

CASE NO.:
Appeal (civil) 6142-6144 of 2001

PETITIONER:
RAJENDRA V. PAI

Vs.

RESPONDENT:
ALEX FERNANDES & ORS.

DATE OF JUDGMENT: 09/04/2002

BENCH:
R.C. Lahoti & P. Venkatarama Reddi

JUDGMENT:

R.C. Lahoti, J.

The appellant, an advocate on the rolls of the Bar Council of Maharashtra and Goa, has been found guilty of professional misconduct and by order dated 22.1.2000, passed under Section 35 of the Advocates Act, 1961, his name has been directed to be removed from the State roll of advocates. The appeal to the Bar Council of India preferred by the appellant has been dismissed on 22.12.2000. Feeling aggrieved by the said two orders these appeals have been preferred under Section 38 of the Advocates Act.

A brief resume of the facts would suffice for the purpose of this order. It appears that there were large scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved. Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn which identification was later on found to be false. The gist of only relevant one out of the several pleas taken up by the appellant before the Bar Council and pressed for the consideration of this Court by learned counsel for the appellant is that the entire episode points out only to rustic naivety on the part of the appellant though an advocate. It was submitted that the appellant did not solicit professional work as such and in fact the villagers confided in him because of his being an advocate, also looking after litigation relating to his family land, and the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation as they were likely to make an overall saving in litigation expenses by fighting collectively as a group and it is out of this fund that the appellant incurred expenses including those by himself. So far as false

identification in opening the bank account is concerned the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. This fact finds support from the circumstance that out of little less than 150, only 3 of the litigating landowners have filed these complaints to Bar Council. It was urged most passionately by the learned counsel for the appellant that it was the first fault, if at all, of the appellant and if debarred from practise for his life at his age yet in early forties, the appellant and his family would be completely ruined.

We have heard the learned counsel for the parties. Ordinarily, this Court does not interfere with the quantum of punishment in such like matters where an elected statutory body of professionals has found their own kinsman guilty of professional misconduct and hence not worthy of being retained in profession. So far as the finding as to professional misconduct is concerned we cannot find any fault or infirmity therewith and indeed learned counsel for the appellant very wisely and fairly gave up challenge to such finding and kept himself confined to pursuing and pressing what can be termed as a mere mercy appeal. Debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. No doubt probity and high standards of ethics and morality in professional career particularly of an advocate must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. Excepting the instance forming gravamen of the charge against the appellant there does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself. Undoubtedly, the appellant should not have indulged into prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. Though the explanation put-forward on behalf of the appellant which has been consistently taken before the State Bar Council, the Bar Council of India and before this Court, may not provide a legally acceptable defence so as absolve him from the charge of misconduct levelled against him but the same does deserve to be taken into consideration for mellowing down the gravity of indictment and hence for determining the quantum of punishment. In a group litigation wherein a little less than 150 persons were involved only 3 have found a cause for grievance inspiring them to complain against the appellant is a factor of some relevance. It was conceded by the learned counsel for the complainant-respondents that the complainants have not suffered any financial loss on account of the appellant. On the totality of the facts and circumstances of the case, in our opinion, it would meet the ends of justice if the appellant is suspended from practise for a period of seven years. Such sentence would satisfy the need for punishment and also act as deterrent on the appellant and set an example to others so as to prevent recurrence of such like incidents.

The appeals are partly allowed. Though the finding of the appellant having been guilty of committing professional misconduct as arrived at by the State Bar Council and the Bar Council of India is maintained, the punishment awarded to the appellant is modified. Instead of the name of the appellant being removed from the State rolls of Bar Council of the State it is directed that his licence to practise shall remain suspended for a period of seven years. Order awarding the costs is maintained. The appeals stand disposed of in these terms. No order as to the costs in this Court.

.....J
(R.C. LAHOTI)

.....J.
(P.VENKATARAMA REDDI)

JUDIS