

PETITIONER:
V.P. KUMARAVELU

Vs.

RESPONDENT:
THE BAR COUNCIL OF INDIA, NEW DELHI & ORS.

DATE OF JUDGMENT: 04/02/1997

BENCH:
S.C. AGRAWAL, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF FEBRUARY, 1997

Present:

Hon'ble Mr. Justice S.C. Agrawal
Hon'ble Mrs. Justice Sujata V. Manohar
A.T.M. Sampath and V. Balaji, Advs. for the appellant
A. Mariarputham and Ms. Aruna Mathur and V.
Krishnamurthy, Advs. for the Respondent Nos. 2-3
J U D G M E N T

The following Judgment of the Court was delivered:
Mrs. Sujata V. Manohar, J.

These appeals arise from a common order dated 15.5.1986 passed by the Disciplinary Committee of the Bar Council of India in D.C.I.T. Case Nos.48 and 49 of 1985. These two cases pertain to the appellant and were transferred to the appellant and were transferred to the Disciplinary Committee of the Bar Council of India under the provisions of Section 36B(1) of the Advocates Act, 1961 as the Disciplinary Committee of the Bar Council of Tamil Nadu could not dispose of these cases within the prescribed period of one year.

On or about 21st of October, 1978, the appellant was appointed as City Government Pleader in all the Civil Courts constituted in Madras other than the High Court of Madras. The work was spread over several courts in Madras and the appellant as the city Government Pleader was required to conduct all the civil matters pending in the civil courts of Madras except the High Court, on behalf of the Government and also to give his opinion on these matters from time to time when required. The appellant was allowed the assistance of juniors who were not appointed by the Government. The respondent was provided with staff.

The first complaint which was filed by the Commission and Secretary, Government of Tamil Nadu against the appellant before the Disciplinary Committee of the Bar Council of Tamil Nadu bearing D.C. Case No. 48/1985 was in respect of Suit No.400 of 1978 on the file of the City Civil Court at Madras. The Government Pleader was instructed to appear on behalf of the State Government in that case. The Memo of Appearance had been filed by the earlier Government Pleader. The records of the case had been sent to the Office of the Government Pleader and he had also been asked to

prepare a written statement. However, when the appellant was appointed as Government Pleader, a fresh Memo of Appearance on his behalf had not been filed in the said suit nor were the papers put up before him. As a result, on 28.6.1979, the suit was decreed ex parte against the State. An application was thereafter moved by the appellant to set aside the ex parte order. The court set aside the ex parte order on condition that the Government should pay Rs.20/- as costs. However, the cost was not deposited. As a result the application to set aside the ex parte order was dismissed on 27-9-1979. Consequently the suit was decreed ex parte with costs.

This suit had been filed by the Travancore Textiles Pvt. Ltd. against the State of Tamil Nadu relating to a lease of land admeasuring 1240 sq.ft. forming part of a channel. The plaintiff had prayed for a declaration that the annual rent of Rs.3609.66 as also the Municipal taxes levied were illegal. The plaintiff had also made a prayer for refund of Rs.25,575.40 with interest at the rate 12% p.a. and for a further declaration that he need not pay any rent after 30.6.1974. The complainant alleged that as a result of the gross negligence on the part of the appellant the Government of Tamil Nadu had suffered substantial loss.

The appellant contended that since the office staff had not put up the papers of this case before him, it was through inadvertence that the suit was decreed ex parte. The Bar Council of India has, however, noted that at the time when an application for setting aside the ex parte order was filed the appellant must have known about the pendency of the case, and the serious consequences that would follow if the order for payment of costs were not complied with. The Bar Council has held that for this lapse the appellant cannot raise the plea that the staff was negligent. Now, although the application for setting aside the ex parte order is filed by the appellant, it is not clear from the record whether the appellant had personally appeared in court for setting aside the ex parte order or was personally aware of or was apprised of the order of costs which had been while setting aside the ex parte order.

In fact, the Bar Council of India has noted mitigating circumstance which go to show that blame cannot be attached solely to the appellant. It has noted that from the correspondence which is brought on record, it is clear that at no point of time the papers pertaining to the case were placed before the appellant except for moving an application for setting aside the ex parte order. It is also not known whether the application was actually moved by the appellant himself or through a junior. It is not clear whether the order which was passed on this application for payment of costs was brought to the notice of the appellant either. The Bar Council has also noted that after the summons in the case was served on the State of Tamil Nadu through the Secretary to the Government of Tamil Nadu in June 1978, a letter was sent on 27th of June, 1978 by the then Government Pleader. Thereafter the Collector of Madras vide his letter dated 20th of September, 1978, sent details and office remarks on the plaintiff's claim. At this time the appellant was not Government Pleader. These papers were received by his predecessor who made an endorsement on the letter of the Collector of Madras to the effect that remarks/statements be prepared. It is also not clear to whom this matter was assigned. According to the distribution of work, copy of which has been placed on record by the appellant, it was the duty of G. Jagannathan, the then Assistant to submit the records of the case of the City Government Pleader for

preparation of the written statement. In the letter addressed by the Collector of Madras he had directed the Executive Deputy Tehsildar, Egmore to meet the Government advocate with the concerned file and to render necessary assistance in preparing the draft written statement. But it appears that no one attended the office of the Government Pleader with the concerned file for preparing the written statement.

After the appellant took charge as the Government Pleader, he had also notified that representatives of the departments of the Government should remain present personally with files on various dates of hearing so that suitable instruction can be made available to the Government Pleader for conducting the case. But this instruction also does not seem to have been followed. It is in these circumstances that the case of the State went unrepresented.

The Bar Council has said that the office staff of the appellant was also responsible for misleading the appellant and keeping him in the dark. The Government also did not care to depute a responsible officer to attend the office of the Government Pleader.

After noting these circumstance the Bar Council of India has imposed a "lighter" punishment of severe reprimand after noting that the appellant is a fairly senior advocate in the State of Tamil Nadu and has a good reputation and a good standing at the Bar.

The next complaint No.17 of 1984 is in respect of a suit filed by an employee of the Directorate of Education of the State of Tamil Nadu challenging his date of birth. Summons was forwarded to the appellant along with a letter date 24.9.1979 informing him that the date of hearing in the case was 10.10.1979. There is an endoresment made by the office of the Government Pleader on that letter. Thereafter another letter of 25.9.1979 was received by the office of the Government Pleader from the Directorate of Education, Madras on which an endorsement was made, "remarks/written statement to be prepared". These remarks are in the same handwriting in which the endoresment on the previous letter is made. However, no memorandum for appearance was filed in that suit on behalf of the State of Tamil Nadu. On 26.10.1979 an ex parte decree came to be passed in that suit.

The appellant has contended that the office had not put up these papers before him. Therefore, there had been a lapse in attending to this case. Here also the Bar Council of India has accepted that there was no deliberate lapse on the part of the appellant. His only lapse was not to have kept the office in order. The Bar Council has held, "It may be that due to rush of work office might have kept him in dark and the papers might not have been put up.....". The finding against the appellant, therefore, is that he was not able to control his office on account of rush of work and also because the staff which was allotted to him had been negligent in the performance of its duties and had not put up the papers in the concerned cases before him to enable him to take appropriate action. The appellant has been held guilty of "constructive negligence", and the Bar Council of India has reprimanded him.

Looking to all the circumstances the appellant was negligent as he had failed to attend to the two cases. His client had to suffer ex parte decrees. There is, however, no finding of any mala fides on the part of the appellant or any deliberate inaction on his part in not attending to the two cases. Will his negligence or "constructive negligence" as the respondent-Bar Council puts it, amount to

professional misconduct? Whether negligence will amount to professional misconduct or not will depend upon the facts of each case. Gross negligence in the discharge of duties partakes of shades of delinquency and would undoubtedly amount to professional misconduct. Similarly, conduct which amounts to dereliction of duty by an advocate towards his client or towards his case would amount to professional misconduct. But negligence without moral turpitude or delinquency may not amount to professional misconduct.

In the case of *In re a vakil* (1926 ILR 49 Mad. 523), Coutts Trotter, C.J., said, "negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. Of that there is no suggestion here, and we are, therefore, able to say that there is no case to investigate, and that no reflection adverse to his professional honour rests upon Mr.M." In the case of *P.D. Khandekar v. Bar Council of Maharashtra & Ors.* (AIR 1984 SC 110 at 113), this Court said, "There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.....For and advocate to act towards his client otherwise than with utmost good faith is unprofessional. When an advocate is entrusted with a brief he is expected to follow norms of professional ethics and try to protect interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. When a person consults a lawyer for his advice he relies upon his requisite experience, skill and knowledge as a lawyer and the lawyer is expected to give proper and dispassionate legal advice to the client for the protection of his interests".

In the present case, there is failure on the part of the appellant to discharge his duties towards his client. This failure, however, is not deliberate. It is on account of heavy pressure of work coupled with lack of diligence on the part of his staff as well as on the part of his client in not sending a responsible person with papers to the office of the Government pleader. However, while the appellant cannot be held responsible for his client's failure to attend the office, the appellant cannot shift the blame entirely on his staff. As the head of the office it was his responsibility to make sure that the work is properly attended to and the staff performs its functions properly and diligently. The appellant has, therefore, rightly been held guilty of negligence. However, in the absence of any moral turpitude or delinquency on his part, we cannot sustain the finding of the Bar council of India that his conduct in the facts and circumstances of this case amounts to professional misconduct. In fact the various mitigating circumstances have been noted by the Bar council of India itself. The negligence on the part of the appellant in these circumstances cannot be construed as professional misconduct.

The appeals are, therefore, allowed. There will, however, be no order as to costs.