technological infusion in the profession and the growing complexity of commercial and financial transactions, it has become all the more necessary for lawyers to remain updated and professionally equipped.

54. Many advanced jurisdictions have already recognised this necessity. In the United States, most state bar associations require advocates to complete Mandatory Continuing Legal Education (MCLE) credits periodically as a condition for maintaining their licence to practise. Subjects typically include professional ethics, technological competence, trial advocacy, and emerging areas of law. In the United Kingdom, the legal profession has progressively moved towards continuing competence frameworks under the supervision of bodies such as the Solicitors Regulation Authority, requiring practitioners to undertake regular

professional development and demonstrate maintenance of competence. Similar systems exist in jurisdictions such as Singapore, Canada, and Australia, where structured professional development programmes are considered essential components of professional regulation.

55. The importance of CLE has repeatedly engaged the attention of expert bodies in this country. The 184th Report of the Law Commission of India proposed substantial reforms to the Advocates Act, 1961 aimed at institutionalising continuing legal education and improving standards of professional training. The proposed amendments contemplated, inter alia, promotion of continuing education in specialised fields of law, practical training for advocates and institutional mechanisms for raising standards of legal education and professional competence. The Advocates (Amendment) Bill, 2003, proposed amendments to Section 7 of the Advocates Act to specifically promote continuing legal education, specialised training and awareness regarding developments in law and legal education. Though the proposed statutory amendments did not ultimately materialise, the underlying concerns reflected therein continue to retain considerable significance.

56. Indian Lawyers can and must develop their own model, a pedagogy that is suitable for the profession and practice of law. Continuing Legal Education should not be viewed as a mere regulatory requirement, but as

a professional commitment to excellence and service. Such programmes can also bridge the knowledge gap between urban and rural practitioners, ensuring that lawyers across the country have access to developments in law, technology, advocacy skills, and professional ethics.

57. An important objective of continuing education is in transmission of the profession's unwritten traditions and values to the younger generations of lawyers. Professional conduct and competency is shaped not only by real-time practice, but also through long-established conventions of fairness, collaboration, courtesy, respect for courts, and service to clients. These time-tested practices constitute the cultural capital of the Bar and must consciously be preserved and passed on through structured mentoring and training programmes.

58. There is a necessity, rather a compelling need, to kindle among advocates a deeper and a renewed sense of bond and shared responsibility for timely disposal of cases as reducing pendency is as much the duty of the Bar as it is of the Bench. There is no dispute that mounting pendency of cases across District Courts, High Courts, and the Supreme Court poses one of the greatest challenges to the justice delivery system in India. The constitutional courts have rightly assumed responsibility for addressing this problem, and judges at all levels remain deeply concerned about delays and arrears. Yet, pendency continues to

be viewed almost exclusively as a judicial responsibility. This approach overlooks a fundamental reality that the Bar is not merely a stakeholder but an equal institutional partner in the administration of justice. Despite frequent references to the Bar and Bench as the “two wheels of the chariot of justice,” the Bar is seldom called upon to share responsibility for reducing delays and improving efficiency. A paradigm shift is necessary. Tackling pendency must become a collaborative mission of the Bench and the Bar. Through coordinated planning, institutional commitment, and shared accountability, meaningful access to justice can be achieved. The first step is to equip and train lawyers to work as a team and then to work with courts and judges for effective and efficient delivery of justice.

59. To achieve these objectives, serious consideration should be given to institutionalising “future continuous” learning for lawyers. Episodic and bouquet presenting seminars and conferences must give way to more serious and committed learning. It is necessary to establish a full-time academy, which may be called the National Legal Academy (NLA) for lawyers, like the National Judicial Academy that has been established for training and capacity building for Judges. Such an institution would enable post-enrolment structural learning, enhance professional competence, ethical awareness, technological adaptability, and long-term planning and

corroboration. Bar Council of India must invest its time and energy in institutionalising this body.

60. There is no dearth of expertise, experience, vision and wisdom amongst members of the Bar. All that is required is to bring them together and enable the idea to take shape. We direct the Bar Council of India to constitute a team of senior and junior lawyers as well as experts in the field of establishing academic institutions for considering, discussing and evolving the idea of establishing National Legal Academy. We hope and trust the BCI will rise to the occasion and reflect on all these issues and inform the Court of its decision. List this appeal for further directions on 31.08.2026.

IX. Conclusions.

61. For the reasons stated above, we allow the appeal, set aside the judgment and order passed by the High Court of Judicature at Allahabad. We declare that inclusion of appellant's name in Caution List is impermissible and without jurisdiction. There shall be a consequential direction to the respondents to remove the name of the appellant from the Caution List with immediate effect.

62. List the appeal on 31.08.2026 for considering the issues relating to institutionalising Continuing Legal Education (CLE) and the proposal for

establishing National Legal Academy (NLA). BCI may file an affidavit indicating the developments a week before the listing of the case.

.....J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

.....J.
[**ALOK ARADHE**]

NEW DELHI;
JULY 07, 2026.