

SUPREME COURT OF INDIA

Palanisamy

Vs.

K Dhanpalan

C.A.No.8299 of 2010

(Dipak Misra,J., A.M. Khanwilkar and Mohan M.Shantanagoudar,JJ.,)

21.03.2017

JUDGMENT

A.M.Khanwilkar,J.,

1. The respondent filed a complaint before the Bar Council of Tamil Nadu on 02.09.1997, for initiating action against the appellants regarding their professional misconduct. The Bar Council of Tamil Nadu referred the complainant to its Disciplinary Committee vide a Resolution No. 271/1998 dated 26.10.1998. The Disciplinary Committee No. II of the Bar Council of Tamil Nadu then registered a complaint bearing D.C.C. No. 57/1998. As the Disciplinary Committee of the State Bar Council could not complete the enquiry within one year, the complaint was transferred to the Bar Council of India and came to be renumbered as Transferred Case No. 150/2000. The Disciplinary Committee of the Bar Council of India proceeded with the enquiry and at the end of the enquiry found that the appellants were guilty of professional misconduct. The Committee, however, took a lenient view and merely reprimanded the appellants with strict warning that in future they should not indulge in business activities or fail to maintain proper accounts of their clients. The Committee also directed appellant Nos. 1 and 2 to pay costs of Rs. 5000/- to the respondent-complainant and to deposit a further amount of Rs. 10,000/- in the Advocates Welfare Fund of Bar Council of India, failing which they would undergo suspension from practicing as advocates for a period of 6 (six) months. This decision of the Bar Council of India is the subject matter of the present appeal.

2. According to the appellants, the Disciplinary Committee failed to provide a fair opportunity of hearing to them including by not permitting cross-examination of the respondent-complainant. Whereas, the Disciplinary Committee accepted the allegations made by the respondent-complainant as a gospel truth because it was so stated by him on affidavit. This has resulted in serious miscarriage of justice. It is also contended that merely on the basis of affidavit of the respondent, the Disciplinary Committee could not have recorded a finding of guilt against the appellants. It is then contended that the documents relied upon by the respondent-complainant were in vernacular language. Without translating those documents and giving translated copy thereof to the appellants, the Disciplinary

Committee could not have relied on the same much less record a finding with reference to those documents. The appellants contend that the enquiry by the Disciplinary Committee and more so its decision is vitiated for the aforementioned reasons. It is submitted that even on merits, the Disciplinary Committee could not have recorded a finding of guilt without giving due weightage to the explanation offered by the appellants. It is also submitted that the respondent-complainant is none other than the brother of the appellants; and the complaint made by him was the outcome of personal differences between the family members. The issues raised by him were at best of civil nature. Finally, it is contended that the appellants have already suffered the ignominy of having a complaint regarding professional misconduct, instituted against them, and more so because of the finding of guilt recorded by the Disciplinary Committee and being reprimanded.

3. Per contra, the respondent-complainant submitted that the Bar Council of India has recorded a finding of guilt after a proper enquiry. The allegations in the complaint against the appellants were serious enough to constitute professional misconduct. It has been found that the appellants failed to maintain proper rental accounts of the respondent-complainant. It is also found that the appellants failed to get endorsement or approval from the respondent-complainant. Further, the appellants failed to file a suit, in spite of instructions given by the respondent-complainant and also appeared against the respondent-complainant - though they were engaged by the respondent-complainant at an earlier point of time. The Bar Council of India also held that appellant Nos. 1 and 2 were running an unauthorized Chit Fund finance business and were depositing the rent and other amounts accrued from the properties of the respondent-complainant towards Chit subscription and were facing a criminal case regarding embezzlement of the Chit prize amount. The Disciplinary Committee, therefore, justly recorded the finding of guilt against the appellants. According to the respondent-complainant, the finding of guilt is based on material on record and no fault can be found with the view taken by the Disciplinary Committee. The counsel for the respondent-complainant has, however, not countered the submission made by the appellants that the parties were related to each other. But he submitted that the appellants misused the trust reposed in them by the respondent-complainant. He submits that just because the disciplinary enquiry against the appellants remained pending from quite some time, that by itself cannot be the basis to set aside the finding of guilt and the order of punishment. The learned counsel for the respondent-complainant, however, did not rebut the plea taken by the appellants that the respondent-complainant had tendered affidavits during the enquiry and also produced other evidence, without giving opportunity to the appellants to cross-examine the respondent-complainant and his witnesses. He has also not disputed the plea taken by the appellants that the evidence produced by the parties before the Disciplinary Committee was in vernacular language and translation of those documents was neither done nor made available to the Committee or the appellants.

4. The moot question is: whether the enquiry conducted by the Disciplinary Committee in the present case can be said to be a fair and proper enquiry? Since the allegations made against the appellants were serious and the finding of guilt recorded against them inevitably had civil consequences, it is cardinal that they should have been allowed to cross-examine the concerned witnesses. Not granting of such opportunity, entails in infraction of principles of

natural justice. Additionally, we are at a loss to appreciate as to how the Disciplinary Committee consisting of members who were not familiar with the vernacular script, could analyse and appreciate the documentary evidence relied by the parties when the said evidence was in a language not known to them. Without proper analysis of those documents, the members of the Disciplinary Committee could not have arrived at any conclusion, leave alone a conclusive opinion about its efficacy.

5. These infirmities in the enquiry conducted by the Disciplinary Committee, in our opinion, are fatal. It would necessarily follow that the entire enquiry is vitiated. Ordinarily, on this finding, we would have relegated the parties before the Bar Council of India for conducting a fresh enquiry. However, considering the fact that the complaint was made in 1997, that too by none other than the brother of the appellants because of some family disputes and that the appellants have suffered ignominy for all this time due to pendency of enquiry against them and including the finding of guilt recorded by the Disciplinary Committee of the Bar Council of India, we are of the considered opinion that the matter must be put at rest. Accordingly, to do substantial justice, in the fact situation of the present case, we desist from relegating the parties before the Bar Council of India for a fresh enquiry.

6. This appeal succeeds. The impugned order passed by the Bar Council of India dated 05.02.2010 in BCI Tr. Case No. 150 of 2000 is set aside.

7. We make it clear that if the appellants have already deposited/paid the amount towards costs in terms of the impugned decision, they shall not be entitled for refund thereof from the respondent-complainant or the Advocates Welfare Fund of the Bar Council of India as the case may be.

8. No order as to costs.