In the Matter of Mr. 'G', a Senior Advocate of THE Supreme Court

(B. K. Mukherjea, Ghulam Hasan, S. R. Dass, B. Jagannath Das, Vivian Bose JJ)

27.05.1954

JUDGMENT

BOSE J. -

This matter arises out of a summons issued to Mr. G, a Senior Advocate of this Court under Order IV, rule 30, of the Supreme Court Rules, to show cause why disciplinary action should not be taken against him.

Mr. G was called to the Bar in England and was later enrolled as an Advocate of the Bombay High Court. He is also an Advocate of this Court. On 20th December, 1952, he entered into an agreement with a client whereby the client undertook to pay him 50 per cent. of any recoveries he might make in the legal proceedings in respect of which he was engaged. On this being reported to the High Court the matter was referred to the Bombay Bar Council and was investigated by three of its members under section 11(1) of the Bar Councils Act. They recorded their opinion that this amounted to professional misconduct. The High Court agreed and suspended Mr. G from practice as an Advocate of the Bombay High Court for six months. The learned Judges considered that they had no power to affect his position as an Advocate of this Court, so directed that a copy of their judgment be submitted to this Court to enable this Court to take such action on it as it thought fit. Acting on this report this Court issued notice to the petitioner under Order IV, rule 30, to show cause why disciplinary action should not be taken against him. About the same time Mr. G filed petition for a writ under article 32 of the Constitution. We are confining ourselves in this order to the matter raised in the summons.

There is no dispute about the facts. They are set out in Mr. G's petition under article 32 and are as follows :

> On the 23rd of July, 1951, Mr. G's client is said to have entered into an agreement with the Baroda Theaters Ltd., for work on a picture which they intended to produce. The remuneration agreed on was Rs. 15,000. Of this Rs. 3,000 was paid at once and the balance, Rs. 12,000, was to be paid on the completion of the picture. It is said that at the date of the dispute the Baroda Theaters admitted that Rs. 9,400 was due, but as they did not pay up, the client consulted Mr. G about the best way to recover his money and wanted to know what the expenses and fees would be. After examining the matter in detail and talking it over with his client, Mr. G advised him that two courses were open to him.

First, there was a civil suit. He said the cost of this would be about Rs. 800 for Court fees and expenses and about Rs. 1,250 for fees. The other alternative was winding up proceedings. The client was told that in these the Court fees would be lower but Mr. G's fees would have to be higher as winding up proceedings are usually protracted.

The client preferred the latter course but said that he could not pay more than Rs. 200 towards the expenses and as regards the fees he said he was too poor to pay and so made a proposal which he

reduced to writing. It is embodied in the following letter dated 20th December, 1952, addressed to Mr. G :

> "I hereby engage you with regard to my claim against the Baroda Theaters Ltd., for a sum of Rs. 9,400 (balance due to me).
>
> Out of the recoveries you may take 50% of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses."

Mr. G said that he was unwilling to work on these terms but when he was pressed to do so and when he realised that unless he agreed the client would probably lose a just claim he reluctantly agreed.

Rs. 200 was thereupon paid towards expenses and Mr. G at once entered into correspondence with the solicitors of the Baroda Theatres Ltd. A winding up petition was drawn up and declared but was not filed because the matter was compromised at that stage. The Baroda Theatres undertook to pay Mr. G's client Rs. 6,400 in full satisfaction of his claim.

The client then paid Mr. G a further Rs. 800 (He had already paid Rs. 200, part of which was spent for expenses). Mr. G claimed the balance which was roughly Rs. 2,200.

We are not concerned with the proceedings in the Bombay High Court and before the Tribunal of the Bar Council in the summons matter with which we are dealing at the moment, as we are acting here under Order IV, rule 30, of the Rules of this Court. The only question is whether, on the facts and circumstances set out above (all of which are admitted by Mr. G), his engagement of 20th December, 1952, amounts to professional misconduct.

Mr. G argued the matter at length, and to his credit be it said, objectively and with restraint, but it is not necessary to cover the wide field he did because we are not concerned with ordinary rights of contract, nor with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character. To use the language of the Army, an Advocate of this Court is expected at all times to comport himself in a manner befitting his status as an "officer and a gentleman." In the Army it is a military offence to do otherwise (see section 45 of the Army Act, 1950) though no notice would be taken of ungentlemanly conduct under the ordinary law of the land, and none in the case of a civilian. So here, he is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action.

Now it can be accepted at once that a contract of this kind would be legally unobjectionable if no lawyer was involved. The rigid English rules of champerty and maintenance do not apply in India, so if this agreement had been between what we might term third parties, it would have been legally enforceable and good. It may even be that it is good in law and enforceable as it stands though we so not so decide because the question does not arise; but that was argued and for the sake of argument even that can be conceded. It follows that there is nothing morally wrong, nothing to shock the conscience, nothing against public policy and public morals in such a transaction per se, that is to say, when a legal practitioner is not concerned. But that is not the question we have to consider, However much these agreements may be open to other men what we have to decide is

whether they are permissible under the rigid rules of conduct enjoyed by the members of a very close professional preserve so that their integrity, dignity and honour may be placed above the breath of scandal. That is part of the price one prays for the privilege of belonging to a kind of close and exclusive "club" and enjoying in it privileges and immunities denied to less fortunate persons who are outside its fold. There is no need to either its portals and there is no need to stay, but having entered and having elected to stay and enjoy its amenities and privileges, its rules must be obeyed or the disciplinary measures which it is entitled to take must be suffered. The real question therefore is whether this kind of conduct is forbidden to the elect or whether, if it was once forbidden, the ban has since been removed, either directly or by implication, be legislative action.

Now it was not disputed that, so far as English Barristers are concerned, this sort of agreement was once taboo both in England and in India. Even when they worked in the mofussil in India and did the kind of work that would be done by solicitors in England and in the Presidency Towns in India, they could not enter into an engagement of this kind, for even solicitors in England are forbidden from making such bargains (see Cordery's Law Relating to Solicitors, fourth edition, page 342). But it was argued, this rule only applied to members of the English Bar, and in any event it was abrogated in India in 1926.

We will first examine whether there was a difference between Barristers and other classes of lawyers. This point was raised in the Punjab in 1907 but was rejected by a majority of seven Judges to two in a Full Bench of nine Judges in Ganga Ram v. Devi Das (61 P.R. (of 1907) p. 280). But it is to be observed that even the two dissenting Judges agreed that an engagement of the present kind was not open to a member of the Punjab Bar. Lal Chand J. (who dissented) said at page 331 :

> "I am in perfect accord with the Hon'ble Chief Judge that stipulation to receive a share in the result of the litigation is different from a stipulation to be paid a fee contingent on success."

The other dissenting Judge, Chatterji J., agreed with him but even as regards the practice which these two learned Judges thought permissible at the date of their decision, Chatterji J. said at page 299 :

> "It must not be supposed, however, that I am in favour of the practice. I should on the whole prefer its abolition....."

We agree with Chitty J. at page 326 that there was no justification even at that date for seeking to apply one set of rules to one branch of the profession and another to another. As he said -

> "What is right or wrong for the one must be right or wrong for the other,"

or, as Sir Lawrence Jenkins C.J. put it in In re. N. F. Bhandara (3 Bom. L.R. 102 at 111),

> "For common honesty there must be no sliding scale even in the mofussil....."

Reading "standards of professional conduct" for the word "honesty", the quotation is apt here. In any case, the decisions to which we shall refer deal with "Advocates" and even where these "Advocates" were Barristers the matter touched them as "Advocates" of an Indian High Court and not because of their special status as Barristers. It is true that at one time Advocates were mainly Barristers, but that was not always the case and the rules laid down in these decisions governed all "Advocates," whether Barristers or otherwise.

The learned Judges in the Punjab Record case collected all the available authorities up to the year of their decision and they show that this kind of agreement was condemned in Calcutta in 1874 and 1900 : In the matter of Moung Htoon Oung (21 W.R. 297) and In the matter of an Advocate of the Calcutta High Court (4 Cal L.J. 259); in Bombay in 1901 : In re N. F. Bhandara (3 Bom. L.R. 102 at 113); and in Madras in 1881 and again in 1939 : Achamparambath Cheria Kunhammu v. William Sydenham Ganty (I.L.R. 3 Mad. 138) and In re an Advocate of the Madras High Court (I.L.R. 1940 Mad. 17). As the Bombay High Court is the one in which Mr. G normally practices and as the engagement was entered into in Bombay, we think it proper to quote the following passage at page 113 from the judgment in the Bombay case (In re. N. F. Bhandara) :

> "I consider that for an Advocate of this Court to stipulate for, or receive, a remuneration proportioned to the results of litigation or a claim whether in the form of a share in the subject-matter, a percentage, or otherwise, is highly reprehensible, and I think it should be clearly understood that whether his practice be here or in the mofussil he will by so acting offend the rules of his profession and so render himself liable to the disciplinary jurisdiction of this Court."

Mr. G argued that even if this was once the law, section 3 of the Legal Practitioners (Fees) Act, 1926, (Act XXI of 1926) changed it and that now every legal practitioner is competent to settle the terms of his engagement and his fees by private agreement with his client. This, Mr. G said, entitles him to enter into any agreement which the law permits in the case of ordinary persons. Legal practitioners, according to him, are now governed by the law of contract and not by rules imported from other countries with different ideas and different social customs and imposed on the Bar in India mainly by English Judges. We do not agree, because this Act is not concerned with professional misconduct. That is dealt with by the Bar Councils Act which was passed in the same year (1926). The Bar Councils Act makes no modification in the disciplinary jurisdiction of the High Court or of the sense in which professional misconduct had been understood throughout India up to that time.

The only Indian decision which Mr. G could quote in his favour was Muthoo Lall v. Budree Pershad (1 N.W.P.H.C.R. 1). But that was not a case in which disciplinary action was being taken against a legal practitioner for professional misconduct. The question there was whether an agreement which might be objectionable on the ground of professional misconduct could be enforced by suit. Two Bombay decisions on which Mr. G relies are to be distinguished in the same way : Shivram Hari v. Arjun (I.L.R. 5 Bom. 258) and Parshram Vaman v. Hiraman Fatu (I.L.R. 8 Bom. 413). Whether these cases were rightly decided or whether they would also be hit on the ground of public policy as Chitty J. thought of a similar matter in the Punjab Record case, is something which does not arise for decision here. It is enough to say that those cases are distinguishable on the ground that the Judges there were not considering a case of disciplinary action.

Mr. G relied on the practice in some of the American States where an agreement by an attorney to purchase part of the subject-matter of the litigation is upheld. The class of cases to which he refers are summarised in a footnote to McMicken v. Perin (15 Law. Edn. 504 & 505). He relied on this to show that contracts of this kind cannot be dismissed as reprehensible or morally wrong. We do not propose to enter into this because what may be harmless in one country may not be so in another. We will however pause to observe that Rattigan J. collected a large volume of American authority at pages 318-321 of his opinion is Ganga Ram Devi Das (61 P.R. (of 1907), p. 280) to show that even in those States where this is permitted it is regretted and forward upon. For historical reasons obtaining there, the practice may have come to stay however much it is regretted; but in 1937 the

American Bar Association adopted the following canon of Professional Ethics :

> "The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting."

In India history tells the converse tale. We see no reason why we should import what many feel is a mistake, even in the country of its origin, from another country and seek to perpetuate their error here when a sound and healthy tradition to the contrary already exists in our Bar. The reasons for exacting these high standards in this country, where ignorance and illiteracy are the rule, are even more important than they are in England where the general level of education is so much higher. We hold that the conduct of Mr. G amounts to professional misconduct and as it was committed in the face of the Bombay view expressed by Sir Lawrence Jenkins in 1901 disciplinary action is called for.

Now had Mr. G been as restrained and objective in his petition under article 32 as he was while arguing the case before us, we might have considered a warning enough seeing that his is the first time this question has been considered in this Court, but, in view of his personal attacks on the learned Chief Justice in his petition where he has questioned his good faith and attributed malice to him, we are not able to deal with him as lightly. We therefore direct that he be suspended from practising in this Court for a period which will expire on the same date as his period of suspension in the Bombay High Court.

There will be no order about costs.

Order accordingly.

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