

CHANDER PRAKASH TYAGI

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v.

SHRI BENARSI DAS (DEAD)
BY LRS. AND OTHERS

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(Civil Appeal No. 2581 of 2005)

MARCH 17, 2015.

[T.S. THAKUR AND PRAFULLA C. PANT, JJ.]

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Advocates Act, 1961; Bar Council of India Rules: Part VI; Section II Regulation 33 – Misconduct – Collusion of Advocate with opponents – Complaint against appellant-Advocate that he having accepted the fee from the complainant for contesting a case for guardianship of his grandson, also subsequently accepted brief from opponents for filing suit against complainant's grandson – Complaint dismissed by State Bar Council on the ground that the appellant had withdrawn his Vakalatnama from two suits and that the two proceedings were of different nature – On appeal, Bar Council of India held the appellant guilty of misconduct and suspended his right to practice for one year – Held: The spirit contained in Regulation 33 is that where a lawyer commits breach of his duty in respect of fiduciary obligation arising out of the relationship between himself and his client, he is guilty of misconduct of conflict of interest – Therefore, appellant was rightly held guilty of misconduct.

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Dismissing the appeals, the Court

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HELD: Regulation 33 of Section II of Part VI of Bar Council of India Rules restrains a lawyer from acting

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A for another client on the ground of conflict of interest as the duty of the lawyer owed to his former client, not to act prejudicially to his interest, does not come to an end with the termination of the earlier case of his client with whom he had shared confidential information. The
 B basis of Rule 33 is that there is likelihood or possibility of misuse of the instructions given to the lawyer by his former client. The argument advanced on behalf of the appellant cannot be accepted that the appellant has
 C committed no misconduct as the proceedings in which the appellant appeared for and against the same client were different in nature, particularly, in view of the fact that the property involved in both the cases was the same. The appellant was given proper opportunity to
 D explain his conduct by the Disciplinary Committee of B.C.I., as there was no violation of proviso to sub-section (2) of Section 37 of the Advocates Act, 1961. [Paras 11, 12, 16] [1036-B, D-F] [1038-G] [1039-A-B]

E *V.C. Rangadurai v. D. Gopalan and Ors.* (1979) 1 SCC 308; 1979 (1) SCR 1054; *Noratanmal Chourasia v. M.R. Mulri and Anr.* (2004) 5 SCC 689; 2004 (1) Suppl. SCR 266; *O.P. Sharma and Ors. v. High Court of Punjab and Haryana* (2011) 6 SCC 86; 2011 (6) SCR 301; *Dhanraj Singh Choudhary v. Nathulal Vishwakarma* (2012) 1 SCC
 F 741; 2011 (16) SCR 240 – relied on.

Case law reference

	1979 (1) SCR 1054	relied on.	Para 13
G	2004 (1) Suppl. SCR 266	relied on.	Para 13
	2011 (6) SCR 301	relied on.	Para 14
	2011 (16) SCR 240	relied on.	Para 15

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(DEAD) BY LRS.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. A
2581 of 2005.

From the Judgment and Order dated 30.06.2002 of the
Disciplinary Committee of the Bar Council of India in D.C.
Appeal No. 36 of 2001.

with

C. A. No. 2633 of 2005.

Sushil Kumar Jain, Sonal Jain for the Appellants.

Ardhendumauli Kumar Prasad, Aviral Shukla, Amit A.
Pai, M. Qamaruddin for the Respondents.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal (Civil Appeal
No. 2581 of 2005), preferred under Section 38 of the
Advocates Act, 1961, is directed against order dated
30.6.2002, passed by the Disciplinary Committee of Bar
Council of India (B.C.I.) whereby the appellant Chander
Prakash Tyagi, Advocate, has been held guilty of violation
of Rule 33 of Section II contained in Part VI of Bar Council
of India Rules. Consequently, appellant has been
suspended from practicing for a period of one year, and
directed to pay cost of Rs.2,000/-, out of which Rs.1,000/-
to be paid to the respondent-complainant and rest of the
amount is directed to be deposited with the Advocates'
Welfare Fund of B.C.I. The appellant is further directed to
pay cost of Rs.3,000/- vide order passed on review
application, dismissed by the Disciplinary Committee, which
is also challenged through special leave in the connected
Civil Appeal No. 2633 of 2005.

2. We have heard learned counsel for the parties at
length.

A 3. Succinctly, factual matrix of the case is that the
respondent-complainant Banarsi Das instituted case No.
137 of 1994 before District Judge, Saharanpur, for his
appointment as guardian of his grandson Komal Arora
under Section 7 of the Guardians and Wards Act, 1890, as
B complainant's son Avtar Singh (father of the minor Komal
Arora) had died in the year 1992. In said case, appellant
Chander Prakash Tyagi, advocate, was engaged as his
counsel. It is alleged by the complainant that the appellant
did not contest his case properly as he was in collusion with
C the "opponents", namely, Dilawar and Nazim, sons of Raja
Hasan, and the petition for appointment of guardian was
dismissed for non-prosecution on 2.1.1995. The
complainant had shown all papers relating to the case to
the appellant and paid his fee. Later, appellant-advocate
D accepted brief of Dilawar for filing suit against complainant's
grandson Komal Arora in subsequently filed proceedings.
On this, complainant gave notice to the appellant on
30.7.1998 to get himself disengaged from Dilawar in suit
E Nos. 565 of 1995 and 573 of 1995, instituted before Civil
Judge, Senior Division, Saharanpur, against Komal Arora
and others. However, he did not care, on which complainant
made a complaint, supported by affidavit and other papers,
to the Bar Council of Uttar Pradesh, Allahabad (for short
F "the State Bar Council").

4. The State Bar Council registered above complaint as
Disciplinary Case No. 13 of 1999 and issued notice to
appellant Chander Prakash Tyagi (Advocate). In his reply
before Disciplinary Committee of the State Bar Council, the
G appellant admitted that he was engaged by Dilawar and
Nazim in suit Nos. 565 of 1995 and 573 of 1995 against
Komal Arora. However, he pleaded that no sooner he came
to know that he had been counsel for Komal Arora in the
earlier proceedings, he withdrew his Vakalatnama from the
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above mentioned suits. It is further pleaded by him that the case for appointment of guardian and the suit for specific performance of contract were of different nature, and he did not commit any misconduct. He further pleaded that the respondent-complainant had taken papers back from him; as such, he was not obliged thereafter to prosecute his case No. 137 of 1994, which was dismissed on 2.1.1995 for non-prosecution.

5. The Disciplinary Committee of the State Bar Council dismissed the complaint, vide order dated 6.6.2000, in view of the fact that the advocate (present appellant) had withdrawn his Vakalatnama from the two suits, and accepted the plea that the two proceedings, one filed on behalf of Komal Arora and the other two filed against him, were of different nature.

6. Aggrieved by the order passed by the Disciplinary Committee of the State Bar Council, the complainant, resorting to Section 37 of the Advocates Act, 1961, preferred D.C. Appeal No. 36 of 2001 before the Bar Council of India. The Disciplinary Committee of B.C.I., after hearing both the sides, opined that Chander Prakash Tyagi, Advocate, is guilty of misconduct, and his right to practice as an advocate was suspended for a period of one year and he was further directed to pay cost of Rs.2,000/-, out of which Rs.1,000/- was required to be deposited with Advocates' Welfare Fund of B.C.I..

7. The review petition filed by the appellant was also dismissed by the Disciplinary Committee of B.C.I., upholding its earlier order, and it further directed the erring advocate to pay Rs.3,000/- as cost of the review petition, out of which Rs.1,000/- to be paid to the respondent-complainant and rest of the amount was to be deposited with the Bar Council

A of India Advocates' Welfare Fund. Hence, these appeals.

8. Learned counsel for the appellant argued before us that neither any charge was framed against the appellant nor principles of natural justice were adhered to by the
B Disciplinary Committee of B.C.I., as such, the impugned orders passed by said authority are liable to be set aside. It is further contended that the proceedings under Section 7 of the Guardians and Wards Act, 1890, in which he was
C engaged by the complainant for his appointment as guardian of his minor grandson Komal Arora, and the suits filed on behalf of Dilawar, though in respect of same property, were of totally different nature, as such it cannot be said that the appellant has committed any misconduct. It is also submitted on behalf of the appellant that since the
D complainant did not pay the fee and took the papers back from him, and he (complainant) himself was prosecuting the case under Guardians and Wards Act, 1890 personally, the appellant is not responsible for dismissal of the case for non-prosecution.

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9. On the other hand, on behalf of the respondents, defending the impugned orders, it is argued that the guilt of misconduct on the part of the advocate was established on record from the certified copies of the papers and the
F admissions made by the appellant. It is further argued that the impugned orders passed by the Disciplinary Committee of B.C.I. are justified in the facts and circumstances of the case.

G 10. Before further discussion, we think it just and proper to quote the relevant provisions of law, which are applicable to this case. Section 35 of the Advocates Act, 1961, reads as under: -

H **"35. Punishment of advocates for misconduct. – (1)**

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Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. A

(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council. B

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State. C

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely: - D

(a) Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct the proceedings be filed; E

(b) Reprimand the advocate;

(c) Suspend the advocate from practice for such period as it may deem fit; F

(d) Remove the name of the advocate from the State roll of advocates. G

(4) Where an advocate is suspended from practice under clause (C) of sub-section (3), he shall, during the period of suspension, be debarred from practicing in any court or before any authority or person in India. H

A (5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.”

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11. Regulation 33 of Section II of Part VI of Bar Council of India Rules, which is said to have been violated by the appellant, reads as under: -

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“An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.”

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12. The spirit contained in the rule 33, quoted above, is that where a lawyer has committed breach of his duty in respect of fiduciary obligation arising out of the relationship between himself and his client, he is guilty of misconduct of conflict of interest. The above rule restrains a lawyer from acting for another client on the ground of conflict of interest as the duty of the lawyer owed to his former client, not to act prejudicially to his interest, does not come to an end with the termination of the earlier case of his client with whom he had shared confidential information. The basis of Rule 33 is that there is likelihood or possibility of misuse of the instructions given to the lawyer by his former client.

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13. In *V.C. Rangadurai v. D. Gopalan and others*¹, this Court has held that where advocate finds there would be conflict of interest in taking up a case of his client, he should not accept the brief of such client, against interest of his earlier client. Defining the word “misconduct”, this

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¹ (1979) 1 SCC 308

Court in *Noratanmal Chourasia v. M.R. Mulri and another*², has explained that misconduct is a transgression of some established and definite rule of action. A

14. In *O.P. Sharma and others v. High Court of Punjab and Haryana*³, this Court has made following observations in paragraphs 37 to 39 relating to ethical standards in the judicial system, and the same are reproduced as under: - B

"37. A court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, Judges and the rest of the staff ought to act in accordance with morals and ethics. C D

38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring E F G

3 (2011) 6 SCC 86

2 (2004) 5 SCC 689

A even a minor violation/misconduct militates against the fundamental foundation of the public justice system.

39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.”

D 15. In *Dhanraj Singh Choudhary v. Nathulal Vishwakarma*⁴, discussing the nobility of the profession of lawyers, this Court has made following observations: -

E “25. Any compromise with the law’s nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality.”

G 16. In view of the above discussion, we are unable to accept the argument advanced on behalf of the appellant that the appellant has committed no misconduct as the proceedings in which the appellant appeared for and against the same client are different in nature, particularly, in view of the fact that the property involved in both the cases was

H 4 (2012) 1 SCC 741

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the same. We agree with the learned counsel for the B.C.I. A
that the appellant was given proper opportunity to explain
his conduct by the Disciplinary Committee of B.C.I., as is
evident from the impugned orders, there is no violation of
proviso to sub-section (2) of Section 37 of the Advocates
Act, 1961. B

17. Therefore, we find no force in these appeals which
are liable to be dismissed and the same are dismissed with
no order as to costs. Copy of this order shall be sent to
the Bar Council of Uttar Pradesh, Allahabad as also to the C
District Judge, Saharanpur.

Devika Gujral

Appeals dismissed.