

BOMBAY HIGH COURT

Advocate General of Bombay

Vs

Phiroz Rustomji Bharucha

(Blanesburgh, C.J. Macmillan and L Sanderson, JJ.)

05.07.1935

JUDGMENT

Blanesburgh, J.

1. Their Lordships after hearing these petitions came to the conclusion that in none of them were the circumstances such as to justify them in advising His Majesty to grant special leave to appeal, and they gave expression to that conclusion.
2. Their Lordships now propose to state in a few words certain considerations. which were present to their minds in reaching their decision.
3. It is plain that the learned Judges of the High Court held that the fact that the advocates concerned had been convicted of a criminal offence was evidence of their misconduct within the meaning of Section 10(1) of the Indian Bar Councils Act and that this misconduct, though not committed in their professional capacity, entitled the Court to take disciplinary action against them. With this view their Lordships agree. The learned Judges, in the exercise of their statutory discretion, then proceeded to consider whether in the circumstances the misconduct so proved called for any disciplinary action whether in the nature of reprimand, suspension, or removal from practice. The learned Judges decided that it did not. So interpreted, the action of the High Court in thus exercising their discretion is not such as His Majesty can be advised further to consider.
4. But to avoid all misapprehension their Lordships think it right to add that in so advising His Majesty they must not be taken to endorse all the views which are expressed in the judgment of the learned Chief Justice and his colleagues. In particular, their Lordships do not think that it was incumbent on the Advocate General to adduce evidence of the grounds on which the convictions were based. It was for the Court to decide whether conviction of having been a member and having assisted and managed the operations of an unlawful association having for its object interference with the administration of the law or with the maintenance of law and order and

constituting a danger to the public peace was evidence of such misconduct on the part of an advocate as to render him unfit for the exercise of his profession, or to call for the Court's censure. It was for the impugned advocate to adduce any considerations which might induce the Court to refrain from taking disciplinary action.

4. Their Lordships do not however find that the learned Judges misdirected themselves in law as to their powers in the exercise of their discretion and, that being so, it would not be fitting to express any opinion by way of agreement or otherwise on the considerations upon which they proceeded in deciding to refrain from any disciplinary action.

5. These observations apply equally to the case of the pleaders.