SUPREME COURT OF INDIA

Narain Pandey

Vs.

Pannalal Pandey

C.A.No.6363 of 2004

(R.M.Lodha and Anil R. Dave JJ.)

10.12.2012

JUDGMENT

R.M. LODHA, J.

1. The complainant is in appeal under Section 38 of the Advocates Act, 1961 (for short, '1961 Act') aggrieved by the judgment and order dated 20.6.2004 passed by the Disciplinary Committee of the Bar Council of India.

2. The appellant filed a complaint against the respondent, an advocate practicing in Tehsil Gyanpur, District Sant Rabidass Nagar, Bhadohi under Section 35 of the 1961 Act before the Bar Council of Uttar Pradesh (for short, 'BCUP') alleging that he is involved in number of false cases by forging and fabricating documents including settlement documents without the knowledge of the parties in the Consolidation Court. The complainant alleged that besides the cases of other people, in the case of the complainant also without his knowledge and other co-khatedars, the respondent filed a compromise deed by forging and fabricating their signatures and obtained orders from the Consolidation Court. The complainant gave the details of four cases in this regard. The complainant also stated in the complaint that respondent has been earlier held guilty of professional misconduct and, in this regard, referred to the judgment in the matter of Diwakar Prasad Shukla v. Panna Lal Pandey. The complainant prayed that the respondent be proceeded with the professional misconduct and be punished by cancelling his license to practice.

3. The complaint was referred to its Disciplinary Committee by BCUP. The respondent filed written statement to the complaint and denied the allegations made in the complaint. In his reply, the respondent denied that he has forged signatures or created any fictitious compromise documents. He set up the plea that the complaint has been filed against him due to enmity.

4. The complainant filed his affidavit in support of the complaint and in the course of enquiry examined seven witnesses. The complainant also produced documentary evidence. On the other hand, although the respondent filed his affidavit in support of the reply but neither he offered himself for cross-examination nor he let in any evidence in opposition to the complaint and in support of his reply.

5. The Disciplinary Committee, BCUP considered the evidence tendered by the complainant at quite some length and observed that all the witnesses produced by the complainant had supported the allegations made in the complaint; the witnesses had stated that compromises which were filed by the respondent-advocate were not signed by them and they had never engaged the respondent as their advocate to conduct their cases in the Consolidation Court. The Disciplinary Committee, BCUP also observed that the respondent-advocate did not cross-examine the witnesses of the complainant on this point. On careful analysis of the evidence, the Disciplinary Committee, BCUP concluded as follows : "From the above discussion and from the perusal of documents it is clear that accused Advocate is involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromise which adversely affect the interest of the parties concerned……."

6. Insofar as respondent's past conduct was concerned, the Disciplinary Committee, BCUP noted thus:-

> "From the perusal of judgment passed by State Bar Council and Bar Council of India, it is established that State Bar Council had taken lenient view by reprimanding the accused Advocate which was modified by Bar Council of India who affirmed the reprimand order and also imposed Rs. 1000/- as cost, failing which accused Advocate will be suspended for the period of six months. The matter involve in the said case is that accused Advocate had filed a fictitious compromise in the Court of Consolidation Officer. Present complaint is also about farzy vakalatnama and fictitious compromise.

7. The Disciplinary Committee, BCUP having regard to the respondent's previous professional misconduct and the finding that he was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises, passed an order dated 28.5.2002 debarring him from practice for a period of seven years from the date of the judgment.

8. The respondent-advocate, challenged the order of the Disciplinary Committee, BCUP in appeal under Section 37 of the 1961 Act before the Disciplinary Committee of the Bar Council of India (BCI). The Disciplinary Committee, BCI heard the parties and held that respondent herein (appellant therein) had acted negligently in the matters before the Chakbandi Officer. However, the Disciplinary Committee, BCI did not agree with the finding of the Disciplinary Committee, BCUP that the advocate had forged the signatures. The Disciplinary Committee, BCI, accordingly, modified the order of punishment and reprimanded him and also imposed a cost of Rs. 1,000/- to be paid by him to the BCI towards the Advocates Welfare Fund and if the amount was not paid within one month from the date of the receipt of the order he would be suspended from practicing for a period of six months. The order passed by the Disciplinary Committee, BCI on 20.6.2004 is the subject matter of appeal.

9. The consideration of the matter by the Disciplinary Committee, BCI is clearly flawed. It overlooked the most vital aspect that seven witnesses tendered in evidence by the complainant had stated clearly and unequivocally that the respondent-advocate had filed forged and fabricated vakalatnamas on their behalf and they had not filed any compromise in Consolidation Court. The respondent-advocate had not at all cross-examined these witnesses on the above aspect although they were cross-examined on other aspects. There was ample documentary evidence as well which proved the allegations made in the complaint that the respondent-advocate had filed forged and fabricated vakalatnamas as well as compromises in diverse proceedings before the Consolidation Court. The Disciplinary Committee, BCI accepted the oral submission of the respondent-advocate (appellant therein) without realizing that the respondent even did not offer himself for cross- examination in respect of the affidavit that he filed in support of his reply. As a matter of fact, the respondent-advocate did not tender any evidence whatsoever in rebuttal. Mere oral submission unsupported by oral or documentary evidence on behalf of the respondent-advocate did not justify reversal of thorough and well-considered finding by the Disciplinary Committee, BCUP on analysis of the oral and documentary evidence let in by the complainant in support of the complaint. It is true that the complainant and the respondent-advocate are

uncle and nephew and some dispute regarding the property amongst the family members of the appellant and the respondent was going on but on that basis the well- reasoned and carefully written finding recorded by the Disciplinary Committee, BCUP was not liable to be reversed by the Disciplinary Committee, BCI.

10. The finding recorded by the Disciplinary Committee, BCI, "this Committee on perusal of the allegations made in the complaint does not agree with the findings of appearing on behalf of both the sides and forging the signatures arrived at by the Disciplinary Committee of the State Bar Council of Uttar Pradesh and the order wherein the appellant is debarred from practice for seven years" cannot be sustained.

11. On careful consideration of the entire material placed on record, we are of the considered view that the findings recorded by the Disciplinary Committee, BCUP that the respondent-advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises which adversely affected the interest of the parties concerned deserve to be restored and we order accordingly.

12. The question now is of award of just and proper punishment. As noted above, the Disciplinary Committee, BCUP debarred the respondent from practice for a period of seven years. The Disciplinary Committee, BCI in the impugned order while holding that the respondent should have been careful in dealing with the matters before the Chakbandi Officer and that he had acted negligently modified the order of punishment awarded by the Disciplinary Committee, BCUP and reprimanded the respondent-advocate (appellant therein) and also imposed cost and default punishment, as noted above.

13. The award of punishment for a professional misconduct is a delicate and sensitive exercise. The Bar Council of India Rules, as amended from time to time, have been made by the BCI in exercise of its rule making powers under the 1961 Act. Chapter II, Part VI deals with standards of professional conduct and etiquette. Its preamble reads as under:

> "An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his

non-professional capacity may still be improper for an Advocate. Without prejudice to the generality of the foregoing obligation, an Advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned."

14. The matters relating to professional misconduct of advocates under the 1961 Act have reached this Court from time to time. It is not necessary to deal with all such cases; reference to some of the cases shall suffice. In Bar Council of Maharashtra v. M.V. Dabholkar and others[1], a seven-Judge Bench of this Court was concerned with an appeal filed under Section 38 of the 1961 Act by the Bar Council of Maharashtra and the main controversy therein centered around the meaning of the expression "person aggrieved". While dealing with the said controversy, V.R. Krishna Iyer, J. in his concurring opinion made the following weighty observations with regard to the Bar and its members:

> "52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('The Practice of Law is a Public Utility' — 'The Lawyer, The Public and Professional Responsibility' by F. Raymond Marks et al — Chicago American Bar Foundation, 1972, p. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney-General and the

Advocates-General too are distressed if a lawyer "stoops to conquer" by resort to soliciting, touting and other corrupt practices."

15. In V.C. Rangadurai v. D. Gopalan and Others[2], a majority judgment in an appeal filed under Section 38 of the 1961 Act speaking through V.R. Krishna Iyer, J. observed as follows:

> "4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.
>
> 5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility — a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned counsel for the appellant.
>
> 6. But, as we have explained at the start, every punishment, however has a functional duality — deterrence and correction. Punishment for professional misconduct is no exception to this "social justice" test. In the present case, therefore, from the punitive angle, the deterrent component persuades us not to interfere with the suspension from practice reduced "benignly" at the appellate level to one year. From the correctional angle, a gesture from the Court may encourage the appellant to turn a new page. He is not too old to mend his ways. He has suffered a litigative ordeal, but more importantly he has a career ahead. To give him an opportunity to rehabilitate himself by changing his ways, resisting temptations and atoning for the serious delinquency, by a more zealous devotion to people's causes like legal aid to the poor, may be a step in the correctional direction.

xxx xxx xxx

11. Wide as the power may be, the order must be germane to the Act and its purposes, and latitude cannot transcend those limits. Judicial 'Legisputation' to borrow a telling phrase of J. Cohen [Dickerson : The Interpretation and Application of Statutes, p. 238], is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. In that sense, 'interpretation is inescapably a kind of legislation'. This is not legislation stricto sensu but application, and is within the court's province.

12. We have therefore sought to adapt the punishment of suspension to serve two purposes — injury and expiation. We think the ends of justice will be served best in this case by directing suspension plus a provision for reduction on an undertaking to this court to serve the poor for a year. Both are orders within this Court's power."

16. In M. Veerabhadra Rao v. Tek Chand[3], a three-Judge Bench of this Court considered the relevant provisions contained in Bar Council of India Rules with reference to standards of professional conduct and etiquette and also sub-section (3) of Section 35 of 1961 Act. In paragraph 28 (Pg. 586) of the Report, this Court observed thus: "28. Adjudging the adequate punishment is a ticklish job and it has become all the more ticklish in view of the miserable failure of the peers of the appellant on whom jurisdiction was conferred to adequately punish a derelict member. To perform this task may be an unpalatable and onerous duty. We, however, do not propose to abdicate our function howsoever disturbing it may be."

16.1. Then in paragraph 30 (Pg. 587), this Court observed that the legal profession was monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. The Court then referred to the decision of this Court in M.V. Dabholkar1 and observed as follows:

> "If these are the high expectations of what is described as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct……..".

16.2. Then in paragraph 31 of the Report (Pgs. 588-589) this Court held as under:

> "31. Having given the matter our anxious consideration, looking to the gravity of the misconduct and keeping in view the motto that the punishment must be commensurate with the gravity of the misconduct, we direct that the appellant M. Veerabhadra Rao shall be suspended from practice for a period of five years that is up to and inclusive of October 31, 1989. To that extent we vary the order both of the Disciplinary Committee of the State Bar Council as well as the Disciplinary Committee of the Bar Council of India."

17. In a recent decision of this Court in Dhanraj Singh Choudhary v. Nathulal Vishwakarma[4], this Court speaking through one of us (R.M. Lodha, J.) in paragraph 23 of the Report (Pg. 747) observed as follows:

> "23. The legal profession is a noble profession. It is not a business or a trade. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting. An advocate's attitude towards and dealings with his client have to be scrupulously honest and fair."

17.1. In paragraph 24 (Pg. 747), the observations made in V.C. Rangadurai2 were quoted and then in paragraph 25 of the Report (Pg. 747), the Court held as under :

> "25. Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality."

17.2. The Court in para 32 (Pg. 748) observed that the punishment for professional misconduct has twin objectives – deterrence and correction.

18. In light of the above legal position, we now consider the question of punishment. We have restored the finding of the Disciplinary Committee, BCUP viz., that the respondent-advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises. The professional misconduct committed by the respondent

is extremely grave and serious. He has indulged in mischief-making. An advocate found guilty of having filed vakalatnamas without authority and then filing fictitious compromises without any authority deserves punishment commensurate with the degree of misconduct that meets the twin objectives – deterrence and correction. Fraudulent conduct of a lawyer cannot be viewed leniently lest the interest of the administration of justice and the highest traditions of the Bar may become casualty. By showing undue sympathy and leniency in a matter such as this where the advocate has been found guilty of grave and serious professional misconduct, the purity and dignity of the legal profession will be compromised. Any compromise with the purity, dignity and nobility of the legal profession is surely bound to affect the faith and respect of the people in the rule of law. Moreover, the respondent-advocate had been previously found to be involved in a professional misconduct and he was reprimanded. Having regard to all these aspects, in our view, it would be just and proper if the respondent-advocate is suspended from practice for a period of three years from today. We order accordingly.

19. The order passed by the Disciplinary Committee, BCI is modified and the respondent-advocate is awarded punishment for his professional misconduct, as indicated above. Civil Appeal is allowed to that extent with no order as to costs.

20. The Registrar shall send copies of the order to the Secretary, State Bar Council, Uttar Pradesh and the Secretary, Bar Council of India immediately.

[1] (1975) 2 SCC 702
[2] (1979) 1 SCC 308
[3] 1984 (Supp) SCC 571
[4] (2012) 1 SCC 741