

aside the direction of the National Commission to pay the amount in Pounds Sterling and hold that the respondent is entitled to get Rs. 28,30,000 with interest @ 18% from the date on which it preferred the claim petition before the appellant, till payment. The respondent is also entitled to receive Rs. 20,000/- towards costs ordered by the National Commission.

10. The Order passed by National Commission shall stand modified to the extent indicated above.

11. With the above directions, Civil Appeal No. 559 of 1994 is disposed of. Civil Appeal No. 633 of 1994 is without any merits and is dismissed. The cost of these proceedings shall be borne by the respective parties.

Order accordingly.

AIR 2002 SUPREME COURT 548

K. T. THOMAS AND S. N. PHUKAN, JJ.

Civil Appeal No. 200 of 2000*, D/- 8-1-2002.

Harish Chandra Tiwari, Appellant v. Baiju, Respondent.

Advocates Act (25 of 1961), S. 38 — Wrong professional conduct — Delinquent Advocate engaged as counsel in Land Acquisition case — Advocate withdrew amount of compensation from Court and has not paid it to client-complainant for last more than 11 years — Not a single circumstance shown to accept his defence that he has paid amount to his client — Advocate, held guilty of wrong professional conduct, has maligned reputation of noble profession and has committed breach of trust — Misconduct aggravated when Advocate produced forged affidavit of his client to deceive Disciplinary Committee to believe that he and his client had settled the dispute by making a late payment to his client — Retaining

*From Judgment and Order of the Disciplinary Committee, Bar Council of India in B.C.I. Tr. Case No. 76 of 1991, D/- 23-9-1998.

such an Advocate on roll is unsafe to legal profession — Punishment of suspension from practice for period of three years imposed by Disciplinary Committee — Enhanced to removal of his name from roll of Advocates — Advocate stands debarred from practising in any Court.

Mahalkari v. Zurange (1997) 11 SCC 109 and Prahlad v. Bar Council of India, 1997 AIR SCW 1440, Disting.

(Paras 8, 12, 13, 14)

Cases Referred : Chronological Paras
Prahlad Saran Gupta v. Bar Council of India, AIR 1997 SC 1338 : 1997 AIR SCW 1440 : (1997) 3 SCC 585 (Disting.) 15
B.R. Mahalkari v. Y.B. Zurange (1997) 11 SCC 109 : (1998) 8 JT (SC) 385 (Disting.) 16

M.M. Kashyap, Advocate, for Appellant.

THOMAS, J. :— We are said that the Disciplinary Committee of the Bar Council of India (for short 'the Disciplinary Committee') despite being the acme statutory body entrusted with the upkeep of the probity of legal profession in India opted to treat a very grave professional misconduct in a comparatively lighter vein. The Disciplinary Committee held an advocate guilty of breach of trust for misappropriating the asset of a "poor" client. But having held so the Disciplinary Committee has chosen to impose a punishment of suspending the advocate from practice for a period of three years.

2. The delinquent advocate filed this appeal under Section 38 of the Advocates Act, 1961 (for short 'the Act'). We told him that in the event of this Court upholding the finding of misconduct he should show cause why the punishment shall not be enhanced to removal of his name from the roll of the Bar Council of the State concerned. Notice on that aspect has been accepted by Mr. M.M. Kashyap, learned counsel for the appellant.

3. We issued notices to the Bar Council of India and also to the Bar Council of U.P. Neither has chosen to enter appearance in this matter and hence we heard learned counsel for the appellant-advocate above.

4. Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of U.P. in May, 1982 and has

2002
 been practi
 Courts at L
 Respondent
 advocate in
 the respons
 sation. The
 scribed the
 poor illitera
 8118 /- for
 the said Bai
 in the Cour
 ing the an
 Court he v
 9-1987. Bu
 ent to whon
 form the c
 amount. Lo
 came to kn
 the amount
 complaint v
 Council of t
 disciplinary
 5. On 12
 to the said
 cil of the St
 engaged by
 in the afor
 also admitte
 of Rs. 8118/
 a defence th
 to the clie
 expenses.
 6. On 3-
 to be that of
 by the appel
 cil in which
 had been ar
 client and ti
 taken on the
 ent. The Disc
 Bar Council
 said affidavi
 client conce
 the responde
 said affidav
 owned the s
 alleged com
 appellant an
 amount from
 7. The c
 later stood i
 of India by v
 act. The Disc
 ducting the i
 that the affid

been practising since then, mainly in the Courts at Lakhimpur Kheri District in U.P. Respondent Baiju engaged the delinquent advocate in a land acquisition case in which the respondent was claimant for compensation. The Disciplinary Committee has described the respondent as "an old, helpless, poor illiterate person". Compensation of Rs. 8118 /- for the acquisition of the land of the said Baiju was deposited by the State of in the Court. Appellant applied for releasing the amount and as per orders of the Court he withdrew the said amount on 2-9-1987. But he did not return it to the client to whom it was payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after failing to get the amount returned by the advocate, a complaint was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant.

5. On 12-7-1988, appellant filed a reply to the said complaint before the Bar Council of the State. He admitted having been engaged by the respondent as his counsel in the aforesaid land acquisition case, he also admitted that he had withdrawn a sum of Rs. 8118/- from the Court. But he adopted a defence that he had returned the amount to the client after deducting his fees and expenses.

6. On 3-8-1988, an affidavit purporting to be that of the respondent Baiju was filed by the appellant before the State Bar Council in which it is stated that a compromise had been arrived at between him and his client and that no further action need be taken on the complaint filed by the respondent. The Disciplinary Committee of the State Bar Council was not prepared to act on the said affidavit without verifying it from the client concerned. Hence they summoned the respondent and confronted him with the said affidavit. The respondent totally disowned the said affidavit, repudiated the alleged compromise between him and the appellant and denied having received any amount from the appellant-advocate.

7. The complaint and the proceedings later stood transferred to the Bar Council of India by virtue of Section 36B(2) of the Act. The Disciplinary Committee after conducting the inquiry, came to the conclusion that the affidavit dated 3-8-1988, purported

to have been sworn to by the respondent, was a forged one and that the application appended therewith was fabricated. The Disciplinary Committee observed as follows :

"Thus, the conduct of the respondent and his evasive reply and his evasive vague deposition duly makes out that after taking the cheque from the Land Acquisition Officer in his own name, the respondent has failed to make the payment to the complainant who is illiterate, poor person and his money has been misappropriated by the respondent advocate."

8. In this appeal appellant first pleaded that he is not liable to be punished at all and then contended alternatively that he has given the money to the client subsequently. But the factual position is so strong against the appellant that he could not show a single circumstance to accept his defence that he had paid the amount to the client. The finding of the Disciplinary Committee that the delinquent advocate "has withdrawn the compensation of Rs. 8118/- and has not paid it to the complainant for the last more than 11 years and is thus guilty of wrong professional conduct and has maligned the reputation of the noble profession and has committed breach of trust which an advocate enjoys", does not require any interference in this appeal.

9. Now, we have the function to decide as to the quantum of punishment to be awarded to the delinquent appellant-advocate, since we feel that the punishment awarded is not adequate in proportion to the gravity of the misconduct. Section 38 of the Act empowers the Supreme Court to "pass such order including an order varying punishment awarded by the Disciplinary Committee of the Bar Council of India as it deems fit." The only condition for varying the punishment awarded by the Bar Council of India is that if such variation is to prejudicially affect the appellant he should be given a reasonable opportunity of being heard. In the present appeal we gave notice to the learned counsel for the appellant to show cause why the punishment should not be enhanced to removal from the roll of the Bar Council of the State. Learned counsel for the appellant addressed arguments on that score.

10. Three different punishments are envisaged in Section 35 of the Act: (1) rep-

reprimand the advocate, (2) suspend the advocate from practice for such period as it may deem fit; (3) remove the name of the advocate from the State roll of advocates.

11. In determining the punishment to be awarded by the Disciplinary Committee on proved misconduct in each case, the Committee should weigh various factors. One of them is the acute need to cleanse the legal profession from those who are prone to misappropriating the money of the clients. Deterrence is thus a prominent consideration. This is particularly necessary at a time when the legal profession has become crowded as it is today, without there being any effective filtering process at the admission stage. Secondly, to keep up the professional standards it is necessary that nobody should form the impression that once a person is admitted to the legal profession he would be immune to any punitive measures and is free to indulge in nefarious or detestable activities. The only authority which can effectively maintain the probity of the legal profession is the Disciplinary Committee of the Bar Council either of the State or of India. The proper message which should go to all members of the legal profession is that they are all being watched, regarding their professional activities, through binoculars by the Bar Council of the State as well as by the Bar Council of India and that their Disciplinary Committee would not acquiesce any professional delinquency with flimsy punishment.

12. Among the different types of misconduct envisaged for a legal practitioner misappropriation of the client's money must be regarded as one of the gravest. In his professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the Court payable to the client or take money of the client to be deposited in Court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanor. Perhaps the dimension of the

gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings.

13. In the present case the misappropriation remained unabated even after the disciplinary proceedings commenced and it continued even till now as the delinquent advocates did not care to return even a single pie to the client. The misconduct of the appellant advocate became more aggravated when he determined to forge an affidavit in the name of the client, which he produced before the Disciplinary Committee in order to defraud his client and to deceive the Disciplinary Committee to believe that he and his client had settled the dispute by making a late payment to his client.

14. By retaining such advocate on the roll of the legal profession, it would be unsafe to the profession. The situation in this case thus warrants the punishment of removal of his name from the roll of advocates.

15. Learned counsel for the appellant cited two decisions of this Court in which the punishment awarded has not been escalated to removal from the roll. One is Prahlad Saran Gupta v. Bar Council of India (1997) (3) SCC 585. In that case the finding against the delinquent advocate was that he retained a sum of Rs. 15,00/- without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession". On the said fact-situation this Court imposed a punishment of reprimanding the advocate concerned.

16. The other case cited by the learned counsel is B.R. Mahalkari v. Y.B. Zurange (1997 (11) SCC 109). The findings in that case is that the advocate retained the

AIR 1997
SC 1338 :
(1997 AIR
SCW 1440

of Rs. 1176/
commencement of the
sent the said
holding that the
conduct this Court
of suspension fr
of three years.
The facts in the
speak for the
from the fac
that the miscon
the present case
Hence the s
of any help to the
of the quantum c
18. In the result v
by imposing the p
the name of the app
advocates. He w
red form practisir
any authority or

AIR 2002 SUPR
(From : Mad
K. T. THOMAS AN
Civil Appeal No. 18
S.L.P. (Civil No. 21
2002.
M.P. Electricity Boar
near and others, Re
Electricity Act (19
compensation for d
by live wire lying
pay damages —
Electricity Board — I
was due to ch
mitted by stran
board.
— Damages —
ception of "Act
able to electric
execution.
2000 SC :
responsibility
the particular
on the Ele
416 of 1999.
100018/20

2002

amount of Rs. 1176/-, though before the commencement of the disciplinary proceedings he sent the said amount to the client. After holding that the advocate is guilty of misconduct this Court upheld the punishment of suspension from practice for a period of three years.

17. The facts in the aforecited decisions would speak for themselves and the distinction from the facts of this case is so glaring that the misconduct of the appellant in the present case is of a far graver dimension. Hence the said two decisions are not of any help to the appellant for mitigation of the quantum of punishment.

18. In the result we dispose of this appeal by imposing the punishment of removal of the name of the appellant from the roll of the advocates. He would thus stand debarred from practising in any Court or before any authority or person in India.

Order accordingly.

AIR 2002 SUPREME COURT 551

(From : Madhya Pradesh)*

K. T. THOMAS AND S. N. PHUKAN, JJ.

Civil Appeal No. 180 of 2002 (Arising out of S.L.P. (Civil No. 21256 of 2001), D/- 11-1-2002.

M.P. Electricity Board, Appellant v. Shail Kumar and others, Respondents.

Electricity Act (9 of 1910), S. 19 — Compensation for damage — Electrocution by live wire lying on road — Liability to pay damages — Is primarily that of Electricity Board — Defence that electrocution was due to clandestine Pilferage committed by stranger — Not available to Board.

Torts — Damages — Strict liability rule — Exception of "Act of stranger" — Not available to electricity Board in cases of electrocution.

AIR 2000 SC 3629(1) held per incuriam.

The responsibility to supply electric energy in the particular locality is statutorily conferred on the Electricity Board. If the

*F.A. No. 416 of 1999, D/- 17-7-2001 (Madh Pra).

AT/AT/S100018/2002/VVG/CSL/1458/2002

energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

(Para 7)

The Board is also liable under the strict liability rule. The basis of such liability is the forceable risk inherent in the very nature of such activity. Act of stranger is one exception to the rule of strict liability. The said exception is not available to the Board as the act attributed to the stranger should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant Board.

W.B. State Electricity Board v. Sachin, AIR 2000 SC 3629 (1) held per incuriam.

(Paras 8, 10, 13)

Cases Referred : Chronological Paras

Kaushnuma Begaum v. New India Assurance Co. Ltd., AIR 2001 SC 485 : 2001 AIR SCW 85 : 2001 All LJ 166 : (2001) 2 SCC 9

11

West Bengal State Electricity Board v. Sachin Banerjee, AIR 2000 SC 3629 (1) : (1999) 2 SCC 21 (Held per incuriam)

15

Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc. (1994) 1 All ER 53 (HL)

11

Charan Lal Sahu v. Union of India, AIR 1990 SC 1480 : (1990) 1 SCC 613

11

M.C. Mehta v. Union of India, AIR 1987 SC 1086 : (1987) 1 SCC 395

12

A. I. R.

ust would be
ropriation re-
period. There
a lessor pun-
delinquent ad-
ore commene-
gs.

he misappro-
even after the
nnmenced and
he delinquent
rn even a sin-
conduct of the
re aggravated
an affidavit in
he produced
nittee in order
ceive the Dis-
e that he and
pute by mak-
ent.

ocate on the
would be un-
uation in this
shment of re-
l of advocates.

the
of
sh-
es-
oll.
v.
(3)
nd-
vo-
um
ent
12-
he
at-
the
on-
as
he
ics
ber
ald
sed
ing

AIR 1997
SC 1338 :
(1997 AIR
SCW 1440

by the learned
Y.B. Zurange
ndings in that
retained the