mony of his father PW-10 Nafe Singh. That witness has said that soon after the occurrence PW-1 Sandeep rushed to him and told him about the occurrence. PW-10 has narrated the details of what he heard from his son. In fact PW-10 narrated them in the First Information Statement which he has lodged with the police. It gives the Court an assurance that PW-10 really heard those details from his son Sandeep (PW-1). Section 157 of the Evidence Act permits the Court to use any former statement made by a witness before any person relating to a fact if it was made "at or about the time when the fact took place". The interval between the occurrence and the time of PW-1's reporting to his father, did not cross the boundaries envisaged by the words "at or about the time when the fact took place" in Section 157 of the Evidence Act. It is useful to refer to the decision of this Court in State of Tamil Nadu v. Suresh, (1998) 2 SCC 372 : (1998 AIR SCW 819 : AIR 1998 SC 1044 : 1998 Cri LJ 1416 para 28). Following passage in that decision will be apposite :

"We think that the expression 'at or about the time when the fact took place" in Section 157 of the Evidence Act should be understood in the context according to the facts and circumstance of each case. The mere fact that there was an intervening period of a few days, in a given case, may not be sufficient to exclude the statement from the use envisaged in Section 157 of the Act. The test to be adopted, therefore, is this: Did the witness have the opportunity to concoct or to have been tutored? In this context the observation of Vivian Bose, J. in Rameshwar v. State of Rajasthan, (AIR 1952 SC 54 : 1952 Cri LJ 547) is apposite :

'There can be no hard and fast rule about the 'at or about' condition in Section 157. The main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction'."

24. The upshot of the above discussion is that we have to confirm the conviction and sentence passed on appellant Ranbir Singh. We do so. We dismiss the appeal filed by him. But we allow the appeals filed by the other three appellants (Mahabir Singh, Sultan and Sis Pal), and the conviction and sentence passed on them as per the impugned judgment of the Division Bench of the High Court will stand set aside and the order of acquittal passed in their favour by the trial Court will stand restored.

Order accordingly.

AIR 2001 SUPREME COURT 2509

K. T. THOMAS AND
Y. K. SABHARWAL, JJ.

Civil Appeal No. 6768 of 2000*, D/- 26-7-2001.

Shambhu Ram Yadav, Appellant v. Hanuman Das Khatry, Respondent.

(A) Advocates Act (25 of 1961), S. 35 — Professional misconduct — Advocate writing letter to his client to send money to bribe the Judge — Is guilty of serious misconduct.

(Para 9)

(B) Advocates Act (25 of 1961), Ss. 35, 44 — Professional misconduct — Punishment — Review — Advocate by letter demanding money from client to bribe judge — Disciplinary Committee ordering his expulsion from profession — Fact that letter sent by advocate was a reply to letter sent by client — Advocate had a long standing of 50 years — Considered while ordering expulsion — Punishment modified to reprimand by review Disciplinary Committee by taking different view on same fact — Not proper — Order passed in review liable to be set aside.

(Paras 8, 10)

(C) Advocates Act (25 of 1961), S. 35 — Bar Council — Credibility — Depends on how they deal with cases of delinquency.

It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a council including its disciplinary body in respect of any profession whether it is Law, Medicine, Accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the mis-

* From Judgment and Order of the Disciplinary Committee of the Bar Council of India in R. P. No. 11 of 1999 in DCA No. 22 of 1997, D/- 4-6-2000.

HS/HS/S100314/2001/VVG/CSL/17204/2001

conduct.

(Para 9)

Ashok Mathur, Advocate, for Appellant; B. D. Sharma, Vidya Sagar, K. N. Vyas and Ms. Deep Shikha Bharathi, Advocates, for Respondent.

Y. K. SABHARWAL, J. :— Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients if it is elgally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout on account of acts of omission and commission by any member of the profession.

2. In this appeal while issuing notice this Court had stayed till further orders the impugned order passed by the Disciplinary Committee of the Bar Council of India. We admit the appeal and heard learned counsel for the parties. On facts, there is not much dispute. The facts material for the decision of this appeal briefly are as follows :

A complaint filed by the appellant against the respondent-Advocate before Bar Council of Rajasthan was referred to Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that respondent while appearing as a counsel in a suit pending in a Civil Court wrote a letter to Mahant Rajgiri his client inter alia stating that his another client has told him that the concerned Judge accepts bribe and he has obtained several favourable orders from him in his favour, if he can influence the Judge through some other gentleman, then it is different thing, otherwise he should send to him a sum of Rs. 10,000/- so that through the said client the suit is got decided in his (Mahant Rajgiri) favour. The letter further stated that if Mahant can personally win over the Judge on his side then there is no need to spend money. This letter is not disputed. In reply to complaint, respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct.

3-4. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding respondent guilty of misconduct under Section 35 of the Advocates Act, State Bar Council suspended him from practice for a period of two years with effect from 15th June, 1997.

5. The respondent challenged the aforesaid order before the Disciplinary Committee of Bar Council of India. By order dated 31st July, 1999, the Disciplinary Committee of Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31st July, 1999 reads thus :

"In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served as advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the judge and he admittedly demanded Rs. 10,000/- from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment then debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any Court of Law, Tribunal or any authority. We also impose a cost of Rs. 5,000/- to the appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months."

6. The respondent filed a review petition under Section 44 of the Advocates Act against the order dated 31st July, 1999. The review petition was allowed and the earlier order modified by substituting the punishment already awarded permanently debarring him with one of reprimanding him. The impugned order was passed by the Disciplinary Committee comprising of three members of which two were not members of the earlier committee which had passed the order dated 31st July, 1999.

7. The review petition was allowed by the Disciplinary Committee for the reasons, which, in the words of the Committee, are these :

"(1) The Committee was under the impression as if it was the petitioner who had written a letter to his client calling him to bribe the judge. But a perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the judge and as such it remained a fact that it was not a offer on the side of the delinquent advocate to bribe a judge. This vital point which touches the root of the controversy seems to have been ignored at the time of the passing the impugned order.

(2) The petitioner is an old man of 80 years. He had joined the profession in the year 1951 and during such a long innings of his profession, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.

(3) The Committee does not approve the writing of such a letter on the part of the lawyer to his client but keeping in view the age and past clean record of the petitioner in the legal profession the Committee is of the view that it would not be appropriate to remove the advocate permanently from the roll of advocates . . . . The Committee is of the considered view that ends of justice would be met in case the petitioner is reprimanded for the omission he had committed. He is warned by the Committee that he should not encourage such activities in life and he should be careful while corresponding with his client.

In view of the aforesaid observations, the review petition is accepted and the earlier judgment of the Committee dated 31-7-1999 is modified to the extent and his suspension for life is revoked and he is only reprimanded."

8. We have perused the record. The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31st July, 1999. The power of review has not been exercised by applying well settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs. 10,000/- for payment as bribe to the concerned judge. We are unable to understand as to how the Committee came to the conclusion that any vital point in regard to the letter had been ignored at the time of the passing of the order dated 31st July, 1999. The age and the number of years the advocate had put in had also been noticed in the order dated 31st July, 1999. We do not know how the Committee has come to the conclusion that the respondent had no intention to bribe the judge'. There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debarring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts.

9. The respondent was indeed guilty of a serious misconduct by writing to his client the letter as aforesaid. Members of the legal profession are officers of the Court. Besides Courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the bar councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

10. In the present case, the earlier order considering all relevant aspects directed expulsion of respondent from profession which order could not be lightly modified while deciding a review petition. It is evident that the earlier Committee, on consideration of all relevant facts, came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers moreso from a person who has put in 50 years in profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheeps which may shake the credibility of the profession and thereby put at stake other members of the bar. Considering these factors, Bar Council had inflicted in its earlier order the condign penalty. Under these circumstances, we have no hesitation in setting aside the impugned order dated 4th June, 2000 and restoring the original order of Bar Council of India dated 31st July, 1999.

The appeal is thus allowed in the above terms with costs quantified at Rs. 10,000/-.

Appeal allowed.

AIR 2001 SUPREME COURT 2512

(From : Himachal Pradesh)*

B. N. KIRPAL, N. SANTOSH HEGDE AND K. G. BALAKRISHNAN, JJ.

Civil Appeals Nos. 2885 with 4659-4668 and 4516 and 4517 of 2000, D/- 25-7-2001.

Union of India, Appellant v. National Hydroelectric Power Corpn. Ltd. and others, Respondent.

WITH

Chairman, H.P. State Pollution Control Board and another, Appellants v. National Hydroelectric Power Corpn. Ltd. and others, Respondents.

And

M.P. Pollution Control Board, Appellant v. M.P. Electricity Board, Respondent.

Water (Prevention and Control of Pollution) Cess Act (36 of 1977), Ss. 3, 16 — Imposition of cess on hydro power generating industry — Validity — Said industry not included in industries specified in Sch. 1 of Act — Notification dt. 16-4-1993 purporting to amend Sch. 1 in order to include hydro power generating industry, placed before each House of Parliament — No steps, however, taken for moving resolution relating to said Notification in Parliament — Non-compliance with requirement of S. 16(2) — Notification amending schedule not approved by Parliament, is invalid — Imposition of cess on hydro-power generating industry, is illegal.
(Para 9)

D. S. Nehra, K. K. Venugopal, Sr. Advocates, Ms. B. Sunita Rao, Ms. Sushma Suri, Satish K. Agnihotri, Ms. Yogmaya Agnihotri, Anil K. Pandey, Naresh K. Sharma, Dhruv Mehta, N. S. Bawa, N. D. Kalra, Ms. Karan Nehra, Ms. Shobha, Anil Nag, Ashok Kumar Gupta, Ajit Pudusssery, Sushil Kr. Jain, Ms. Jayshree Anand, Jagjit S. Chhabra, V. K. Shailendra, Krishnan Venugopal, R. S. Suri, Mahabir Singh, S. B. Upadhyay, Rajiv Nanda, Advocates with them, for the Appearing Parties.

---

*C.W.P. No. 403 of 1997, D/- 11-10-1999 (Him Pra).

HS/HS/S100315/2001/BNG/CSL/17127/2001