

SPECIAL BENCH.

Before Rankin C. J., Buckland and Suhrawardy JJ.

1929
July 8.

In re THE BAR COUNCILS ACT.*

Bar Council—Tribunal—Advocates—Misconduct—Complaint to court—Reference to Tribunal—Powers—Duties—Withdrawal of complaint—Investigation—Revision by High Court—Remand—Dominus litis—Bar—Privileges—Indian Bar Councils Act (XXXVIII of 1926), ss. 10, 12 (4), 13 (3).

Where the High Court did not think fit to summarily reject a complaint made against an advocate and was obliged, therefore, to refer the case for enquiry to the Bar Council, and the Tribunal, constituted for this purpose by the Chief Justice, after certain evidence had been taken on affidavits, on the intimation of the complainant's solicitor that he withdrew the complaint, reported "In these circumstances the enquiry cannot further be proceeded with," the Court in the exercise of its power under the 4th clause of section 12 of the Indian Bar Councils Act, referred the matter back to the Tribunal through the Bar Council,

held (Per RANKIN C. J., BUCKLAND and SUHRAWARDY JJ. concurring) that it was quite possible for the Tribunal to proceed to investigate that complaint and it had ample power to compel the attendance of witnesses under section 13 of the Act.

Held, further, *per curiam*, that the complainant, after the matter had been referred to the Tribunal, was not in any way a person who was like a plaintiff *dominus litis*: the Act required that the Tribunal should come to a finding; the question was not whether the complainant had a grievance, but whether a member of the profession, against whose conduct the complaint had been made—a matter in which the public had an interest—, was to be found to have done something that he should not have done or whether he should be cleared of the charge.

Held, also, *per curiam*, that it appeared highly unsatisfactory from the point of view of advocates and of the public that anyone should make a solemn complaint against one of them to the High Court and have the matter referred to the Tribunal and that then, without any finding, which could clear the advocate, the enquiry should be dropped.

Per BUCKLAND J. The Bar Council is in the position of a trustee and guardian of the dignity and privileges of the bar and the rights and duties of its members and it is to the interest of the profession that, when a charge is made against an advocate, it should either be cleared up or be brought home to him. The rules are so designed that there should be a finding one way or the other regarding a charge of misconduct.

Per SUHRAWARDY J. The Tribunal should have said so in so many words, if they were satisfied that, in the circumstances of the case and on the material before them, the matter should not be proceeded with further.

*Reference by the Tribunal, constituted under the Indian Bar Councils Act, dated June 22, 1929.

REFERENCE of report by the Bar Councils Tribunal to the High Court *in re* an advocate.

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On the 12th March, 1929, one Mr. Sripatinath Deb, *zemindar*, of 67/A, Beadon Street, Calcutta, lodged a complaint to the High Court about the professional misconduct of an advocate. In his letter, dated 12th March, 1929, addressed to the Registrar, High Court Original Side, the complainant made a representation to be laid before the Hon'ble the Chief Justice and the Judges of Calcutta High Court. *Inter alia* he wrote :—

“ On the 9th September, 1928, I engaged Mr. * * * barrister-at-law, for defending me and my servants in the police court. There was some discussion about the fee to be paid to him, but in the end he asked for a settled lump fee of Rs. 1,500 for his appearance on behalf of myself and my servants in the police court throughout the trial. I agreed to the said fee and handed over a cheque to him for a sum of Rs. 1,500 on the 19th September, 1928.” * * *

“ In spite of my repeated requests and entreaties, Mr. * * * did not appear for me and my servants in the police court on the following dates :—5th, 15th, 24th and 29th November : 12th, 19th and 20th December, 1928. He appeared for me on the following dates :—11th September, when the case was merely adjourned and was not proceeded with, 19th September, when three witnesses were cross-examined, 21st September, when three witnesses were cross-examined, 28th November, when one witness was partly cross-examined, 5th December, when one witness was cross-examined.” * * *

“ Mr. * * * told me, about the middle of December, that unless he was paid fresh fees daily for his appearance in the police court, he would not care to appear at all. He further stated that, as I was well able to pay, there was no reason why I should not pay. As Mr. * * * definitely refused to appear for me and for my servants in the police court, I had to incur heavy expense in engaging the services of Mr. S. K. Sen, barrister-at-law, at a daily fee.”

“ On the 24th December, 1928, I wrote, addressed and sent under registered cover to Mr. * * * at his residence in * * * the following letter ‘ * * * ’ I have been waiting up to the present moment to hear from Mr. * * * in reply, but he has not chosen to vouchsafe any reply to me nor has he refunded to me any portion of the fees which I paid to him on the 9th September, 1928.”

“ In the circumstances herein stated, I have no other alternative but to place the matter before the Hon'ble the Chief Justice and the Judges under section 10 of the Indian Bar Councils Act and to draw the attention of the Hon'ble Court to the conduct of Mr. * * * and I humbly pray that such orders may be passed on this representation of mine as may seem fit and proper to their Lordships.”

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The Full Court referred this complaint to the Bar Council and it was inquired into by a Tribunal specially constituted for this purpose by the Chief Justice on the 17th May, 1929. After this Tribunal had received affidavits, the complainant's solicitor withdrew his complaint, on the 22nd June, 1929, whereupon the Tribunal reported "In these circumstances, the enquiry cannot further be proceeded with." This report was, thereafter, placed before a Special Bench for consideration.

Mr. S. N. Banerjee, for the advocate.

The matter has been compromised and the complaint withdrawn.

[RANKIN C. J. We have gone through the papers. This case must go back to the Tribunal for a finding one way or the other.]

The Advocate-General (Mr. N. N. Sircar), as President of the Bar Council, was not called upon.

RANKIN C. J. In this case, it appears to me to be necessary that this Court should exercise its power under the 4th clause of section 12 of the Indian Bar Councils Act and refer the matter back to the Tribunal through the Bar Council. A complaint was made against the advocate in question. The High Court did not think fit to summarily reject the complaint and was obliged, therefore, to refer the case for enquiry to the Bar Council. It was referred to the Tribunal and it appears that, after certain evidence had been taken on affidavits, on the 22nd June, 1929, a letter was produced from the solicitor of the complainant to say that he had had a talk with the advocate concerned and had to inform the Bar Council that his client did not wish to proceed with the matter further, and that he, therefore, withdrew the complaint. On this, the Tribunal has reported: "In these circumstances, the enquiry cannot further be proceeded with." With the greatest possible

respect to the learned lawyers who composed that Tribunal, the position is very different. It was quite possible for the Tribunal to proceed to investigate the complaint and it had ample power to compel the attendance of witnesses under section 13 of the Act. The complainant, after the matter has been referred to the Tribunal, is not in any way a person who is like a plaintiff *dominus litis*. The Act requires that the Tribunal should come to a finding. The question is not whether the complainant has a grievance, but whether a member of the profession against whose conduct the complaint has been made—a matter in which the public has an interest—is to be found to have done something that he should not have done or whether he should be cleared of the charge. It appears to me highly unsatisfactory from the point of view of advocates and of the public that anyone should make a solemn complaint against one of them to the High Court and have the matter referred to the Tribunal and that then, without any finding which could clear the advocate, the enquiry should be dropped. I quite appreciate that, in this particular case, there may well have been circumstances and evidence before the Tribunal which would entitle it upon consideration to say that it was satisfied that there was no need to further investigate the matter and that there was no proof that the charge preferred had any substance. In these circumstances, it would certainly be open to the Tribunal to exercise its own discretion, whether to employ its power to summon the complainant personally or other people. It was in no way obliged to do so, if it did not think this necessary in order to arrive at a finding upon the question. But the report as drawn clearly imports that the Tribunal was of opinion that the enquiry necessarily came to an end. I am so well satisfied that this view would deprive the new enactment—the Bar Councils Act—of much of its advantage to the public that it appears to me desirable on the whole to make an order referring the matter back to the Tribunal and the

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Tribunal will, I trust, make up its mind as regards this matter and come to a definite finding on which this Court will be entitled to take action either by dismissing the complaint or otherwise as the circumstances may require.

BUCKLAND J. I desire to add a few words to what has fallen from the learned Chief Justice. The situation which has arisen in this particular matter appears to have been foreseen by those who framed the rules under the Indian Bar Councils Act. Under rule 3, it is provided that when a complaint has been made by a person other than a court or by the Bar Council, such person or the Bar Council shall be entitled to appear before the Tribunal to prosecute the complaint. The object of that is that, if the complainant will not prosecute the complaint, the Bar Council may do so and bring the matter to a final conclusion. The Bar Council, I apprehend, is in the position of a trustee and guardian of the dignity and privileges of the Bar and the rights and duties of its members and it is to the interest of the profession that, when a charge is made against an advocate, it should either be cleared up or be brought home to him. The rules are so designed that a charge of misconduct should not be left in the position in which this case comes before us, but that there should be a finding one way or the other. The present position is unsatisfactory from every point of view and I concur in the order to be made.

SUHRAWARDY J. I agree with the learned Chief Justice. I do not understand what the Tribunal mean by saying that the matter cannot be further proceeded with. If they mean to say that, because the parties have compromised the matter, the law does not empower them to proceed further, then they are wrong. On the other hand, if they are satisfied that, in the circumstances of the case, and on the material before them the matter should not be proceeded with

further, then they should have said so in so many words.

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Case remanded to Tribunal of Bar Council.

Attorneys for the advocate: *H. N. Dutt & Co.*

G. S.

[NOTE.—The matter was finally considered by a Special Bench composed of Rankin C. J., Buckland J. and Cuming J., after the Tribunal returned its further finding. The material portion of the concurrent judgment of the Special Bench, dated 4th September, 1929, was as follows:—

RANKIN C. J. The Tribunal has now returned a further finding and it appears therefrom that, after taking certain evidence, including the evidence of the advocate concerned, the Tribunal finds that the charges have not been substantiated and holds that the allegations made in the petition of complaint have been disproved and acquits the advocate of the charge of professional misconduct made against him. Under the Act, it is for the High Court to pass such a final order in the case as it thinks fit. In my judgment, the proper order to pass is that we confirm the finding of the Tribunal that the charges made against the advocate have not been substantiated and the allegations made in the petition of complaint have been disproved. ED.]