

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4168 OF 2008

Markand C. Gandhi

...Appellant(s)

Versus

Rohini M. Dandekar

...Respondent(s)

O R D E R

Heard learned counsel appearing for the parties and Bar Council of India [for short, “B.C.I.”].

By the impugned order, B.C.I. recorded a finding that the appellant had committed professional misconduct and suspended him from practising as an advocate before any court or authority in India for a period of five years. While concluding the disciplinary proceeding cost of Rupees five thousand has been awarded against the appellant. It was directed that, in case the cost awarded is not paid within a period of one month, the period of suspension shall be extended for a further period of six months.

The sole respondent filed a complaint in the year 1984 before the Bar Council of Maharashtra [for short, “the State Bar Council”] for taking disciplinary action against the appellant as, according to the complainant, appellant had committed professional misconduct. As the

complaint could not be disposed of within the period of one year, as required under law, the same was transferred to the B.C.I. In view of the nature of the order that we propose to pass, it is not necessary to state respective cases of the parties. Suffice it to say that, on the pleadings of the parties, following issues were framed by the Disciplinary Committee of the B.C.I.:

- “1. Whether on 8th June, 1977, the respondent gave a threat to the petitioner as alleged? OPC**
- 2. Whether the respondent is guilty of preparing and drafting documents as alleged in Part No.7 of the complainant to the detriment of the complainant and her family members? OPC**
- 3. Whether the respondent accepted the briefs from persons whose interest was in clash to the interest of the complainant and her family member and thereby caused loss of the damage to the complainant as alleged?**
- 4. Whether the respondent issued a false certificate regarding marketability of title with respect to the disputed property with a view to take illegal gains and thereby committed professional misconduct as alleged? OPC**
- 5. Whether the Respondent continued the said certificate to be used for illegal gains despite notice, if so to what effect? OPC**
- 6. Whether the respondent in collusion with Mr. Vora, the Architect and builder Mr. B.S. Jain committed illegal acts as alleged and as a result made personal gains and committed profession misconduct? OPC**

7. Whether the respondent helped the builder and the Architect in their unauthorised acts to cross wrongful acts to the complainant as alleged? OPC

8. Whether the respondent is guilty of having committed professional or other misconduct as alleged vis a vis the complainant and her family members on the one hand and the Architect and the builder on the other hand? OPC”

The impugned order runs into 23 pages. Upto the middle of Page 10, the Committee has referred to cases of the parties; from middle of Page 10 to middle of Page 11, issues have been mentioned; from middle of Page 11 to the top of Page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder:

“We have gone through the records. The issues were framed on 18-8-1990. Issue No. 1 relates to a threat given by the respondent to the complainant on 8-6-1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand.

As far as the issue No. 2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record.

As far as the issue No. 3 is concerned, this is also proved by the complainant by her evidence. Issue No. 4 relates to the certificate issued by the respondent. This has also been proved by the complainant by documentary proof which is on record. Likewise Issue No. 6 is also proved by documentary proof.

Issues Nos. 6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the respondent.

The main issue in this controversy is issue No. 8 i.e., whether the respondent is guilty of professional misconduct or other misconduct. In this respect it is the admitted position before the Committee that some documents were already on record and retained by the respondent and the certificate issued by the respondent with regard to the property in question. It is also admitted position that in this matter a compromise letter was filed by the parties earlier.

We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the respondent. The allegations made are very serious. We are of the opinion that the respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any court or authority in India for a period of five years and we also impose a cost of Rs. 5,000/- to be paid by him to the Bar Council of India which on deposit will go the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more.”

From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I.

We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of *audi alteram partem* is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most.

Accordingly, the appeal is allowed, impugned order rendered by the Disciplinary Committee of the B.C.I. is set aside and the matter is remitted, for fresh consideration and decision on merits in accordance with law. Chairman of the B.C.I. will see that this case is not heard by the Disciplinary Committee which had disposed of the complaint by the impugned order and an altogether different Committee shall be constituted for dealing with this case.

We hope and trust that in future the Chairman or any other person empowered to constitute Disciplinary Committee shall act in such a manner so that the committee is manned by persons who can decide the matter with proficiency.

It is unfortunate that, though the complaint was filed before the State Bar Council in the year 1984 and transferred to the B.C.I. and numbered as Case No.107 of 1986, the matter remained pending before it for twenty two years. The Chairman of the B.C.I. would see that, in future, complaints are disposed of with reasonable despatch and not in this leisurely fashion so that people may repose confidence in the B.C.I., which is a statutory and autonomous body. The Committee shall be constituted within one month from the date of receipt/production of copy of this order and, thereupon, the re-constituted Committee shall dispose of the matter after giving opportunity of hearing to the parties in accordance with law within a period of six months from the date of its constitution.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
July 17, 2008.