

B. L. Samdaria

Vs

Harak Chand Jain and Others

Special Leave Petition No. 7826 of 1987

(Sabyasachi Mukharji, K. N. Saikia JJ)

13.08.1990

ORDER

1. This is petition under Article 136 of the Constitution of India against the judgment and order of the Disciplinary Committee of the Bar Council of India dated January 30, 1987.
2. Respondent 1 had filed a compliant dated February 10, 1982 against the advocate-petitioner (hereinafter referred to as 'the petitioner') before the Bar Council of Rajasthan. In the complaint, respondent 1 stated that he had come to know that the petitioner seems to be habituated to ignore all Code of 'Professional and other conduct'. That in a particular civil miscellaneous application in the court of the District Judge, Ajmer, the petitioner had first filed the claim petition under the Motor Vehicles Act through his own junior Shri Lekh Raj Ojha, advocate. It was stated that the claimant Smt Chandu Bai expired after filing of the claim petition and that the petitioner filed application and vakalatnama on behalf of the legal representatives ignoring the very serious rules of professional conduct, namely, that he could not take brief on behalf of the claimant's legal representatives as he was already a counsel for the opposite party. The documents annexed indicated that he filed vakalatnama and affidavit on behalf of the legal representatives and the insurance company. These constitute, accordingly to respondent 1, serious professional and other misconduct. It was further stated that the petitioner has already been punished in a case by the Disciplinary Committee of Bar Council and another was pending before the Disciplinary Committee. The petitioner filed a rejoinder. As the Bar Council of Rajasthan could not dispose of the complaint within a period of one year, it stood automatically transferred to the Bar Council of India under Section 36-B of the Advocates Act, 1961 (hereinafter called as 'the Act'). The Disciplinary Committee of the Bar Council of India disposed of the complaint by an order dated September 8, 1985.
3. The Disciplinary Committee of the Bar Council of India exonerated that petitioner of the first charge but found him guilty of the second charge. It was the case of the petitioner that the respondent complainant had nothing to do with the subject matter of the complaint made by him. He was not at all the person who was affected by the alleged misconduct on the part of the petitioner. The complaint was investigated and the petitioner was found guilty. The Bar Council of India categorically found that it was not believable that Smt Chandu Bai engaged Shri Lekh Raj Ojha who was a novice in the profession to file the claim petition. It was the petitioner who had filed the application for bringing the legal representatives of the said deceased Smt Chandu Bai on records and it was further noted Shri Lekh Raj Ojha had left the office of the petitioner before May 1980. The petitioner failed to produce the most material witnesses like Shri Lekh Raj Ojha and Shri Arun Sharma, advocates and his clerk or typist, etc. The petitioner did not comply with the order of the State Bar Council of Rajasthan which directed him to produce the cash book, an adverse inference could be drawn. It was the case of the petitioner that the Disciplinary Committee of the Bar Council

of India arrived at its findings without taking into account all the relevant facts and material documents and without taking account the pleaded facts.

4. It was the case of the petitioner that Shri Lekh Raj Ojha was using the office of the petitioner in 1979, as an advocate. The Disciplinary Committee, according to the petitioner, did not at all consider or refer to the State Roll of Advocates, published by the Bar Council of Rajasthan, containing the bio-data of Shri Lekh Raj Ojha, advocate and that is the reason why the Bar Council came to wrong conclusion that Shri Lekh Raj Ojha was a beginner to whom Smt Chandu Bai could not have entrusted her case.

5. The petitioner's case was that this was an unwarranted inference, based on no evidence. According to the petitioner, had the Disciplinary Committee not assumed that Shri Lekh Raj Ojha was just a beginner, it would not have proceeded to draw the conclusion that it was the petitioner and not Shri Lekh Raj Ojha who was, in fact, engaged by Smt Chandu Bai, as her counsel. The fact that the petitioner filed the vakalatnama did not support the conclusion because, according to the petitioner, it was the petitioner who had acted on behalf of Smt Chandu Bai. On this basis, the Disciplinary Committee of the Bar Council of India passed the order dated September 8, 1985 suspending of petitioner for two years. Thereafter, there was a stay on November 8, 1985 by the Chairman of the Bar Council of India for one month. In spite of the Stay order, the Registrar of State Bar Council of Rajasthan issued Notification dated November 15, 1985 suspending the petitioner for two years. The petitioner preferred first appeal to this Court on December 3, 1985. This Court on December 19, 1985 dismissed the first appeal in limine. This Court also dismissed the review petition in limine on February 18, 1986. On April 1, 1986, the petitioner filed review petition before the disciplinary Committee of Bar Council of India on the basis of additional and fresh pieces of evidence and errors apparent on the face of records in the order dated September 8, 1985 as an additional ground. The review petition was admitted and delay was condoned and on February 16, 1987, the petitioner was communicated the order dated January 30, 1987 dismissing the review petition.

6. This special leave petition has been filed on July 13, 1987 against the order dated January 30, 1987 passed by the Bar Council of India. We have perused the grounds challenging the order passed by the Bar Council of India. The Disciplinary Committee had held that the powers of review under Section 44 of the Act are not to be read with limitation as contained in Order XLVII, Rule 1 of the Civil Procedure Code. The powers should be exercised only in case where circumstances of a substantial and compelling character make it necessary to do so and not for the purpose of rehearing and fresh decision of a case. The Disciplinary Committee also noted that the review should not be refused only on the ground that the appeal against the judgment sought to be reviewed has been dismissed by this Court. Dealing with the contentions, the Disciplinary Committee observed as follows :

"We shall deal with each point in seriatim. So far as the contention raised in para "A" is concerned, it relates to the proceedings before the Supreme Court and we feel that it would be preposterous to venture to entertain and comment on the said grievance of the petitioner. We only say that the pleadings of the review petition are unpleasant.

While dealing with the contention raised in para 'B', we take the first document produced by the petitioner i.e. order sheet dated April 5, 1984 of MACT Case No. 23/79 Chandu Bai v, Bhachand. It appears from the order sheet that the claim case of the widow Chandu Bai was dismissed for want of prosecution. Perhaps the petitioner

wants to show on the strength of the order sheet that ultimately no counsel appeared in that case and it was dismissed in default, though he was present at that time on behalf of Insurance Company. We are not here re-affirm our findings given in our judgment dated September 8, 1985 but this document clearly shows that Sri Lekh Raj Ojha was not the real counsel and he never took care as the petitioner himself says that Sri Ojha was not regular in profession. We are shocked to know that this document that an illiterate widow coming from backward class has gone out of the court without payment of even a penny. After all, what is our professional accountability to the society ? Be that as it may, the document is not of the nature, which calls for review."

7. The Disciplinary Committee further examined the other contentions and observed as follows :

"Lastly, the petitioner has stated that the complainant has no locus standi in the case. In this regard, we only wish to refer the observations of the Supreme Court in Narendra Singh v. Chhote Singh [(1983) 4 SCC 131 : 1983 SCC (Cri) 788 : AIR 1983 SC 990]. It was held that the disciplinary proceedings against the lawyer involves not only the particular lawyer but the entire profession. The reputation of legal profession is the total of the reputation of the practitioners. The honour of the lawyer and purity of profession are the primary consideration and they intermixed. The Bar Council has power even to take action suo motu. In this view of the matter, the contention raised by the petitioner is not sustainable.

We gave full hearing to the petitioner on the review application without limiting ourselves to the rules as contained in the Civil Procedure Code, we condoned five months delay, we allowed production of documents and witnesses and thoroughly looked into the record again. The petitioner has raised on O.N. Mohindroo case [O.N. Mohindroo v. District Judge, Delhi, (1971) 3 SCC 5], which we have discussed in the earlier part of our judgment. It is suffice to state here that there were special circumstances pointed out by the Supreme Court of India on the basis of which their Lordships took a decision that it was a fit case for allowing the review application. No such extraordinary circumstance exists in the present case. In O.N. Mohindroo case [O.N. Mohindroo v. District Judge, Delhi, (1971) 3 SCC 5] there was unusual circumstance and the Bar Council of India itself was of the opinion that the case was not satisfactorily proved and the Hon'ble Supreme Court was of the same view. In the present case, we issued notice to the Rajasthan Bar Council. Mr. I.K. Makwana, who appeared on behalf of the Rajasthan Bar Council has vehemently opposed the review application. He has also pointed out certain misstatement in the review application and on that strength submitted that the conduct of the petitioner has not been fair even during the hearing of the review application. We need not go into this aspect of the case. It is suffice the state that the petitioner has filed to pointed out such manifest wrong in our judgment, which may call us the review our judgment and change the verdict. The petitioner has strongly relied on the decision of the Supreme Court in O.N. Mohindroo case [O.N. Mohindroo v. District Judge, Delhi, (1971) 3 SCC 5] and has contended that his case is squarely covered by the said case. We have read the judgment thoroughly. In order to understand and appreciate the binding force of the decision, it is always necessary to see what were the facts of the case in which the decision was taken and what was the point which was to be decided. In this connection, reference be made to remarks of Lord Halsbury in [1901] AC 495,

"every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expression, which may be found that there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case, in which such expressions are to be found."

8. The Bar Council of India found on merit in the contention of the petitioner for review and as such dismissed the review petition. Aggrieved thereby, the petitioner seeks the intervention of this Court under Article 136 of the Constitution of India. We have perused the order of the Bar Council of India. We are, in substance, in agreement with the findings of the Disciplinary Committee of the Bar Council of India and we find no ground for interference. Review did not lie. It has to be reiterated that the Disciplinary Committee of the Bar Council did not dismiss the application for review on technical ground but examined the matter on merits.

9. Having examined the factual basis of the contentions raised and the version of the petitioner on non-appearance and non-production of Shri Lekh Raj Ojha and other surrounding circumstances, we are of the opinion that the Bar Council of India did not commit any error in passing the order as it did. This application for appeal must, therefore, fail. While we uphold the findings as to guilt of the petitioner, as the petitioner has served his sentence, that is to say, remained in suspension for all this period, we are of the opinion that in the facts and the circumstances of this case, sufficient punishment would be deemed to have been meted out to the petitioner. We transform the sentence undergone, that is to say, period already spent in suspension, which in our opinion, is sufficient punishment in this case and the rest of the punishment, that is to say, barring the petitioner for the remaining period need not be given effect to and, therefore, is cancelled. We, therefore, modify the order by stating that the suspension period already undergone by the petitioner would be substituted to the order of suspension directed by the Disciplinary Committee of the Bar Council of India. There will be no order as to costs.

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