

SUPREME COURT OF INDIA

Jaipur Vikas Pradhikaran

Vs.

Ashok Kumar Choudhary & Ors.

C.A.No.5099 of 2002

(Mukundakam Sharma and Anil R.Dave,JJ.,)

15.09.2011

JUDGMENT

Dr. mukundakam sharma,J.,

1. The present appeal, under section 38 of the Advocates Act, 1961, (hereinafter referred to as "the Act") is filed against the final judgment dated 24.03.2002 of the Disciplinary Committee of the Bar Council of India [hereinafter referred to as Disciplinary Committee] in BCI Transfer Case No. 74 of 1995, whereby the Committee dismissed the complaint of the appellants herein holding

that no case of any misconduct is made out.

2. The facts leading to the filing of the present case are that the present complaint was filed under section 35 of the Act by Jaipur Development Authority against the present respondents before the State Bar Council of Rajasthan in the year 1994 which was entrusted to the Disciplinary Committee of the State Bar Council of Rajasthan. Since the proceedings could not be completed in the stipulated period of one year, the complaint was transferred to the Bar Council of India in the year 1995, registered as Transfer Case No. 74 of 1995.

3. The allegations made in the complaint was that appellants engaged the Respondent No.1 herein on retainer basis in order to defend its cases pending in the different Courts at Jaipur, Rajasthan. In the year 1990, Respondent No.1 was appointed to defend Jaipur Development Authority in some Reference cases under section 18 of the Rajasthan Land Acquisition Act. Also, on 05.10.1990, Respondent No.1 was engaged to defend Jaipur Development Authority in the Land Acquisition Reference No. 14 of 1982, Abdul Samad & Ors Vs. Jaipur Development Authority in Civil Court at Jaipur City. Even his retainership fee was enhanced by additional amount of Rs. 600/- per month.

4. The Land Acquisition Reference No. 14 of 1982 was fixed for filing of the Written Statement in the Court on 07.12.1991. The Respondent No. 1 neither appeared in the Court on 07.12.1991, nor filed Written Statement on behalf of the appellants. Consequently, the Court closed the opportunity for filing the Written Statement on behalf of the appellants vide

order dated 07.12.1991. The Respondent No.1 did not inform the appellant about the said order dated 07.12.1991 of the learned Court. The Claimant in the said Land Acquisition Reference No. 14 of 1982 examined the witnesses in the Court, but the respondent neither cross-examined those witnesses nor did he inform the appellant about this. Also, in the said Reference, the date was fixed as 10.11.1993 for producing of the entire evidence but no intimation regarding the aforesaid date was given by the Respondent to the appellant, as a result of which evidence of the Appellant was ordered to be closed by the learned Court. The Respondent also did not inform the appellant about the aforesaid order dated 10.11.1993.

5. Ultimately, the Land Acquisition Reference No. 14 of 1982 was decided on 02.12.1993 against the appellant and in that Judgment, an award of Rs. 1.25 crore was announced by the Court. Even the final order passed by the Court was not conveyed to the appellant. The appellant came to know about the passing of the aforesaid order for the first time on 24.03.1994 when Mr. Manak Chand Surana - Respondent No. 2 filed Execution Petition No. 20 of 1993 in the Executing Court and another Execution Petition was filed by Mrs. Asha Gupta, wife of Respondent No. 3.

6. The appellant sought indulgence of the State Bar Council of Rajasthan for taking appropriate action against the respondents as envisaged under section 35 of the Act on the aforesaid grounds. It was also contended that Respondent No. 2 work in the same chamber in which the Respondent No.1 has been sitting and that Respondent No. 3 is the brother-in-law of Respondent No.1. Hence, in this manner, all the Respondents are closely related to each other or friends and in connivance of Respondent No.1, the Respondent No. 2 and wife of Respondent No. 3 purchased the rights in the said property in order to earn profit out of the property in dispute which amounted to professional misconduct. The Respondent No.1 intentionally acted against the interest of the appellant in defending the said Reference.

7. The complaint was entrusted to the Disciplinary Committee of the State Bar Council of Rajasthan, but since the proceedings in the complaint could not be concluded by the Disciplinary Committee of the State Bar Council of Rajasthan within the stipulated period of one year, the same was transferred to the Bar Council of India in the year 1995.

8. The Bar Council of India vide final Judgment dated 24.03.2002, dismissed the complaint. It is against this judgment of the Bar Council of India dated 24.03.2002, that the Jaipur Vikas Pradhikaran has preferred an appeal under section 38 of the Act, upon which we heard the learned counsel appearing for the parties.

9. We heard the learned counsel appearing for the parties who had taken us through the entire records. Counsel appearing for the appellant submitted before us that the order passed by the Disciplinary Committee of the Bar Council of India was illegal and, therefore, is liable to be set aside. It was submitted by the counsel that the findings of the Disciplinary Committee that the allegation that the respondent no.1 did not conduct the case of the complainant properly was not proved on file is incorrect and against the records. He also assailed the findings of the Disciplinary Committee to the effect that the respondent no. 1 was not at all negligent in conducting the case of the complainant and submitted that the said findings are

contrary to the records on which he had relied upon. Various instances of alleged misconducts, misdemeanors and misdeeds of the respondent no.1, respondent no. 2 and respondent no. 3 were brought out by analyzing and referring to the contents of the complaint and also the evidence led by the parties.

10.The counsel appearing for the appellant also analyzed the sequence of events and placed before us a list of dates to support the contention that the respondent no. 1 on and after accepting the engagement from the appellant acted in violation of the professional ethics and also abused the trust reposed on him. He has in that context placed the following facts for our consideration.

11.He submitted that the complaint which was filed by the appellant stated that the respondent no. 1 was retained by the appellant institution in the year 1989 to conduct all such cases pending before the Civil Court filed against the institution. That the respondent no. 1 was also authorised in 1990 to appear and plead in all the reference cases filed against the appellant herein and also in all pending references and due to the aforesaid engagement, the appellant granted a special enhancement of a sum of Rs.600/- per month to the respondent no.1 in his monthly retainership. It is also disclosed from the records that the reference case no. 14/1982 which is the basis and the subject matter of the complaint filed, was a land acquisition matter under Section 18 of the Land Acquisition Act pending in the Civil Court, Jaipur City, Jaipur wherein the respondent no. 1 was authorised to conduct the case on behalf of the appellant as a counsel. The authorisation was on 5.10.1990 and he started conducting the said case from the said date. It is, however, also disclosed from the records placed before us that the aforesaid reference case no. 14/1982, the Collector passed an award in favour of the land owners, namely, Sh. Abdul Samad, Abdul Latif and Abdul Hamid determining the land compensation of Rs.16,200/- only for the entire land.

12. One Mrs. Shanta Sharma, thereafter purchased the right to seek compensation in the said land on 20.9.1980 and 5.2.1982. On 30.1.1990, Smt. Shanta Sharma executed an assignment deed in favour of relatives of respondent no. 2, namely, Vimla Surana, Rajendra Surana, Jitendra Surana and Manak Surana and Smt. Asha Gupta, wife of respondent no.3, who also happens to be the sister of respondent no.1. It is shown from the records that the respondent no.2 and the respondent no.3 have been appearing for the claimants claiming higher compensation before the Reference Court after the relatives of the respondent no. 2 and the wife of respondent no.3 got themselves substituted in place of original owners. They were contesting parties in the Reference Court who were represented by respondent no.2 and the respondent no.3.

13. He also pointed out that on 19.1.1990, respondent no. 1 appeared for the wife of the respondent no. 3 who was his sister, she having been substituted as a claimant in the proceeding. Despite the said fact, it appears that on 5.10.1990, the appellant engaged respondent no.1 as its counsel, which engagement was accepted by the respondent no. 1 without disclosing the fact that he had already appeared in the case on behalf of respondent no.3. Be that as it may, date was fixed in the said proceeding on 7.12.1991 when the written statement was to be filed. It appears that the respondent no.1 who was representing the

appellant herein, did not appear in the proceeding on that date nor had he prepared the written statement. Since the written statement was not filed, and the respondent no. 1 also did not appear on the date fixed, the defence of the appellant was struck off, but the said fact was not brought to the notice of the appellant by the respondent no.1. Thereafter in the said reference proceedings, a date was fixed for leading evidence. On the said date i.e. 10.11.1993, respondent no. 1 informed the court that no evidence is to be produced on behalf of the appellant. In view of the aforesaid statement made by the respondent no.1, an order was passed closing the evidence and fixing the matter for final hearing.

14. The reference was argued thereafter and it is the contention of the appellant that the respondent no. 1 did not argue the said reference properly. Be that as it may, on 2.12.1993, an order came to be passed enhancing the compensation for the acquired land from Rs.16,200/- to Rs.1.25 crores. The allegation of the appellant is that even the said order was not communicated and that the appellant came to know about the aforesaid position and also of the order increasing the value of compensation only from the execution case filed. Further allegation was that when the defence was struck out, the respondent no. 1 did not appear nor did he take any steps for getting the said order recalled. He also did not even communicate the order and even thereafter, there was no communication when the final order was passed despite the fact that he was required to inform the development of the case at each step. So far the respondent no. 2 and 3 are concerned, the allegation was that the said respondent no. 2 and 3 are also Advocates who share the same chamber with respondent no. 1. They also filed common and joint application for allotment of chamber which indicate that they are working together and, therefore, they are also parties to the aforesaid conspiracy of obtaining practically an ex-parte order against the appellant so as to derive illegal benefit.

15. Be it stated herein that later on the application filed by the appellant, the aforesaid judgment and order of the Reference Court has since been set aside.

16. In view of the aforesaid alleged lapses and willful default on the part of the respondent no.1, the aforesaid complaint was filed by the appellant under Section 35 of the Advocates Act alleging misconduct against the respondent no.1, as also the respondent no. 2 and 3 on the ground that the respondent no.1 appeared for claimant prior to his engagement as counsel for the appellant. It was also alleged that since an assignment deed was made out in favour of the sister of the respondent no.1 on 30.1.1990, the respondent no. 1 should not have accepted the brief and the very fact that he accepted the engagement without disclosing the material facts, proves and establishes the allegation of misconduct.

17. The various contentions of the counsel appearing for the appellant were, however, refuted by the counsel appearing for all the respondents, namely, respondents no. 1, 2 and 3. They have relied upon the replies filed by the said respondents to the complaint filed and also on the findings recorded by the Disciplinary Committee while exonerating all the respondents.

18. In the light of the aforesaid submissions, let us examine the facts of the present case. From the facts disclosed hereinbefore, it is established that an award was passed by the Collector in respect of the land in question on 4.3.1982 determining the value of the land at

Rs.16,200/- for the entire land. At that stage the claimants were the three land owners. After the aforesaid award was passed, the three land owners, namely, Abdul Samad and two others transferred the right to receive compensation to Smt. Shanta Sharma on 20.9.1980 and 5.2.1982. Smt. Shanta Sharma thereafter executed the assignment deed in favour of relatives of respondent no. 2 , namely, Vimla Surana, Rajendra Surana, Jitendera Surana and Manak Surana in whose favour also the aforesaid assignment deed was made out. The records available also disclose that the aforesaid relatives of respondent no.2 and Smt. Asha Gupta, wife of respondent no.3 also got themselves substituted in the reference proceedings, which is Reference Case No. 14/1982. These persons got themselves substituted only on the basis of such assignment without which they had no right to get themselves substituted in place of original owners. After substitution, Smt. Asha Gupta, the wife of respondent no.3 and sister of respondent no.1 and the aforesaid relatives of respondent no.2 were parties in the reference proceedings as claimants. Respondent no. 1 appeared in the said reference case on 19.1.1990 for his sister (wife of respondent no.3).

19. Despite the aforesaid fact, the respondent no.1 accepted the engagement given to him by the appellant as its counsel to contest the claim of the aforesaid contesting claimants, one of which was his own sister. We also find from the records that in fact the respondent no.1 was the retaining counsel of the appellant from the year 1989 and, therefore, he could not have entered appearance on behalf of the wife of the respondent no. 3 on 19.1.1990. The respondent no. 1 therefore not only appeared for the wife of the respondent no. 3 in the same reference in which he also appeared for the appellant, who were contesting the claims of the claimant including his own sister. These activities of the respondent no. 1 were unbecoming of a professional lawyer and also clear cases of misconduct.

20.The defence taken was that there was some confusion with regard to the appearance slip on 19.1.1990 for the appearance slip which was filed in the aforesaid reference case on 19.1.1990 was meant for a different case. But the said appearance slip appears to have been manipulated later on by making over-writing on the same. The misdemeanor of the respondent no. 1 did not end only with the aforesaid position. On 7.12.1991, the written statement was required to be filed, but no such written statement was prepared nor was it filed and even respondent no. 1 did not appear in the said proceedings on that date, for which the defence of the appellant was struck off. Even the said fact was not brought to the notice of the appellant by the respondent no.1. Even thereafter when the matter was listed for recording of evidence on 10.11.1993, the respondent no. 1 informed the court that no evidence was being produced on behalf of the appellant. That statement appears to have been made without any positive instructions of the appellant in that regard and without even informing the appellant about the said fact. Consequent upon the aforesaid representation made by the respondent no. 1, the evidence of the appellant was closed on 10.11.1993 and the case was fixed for arguments. On 2.12.1993 the order was passed by the Reference Court enhancing the compensation from Rs.16,200/- to Rs.1.25 crores. The said order was also not communicated by the respondent no. 1 to the appellant.

21. Counsel appearing for the respondent no. 1 however, during his course of arguments, submitted that he was not required to apply for any certified copy and send the same to the

appellant in terms of his engagement. But the said fact is belied from the fact that in terms of his engagement and he being a retaining counsel, it is his obligation to provide all information regarding the development of the case and also to provide copies of the orders passed along with his opinion. It was necessary on his part and he was duty bound to take steps for recalling the order of striking off the defence. At least he should have sent such an advice. He had conducted the case at one stage against the appellant despite being a paid retainer of the appellant and also despite the fact that there was a conflict of interest. In fact, the respondent no. 1 was under an obligation to disclose his interest in the case and should have refused to accept the brief when offered to him. Nothing of the nature was done and rather he paved the way for getting enhancement of compensation for his sister. It is therefore established that the respondent no. 1 stage managed the entire proceeding and set the course so that the higher claim of the newly substituted claimants are accepted.

22. In the case of *V.C. Rangadurai Vs. D. Gopalan and others reported in*¹ a three Judges Bench of this Court has stated and outlined the duties and responsibilities of a counsel. In paragraph 30 of the said judgment this Court has held that counsel's paramount duty is to the client and accordingly where he forms an opinion that a conflict of interest exists, his duty is to advise the client that he should engage some other lawyer. It was further held that it is unprofessional to represent conflicting interests, except by express consent given by all concerned after a full disclosure of the facts. The Court further went on to hold that the relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith and that it is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. This Court also held that when a lawyer is entrusted with a brief, he is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust.

23. In the present case, it appears to us that the respondent no. 1 had not only not disclosed the conflicting interests that he had in the matter but had gone a step further by betraying the trust reposed on him by the complainant. The facts which are analyzed clearly prove the guilt of the respondent no. 1. He acted in a manner unbecoming of a lawyer, who was bound by ethical conduct and failed to protect the interest of his client.

24. Counsel appearing for the respondent no.1, however, submitted that a case of this nature must be proved beyond all reasonable doubts and not on preponderance of probabilities. There is no dispute of the aforesaid position as it is also held in the aforesaid case by this Court that findings in disciplinary proceedings must be sustained by high degree of proof than that is required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution.

25. Counsel appearing for the respondent no.1 also drew our attention to a two judges decision of this Court in *Pawan Kumar Sharma Vs. Gurdial Singh reported in (1998) 7 SCC 24* wherein this Court has held that charge of professional misconduct is in the nature of quasi criminal charge and due to the same, it is required to be established not by preponderance of probabilities, but beyond a reasonable doubt. Even keeping in view the

aforesaid standard of proof in mind, we find that by the sequence of events as mentioned in the case and proved through evidence led that the respondent no.1 did not adhere to the professional ethics by which he was bound as stated hereinbefore.

26. The factual narration which has been given and the conduct of the respondent no.1 in conducting the case clearly proves and establishes his misdemeanor and misconduct and, therefore, we find the respondent no.1 guilty of professional misconduct.

27. We, therefore, order and direct that respondent no.1 be suspended as an Advocate from practice for a period of six months from today.

28. So far as the defence raised by the respondent nos. 2 and 3 is concerned, we have considered the same in the light of the records also. So far the allegations against the respondent no. 2 are concerned, he has appeared in the aforesaid reference case as a lawyer and he was not a claimant himself. It is true that he is sitting in the same chamber as that of respondent no.1, but from this mere fact, it cannot be held that he is also guilty of the same or similar misconduct as that of respondent no.1. Although his relatives have purchased the right to claim compensation and have substituted themselves as claimants, but he is only representing them in the capacity of an Advocate and except for that no other fact has been proved by the appellant which would lead to and prove his guilt or could be said to be a misconduct. Similarly, so far as respondent no. 3 is concerned, he was representing his wife only in the reference case and was the chamber-mate of the respondent no.1. Although his wife was a claimant herself, there could be an unholy alliance between his wife and the respondent no.1, but there is not enough evidence on record to prove and establish that the respondent no. 3 has committed any misconduct.

29. Therefore, we uphold the order of the Disciplinary Committee holding that the respondent no. 2 and 3 are not guilty of the charges and allegations of misconduct made against them. So far as respondent no. 1 is concerned, we modify the order passed by the Disciplinary Committee of the Bar Council of India and direct that he shall be suspended as an Advocate from practice for a period of six months from today.

30. The appeal is disposed of in terms of the aforesaid order. There will be no order as to costs.

Judgment Referred.

¹(1979) 1 SCC 0308