

(1964) 08 MAD CK 0040

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 3526 of 1964 in Referred Case No. 34 of 1941

In Re: An Advocate

Date of Decision : 17-08-1964

Acts Referred:

Advocates Act, 1961 — Section 50, 58B, 58B(1), 58B(2)
Bar Councils Act, 1926 — Section 11, 12, 12(4), 12(6), 14
General Clauses Act, 1897 — Section 6
Penal Code, 1860 (IPC) — Section 409, 467

Citation : (1965) ILR (Mad) 323

Hon'ble Judges : Sadasivam, J;Natesan, J;Anantanarayanan, J

Bench : Full Bench

Advocate : V. Tyagarajan, for the Appellant; N. Krishnaswami Reddi, General for Bar Council, for the Respondent

Judgement

Anantanarayanan, J.—On 17th November 1941, the Petitioner before us, Sri V.P. Chakravarthi, was struck off the Rolls of Advocates by

a Full Bench of this Court consisting of Leach, C.J. Mockett and Kuppuswami Ayyar JJ. in Referred Case No. 34 of 1941. Admittedly, the

proceedings related to an amount of Rs. 1,775 (this is the figure furnished by learned Counsel) delivered by the judgment-debtor to the legal

practitioner, for payment over to the decree-holder, which amount was not so delivered, either by gross negligence or otherwise; the retention of

the moneys, thereby amounting to gross professional misconduct. Subsequent to this removal of the Petitioner from the Roll of Advocates, there

were admittedly certain criminal proceedings in which he sustained convictions under Sections 409 and 467, Indian Penal Code. But the case of

the Petitioner is that all this was 23 years back, and that, since then, he has atoned for his past misdemeanour by a prolonged period of suffering

and punishment. He has also been of good behaviour, and, subsequently, he has conformed to the ideals of rectitude, and turned over a new leaf.

There are two certificates of character in his favour granted by senior Counsel of the Madras Bar, namely, Messrs. K. Rajah Ayyar and K.S.

Champakesa Ayyangar. In brief, the Petitioner prays for review or rescinding of the previous order and restoration to the Rolls, by virtue of our powers u/s 12(6) of the Indian Bar Councils Act.

2. Ordinarily, the exercise of our jurisdiction would have occasioned no difficulty, and the case itself would merely have to be dealt with on the

merits. But, in the present context of the supersession of the Indian Bar Councils Act by the Advocates Act XXV of 1961, there is a question of

our jurisdiction and also of the effect of the exercise of our jurisdiction, if it still exists. This question has necessarily to be clarified first, before we

proceed to the merits. For this reason, we have had the benefit of full arguments from learned Counsel for the Petitioner, Sri V. Tyagarajan, and

the learned Advocate-General. The matter can be quite tersely stated as follows:

The effect of Section 50 of the Advocates Act, 1961, is to repeal prior enactments, in the manner provided for by that Section, and as the relevant

parts of that enactment came into effect. Admittedly, the power of review is vested in us u/s 12(6) of the prior Act, which itself is liable to be

repealed by the coming into force of Chapter V of the Advocates Act, 1961. Now, according to the learned Advocate-General, Chapter V came

into force on 1st September 1963; the situation is not in dispute that, thereby, Section 12 of the prior Act stood repealed on the date on which the

Petitioner sought redress at our hands, which was on 27th March 1964. The question is, whether notwithstanding this, our power of review is

saved, either by any express provision of the new statute, or by any doctrine of inherent jurisdiction, or upon any other principle recognised by law.

3. On an analysis of the relevant provisions, this would appear to be an instance of a *casus omissus* as far as Act XXV of 1961 is concerned. For,

the only saving provisions are to be found in Section 58-B of that Act, and the first proviso to Section 58-B(2) relates to the finding of a Tribunal

constituted u/s 11 of the Bar Councils Act, and the exercise by the High Court of its powers u/s 12 in respect of certain proceedings. The second

proviso to Section 58-B(2) relates to a case where the High Court has referred

back any case for further enquiry under Sub-section (4) of Section

12. With regard to the first proviso, a proceeding of the present character would appear to be saved, at the first blush; but, further scrutiny reveals

that this is not the case. For as Section 58-B(1) specifies, the proceeding itself has to be in respect of a disciplinary matter, in relation to an existing

Advocate of a High Court. Admittedly, the Petitioner is not an existing Advocate, and the first proviso will not save the present proceedings, nor

confer on us jurisdiction to act u/s 12(6) of the Bar Councils Act.

4. We are of the view that this power is indisputably saved, assuming that the case is not provided for in the new Act, by virtue of Section 6,

Clauses (c) and (e) of the General Clauses Act, 1897. We do not think it can be disputed, for a moment, that the power embodied in Section

12(6) of the Indian Bar Councils Act, is not merely a power vested in us, but is also a remedy in favour of the affected party, and this is very clear

from the wording and structure of the several clauses of Section 12. But, if an application for review is a power in the affected party, such power

would, undoubtedly, be saved, upon the general principle of Section 6(c) and also Section 6(e) of the General Clauses Act. The learned

Advocate-General concedes this, and also concedes that this is a matter with reference to which our power is not taken away by any express

provision of the superseding statute. Consequently, we are of the view that, even apart from the amplitude of our inherent jurisdiction, which also

the learned Advocate-General would appear to concede, we have the power to entertain this application and to dispose it of, as though the Indian

Bar Councils Act were in full force and effect today.

5. Upon the merits, we are of the view, after a very careful consideration of the facts of the record, that the order may be rescinded, and that the

Petitioner may now be restored to the position that he originally occupied, namely, as a qualified legal practitioner entered in the Roll of Advocates,

and entitled to practise his profession. We agree with the submission of learned Counsel on his behalf that, considering the very long period that

has since elapsed, the condign punishment undergone by the Petitioner for his sins of omission and commission, and the subsequent rectitude which

he has satisfactorily exhibited in his life, as borne out by the certificates of senior Counsel, this is a fit case in which we may exercise the discretion

vested in us, to review and rescind the order and direct that the Petitioner be restored to his profession and to the Rolls of Advocates.

6. The learned Advocate-General submits that, if this is done, u/s 14 of the Indian Bar Councils Act, which stands unrepealed by Act XXV of

1961 to-day, the Petitioner will have a right to practise, as a right flowing from a valid enactment, in force to-day. We note this argument, and

leave matters there. The actual details, of the procedure that the Petitioner may have now to adopt, with reference to the Bar Council, for formal

admission of his name to the Rolls, do not concern us in this proceeding. The Petitioner would not appear to be an existing Advocate, and the

procedure provided for that case may not apply to him. But he may seek the remedy of such other procedure as is available to him for having his

name formally inscribed in the Rolls. With these observations the proceeding is allowed. No costs.