

Reading Material for B. Com LLB. VIII Semester (17.04.2020)

SELECTED OPINION OF DISCIPLINARY COMMITTEE OF THE BAR COUNCIL OF INDIA ON PROFESSIONAL MISCONDUCT

1.. Jagdish Singh & other v. T.C. Sharma

BCI TR Case No.47/1990

Jagdish Singh and others were employees of the Central Board of Education, New Delhi. They were arbitrarily dismissed from service by the Board. They approached T.C. Sharma an Advocate to file a case against the arbitrary dismissal. They paid Rs.1400 as fees for the case.

Sharma gave a fake case number stating that he has filed the case before the central Administrative Tribunal, New Delhi. On verification it was found that no such case has been filed. Later they engaged another Advocate Mr. Bhati to file the case and got a favourable order of reinstatement.

Therefore, they asked the return of Rs.1400 from T.C. Sharma. He refused to pay the same. So, the complainant filed a petition against him before the Delhi Bar Council alleging professional misconduct. Since Sharma failed to appear during the enquiry, the state Bar Council could not be able to dispose off the case within one year. Hence, the case was transferred to the Bar Council of India.

The Bar Council of India examined the petitioners, but the respondent was absent. Finally the Bar Council of India passed an order holding the respondent guilty of professional misconduct and awarded the following punishments.

1. Suspended him from practice for a period of 5 years.
2. Directed him to return the Rs.1400/-with 12% interest per annum.
3. Directed to give Rs.500 as cost to the complainant.

2. Bablal v. Subash Jain

BCI TR Case No.115/1986

The complainant and the Respondent are Advocates. The complainant filed a petition before the Madhya Pradesh Bar Council stating that the respondent is guilty of professional misconduct under s.35. The allegation of the complainant is that the respondent a practicing lawyer, is working as an Editor, Printer and Publisher of a weekly called ``Aaj Ki Janta`` He is the owner of the press which prints the weekly. It is also alleged that the respondent did not disclose these facts while applying for enrolment to the State Bar Council.

The respondent denied all the allegations. He contended that before enrolment, the job of printing and publishing was transferred to his wife and thereafter he was working only as an editor of the said weekly.

Since the enquiry was not completed within one year, the case was transferred to the Bar Council of India.

In the enquiry it was found that he enrolled in 1973 and continued as the printer, publisher and editor of the weekly till 1983. Only in 1983 printing and publishing was transferred in the name of his wife. But, by a general power of attorney from his wife the respondent was looking after the entire work of the weekly. Based on this finding the Bar Council of India held that the respondent is guilty of professional misconduct punishable under S.35 of the Advocates Act and passed the following orders.

1. He was suspended from practice for a period of one year.
2. Suppression of the fact that he is the owner of the weekly in the enrolment application cannot be treated as professional misconduct punishable under S.35.

3. Baswarooponi v. Babulalsoni

BCI DC Appeal No.25/1992

Babulalsoni is the father of Balswaroopsoni. He filed a complaint against his son alleging professional misconduct before the Madhya Pradesh Bar Council. The allegations are as follows:

1. A criminal case under S.307 I.P.C. is pending against him.
2. while appearing as a defence counsel for one munna in a criminal case No.125/89 he has introduced his own brother as Dwarha Pradesh and arranged him to stand as surety for munna.
3. He has withdrawn a sum of Rs.1500 deposited in the court in the name of Babulalsoni in a civil case without his consent.

Before the State Bar Council, Babulalsoni personally appeared and produced certain documentary evidence in support of his case but the present appellant did not appear though many chances are given to him. Finally, the Bar Council held that Balswaroopsoni is guilty of professional misconduct and passed an order removing his name from the Advocates Roll.

Against this order Balswaroopsoni filed an appeal the Bar Council of India. In the appeal he denied all the allegations against him but, failed to produce any documentary evidence in his support.

Regarding the second allegation he took a defence that munna brought one person and introduced him as Dwarakha Prasad. Believing Munna's words only he also introduced him to the court as Dwarakha Prasad. This defence was not accepted by the Bar Council of India because Balswaroopsoni knows that the person brought by Munna Dwarakha Prasad.

Regarding the third allegation he took the defence that he is also one of the plaintiff in the said case and his father has given power to withdraw that amount of Rs .1500/. But no documentary evidence in support of this difference was produced by him.

After hearing the parties, the Bar Council of India reduced the punishment and suspended him from practice for a period of 5 years.

4.Indure Ltd. v. Deo Raj Guptha

BCI TR Case No.58/1993

The complainant company is one of the highest producer of ash handling system in the world, having large manufacturing and engineering factories. The respondent was the Advocate of the company and various cases related to the company was entrusted with him.

In April 1986 NELCO precisions, a company located at Faridabad gave a false advertisement in the papers that Indure Ltd. Is using the parts manufactured by NELCO precisions.

To stop this false advertisement Indure Ltd. instructed the respondent to serve a legal notice to NELCO. Notice was sent, but the notice has not given the desired result. Therefore, the respondent was instructed to file a case against NELCO. A plaint was prepared and it was approved by the petitioner company and necessary court fees was also paid to him.

The respondent informed the complainant that he has filed the suit in the Delhi High Court and got a stay order. In fact no suit had been filed.

The complainant filed a complaint in the Bar Council of U.P. alleging professional misconduct against the respondent. They alleged that the respondent had made a similar type of misrepresentation earlier also when he was instructed to file a case against Anael Industries Ltd. A criminal complaint was also filed against Gupta in this regard.

The respondent filed a very brief counter and failed to give any explanation about the serious allegation of professional misconduct. He simply prayed that for the same matter there is already a criminal case pending against him, so the Bar Council

should not proceed with the complaint. When the petition was pending before the Bar Council, the criminal case was disposed off and he was convicted.

Since the U.P Bar Council could not able to complete the enquiry within one year the petition was transferred to the Bar Council of India.

The Bar Council of India examined the complainant and the respondent and finally came to the conclusion that the allegations against the respondent the complainant has been proved beyond reasonable doubt and directed the removal of his name from the roll of Advocates and prohibited him from practicing as an Advocate.

5. Commissioner of Civil Supplies & Consumer Protection Dept. v. Balakrishnan

DC Appeal No.15/1995

Mr. Chandrakanth of Villupuram has filed a writ petition No.10589/90 in the Madras High Court praying for the release of a Van TAH 4777 which was ceased by the Special Thasildar, Dindivanam on 5- 7-1990. The writ petition was dismissed on 11- 7-1990.The respondent Mr. V. Balakrishnan was the Advocate for Mr. Chandrakanth in the writ petition .After the dismissal of the Writ petition. After the dismissal of the writ petition the respondent sent the following telegram to the District Revenue Officer, South Arcot.

“High Court of Madras in writ petition No.10589/1990 filed by Chandrakanth directed the District Revenue Officer to release the van TAH 4777 with 100 bags of paddy within one week. Do not sell the paddy. Detailed order follows”.

In another writ petition No.6184/1990 the respondent sent the following telegram to the Collector, South Arcot.

In writ petition No.6184/1990 filed by cuberan of villupuram for release of 117 bags of paddy the High Court has ordered notice of motion returnable on 11-6-90. Not to dispose the paddy till the final order in the writ petition’.

A petition was filed against Mr. Balkrishnan before the State Bar Council alleging professional misconduct. It is alleged that the contents of both these telegrams were false and is not in consonance with the High Court order.

The State Bar Council gave benefit of doubt to the respondent by observing that he acted with all enthusiasm to protect the interest of his client. The State Bar Council observed that though his conduct is not praise worthy, it did not amount to professional misconduct and thereby no punishment is awarded to him.

Against this order an appeal was filed before the Bar Council of India. After hearing both the parties, the Bar Council of India passed the followings orders.

- 1.The order of the State Bar Council was set aside.
- 2.He was found guilty of professional misconduct under S.35 of the Act.
- 3.The act sending wrong telegram misquoting the content of the court order is not an act fit for an Advocate and he was reprimanded with strong words.