



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Integrity on Trial: Analyzing Disciplinary Actions and Review Powers in Cases of Legal Misconduct - Shambhu Ram Yadav v Hanuman Das Khattry

Hari Shankar Singh^a

^aBharati Vidyapeeth, New Law College Pune, India

Received 01 July 2024; *Accepted* 02 August 2024; *Published* 05 August 2024

INTRODUCTION

The case of Shambhu Ram Yadav v Hanuman Das Khattry¹ has led society to question the integrity and honesty of lawyers. In this case, a question of misconduct is raised on the conduct of an Advocate, it does not only damage the reputation of the Accused Advocate but also damages the reputation of the whole profession. The utmost honesty and morality in the legal profession serve as a cornerstone of Justice. This case has taken into consideration section 35 of the Advocates Act, 1961² which talks about provisions of punishment that the Advocate will be eligible for in case of any misconduct and section 44 of the Advocate Act, 1961³ which talks about the power of review of the orders by the disciplinary committee of the Bar Council. Section 44 of the Advocates Act, 1961⁴ has provided a very crucial insight in deciding on the question of

¹ *Shambhu Ram Yadav v Hanuman Das Khattry* (2001) 6 SCC 1

² Advocates Act 1961, s 35

³ Advocates Act 1961, s 44

⁴ *Ibid*

whether the disciplinary committee has the power to modify any judgment previously given by any other disciplinary committee has also been answered. This case has also emphasized the fact that the punishment for a crime should not only be based on its graveness but should also be based on its impact on society. The actions of the professionals of the legal profession should be in the correct and advised mandate as they are not just practising law as a profession but are also assisting the administration in running smoothly. The trust of society in the legal system should always be intact and anything endangering it should be immediately eliminated.

FACTS

In this case, a complaint was filed against the respondent by the appellant before the Bar Council of Rajasthan which was looked upon by the Disciplinary Committee which was constituted by the State Bar Council. The Complaint was that the respondent while appearing as a counsel in a suit pending in the Civil Court wrote a letter to his client stating that the concerned judge can be bribed and the respondent himself has bribed and got many judgments in his favour. The Respondent asked the Appellant to either get the concerned Judge influenced through some gentlemen so that they can get the judgment in their favour or send him the Amount of Rs.10,000 so that they can get the judgment in their favour by bribing the Judge. The Disciplinary Committee of the State Bar Council upon complaint observed that the respondent has not disputed the contents written by him in the letter and has accepted it. According to this observation, the Disciplinary Committee held the respondent guilty of misconduct and as per Section 35 of the Advocates Act, 1961⁵ suspended him from practising for two years. The respondent challenged the said order of the Disciplinary Committee of the SBC before the Disciplinary Committee of the Bar Council of India. The Disciplinary Committee of the Bar Council of India Augmented the Punishment and directed that the name of the respondent be struck off from the roll of Advocates, thus debaring him permanently from practising and even imposed Rs. 5000 on the Appellant which was to be paid to the Bar Council of India within Two months. The respondent filed a review petition Under section 44 of the Advocates Act, 1961⁶ against the order dated 31-7-1999. The review petition was allowed. During the review of the

⁵ Advocates Act 1961, s 35

⁶ Advocates Act 1961, s 44

punishment of permanently debarring the Advocate from the roll in the order dated 31-7-1999, it was found that the respondent was only replying to the letter of his client and not himself instigating his client to bribe the judge. Taking this factor into consideration, the punishment was reduced to only reprimanding the respondent and not permanently debarring him from the role.

ISSUES

- Whether the respondent is responsible for any misconduct.
- Whether the exercise of the power of review empowers a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee by taking a different view of the same set of facts.
- Whether the punishment given in the earlier order dated 31-7-1999 by the BCI is Appropriate.

ARGUMENTS BY APPELLANT

The Appellant's contention was merely based on the fact that the respondent had written the letter stating about the bribing of the judge and has admitted to whatever he has written. In addition, the Appellant claimed that the respondent had committed misconduct by writing the concerned letter and the punishment which was given by the order dated 31-7-1999 was appropriate. The Appellant further contented that the Disciplinary Committee has without any valid ground modified the order of permanently debarring the Advocate dated 31-7-1999 with only reprimanding the Advocate under the exercise of the power of review, and the modification without any valid ground erodes the credibility of the said profession in the eyes of the people.

ARGUMENTS BY RESPONDENT

The Respondent in his defense pleaded that he had not written that letter to his client to instigate him to either bribe the judge by himself or send him money so that the Respondent could bribe the judge to get the judgment in their favour. The respondent further pleaded that he only brought up the fact of how the presiding judge's service was terminated as he was charged with the offense of corruption and no money was sent to him by his client after that letter. In Addition

to these claims, he claimed that in his 50-year-long legal career, all the standards of professional ethics had been maintained by him and this is the first time that he has made this kind of mistake.

JUDGEMENT

The Apex court held the respondent guilty of misconduct. The Apex court held that the disciplinary committee in its earlier order has taken into consideration the factor of age of the Advocate as well as the number of years the Advocate has given to the legal profession. Apart from these relevant factors, the committee while announcing its order dated 31-7-1999 has also taken into consideration the letter which the client has sent to the respondent to which the respondent responded through a letter in which he had mentioned about sending him Rs.10,000 for bribing the judge. The Apex court stated that the power of review was not exercised by applying the appropriate principle governing the exercise of such power. The apex court stated that there was nothing that suggested that the intention to bribe the judge was absent. The Apex court also held that the power of review does not provide a jurisdiction to a disciplinary committee to amend any earlier decision announced by any other disciplinary committee by taking a view that is different from that of the previous disciplinary committee. The Apex court stated that the Bar Council of India expects and prefers a higher standard of morality from the person who has put 50 years in the profession since the BCI was entrusted with the duty of guarding the professional mandate. Hence, the Apex court stated that the BCI had inflicted an appropriate order in its order dated 31-7-1999. Under the said circumstances, the Apex court set aside the impugned order of 4-6-2000 and restored the original order of the BCI dated 31-7-1999 while allowing the appeal in the above terms with the cost being Rs. 10,000.

In the concerned case, the order dated 31-7-1999 was passed after a thorough consideration of the relevant factors as well as the contentions from both parties. The decision cannot be amended while deciding the review petition. It was evident that the previous committee concluded after considering the relevant facts that the lawyer was not worthy of remaining in the profession. The legal profession relies very much on the approach as well as the high standard of morals from the lawyers. Age can never be an excuse for the lack of a high standard of morality. Hence it is very plausible to expect the lawyers to be a person of high morals and unassailable legal and ethical propriety. It was observed by the Apex court that incidents like this can put the

credibility of the legal system as well as the people practising this profession into question. Apart from this, the contention of lack of valid ground onto which the decision was modified was also held by the apex court. Taking all of these into consideration, the apex court decided that the punishment given in the order dated 31-7-1999 was an appropriate one.

ANALYSIS

This case has dealt with the questions related to section 35 of the Advocates Act, 1961⁷ which has provisions relating to the punishment in case of the offence of professional misconduct, and section 44 of the Advocates Act, 1961⁸ which talks about the review power of the disciplinary committee. The punishment that was given by the state bar council in this case was in confirmation of the provisions mentioned in section 35 of the Advocates Act, 1961⁹. This section has stated that if the disciplinary committee gets a complaint or if the state bar council has reason to believe that any advocate on its roll has committed any misconduct or has a role to play in that misconduct, then it can refer the case to its disciplinary committee for disposal. The provision has also established that the respondent should be given an appropriate chance to present his/her defense. After the defence has been presented the disciplinary committee can decide on the result. The result can be various. The committee can dismiss the complaint, reprimand the advocate, suspend the advocate for a certain period, or remove the advocate from the advocate role¹⁰. The State Bar Council made sure that all the provision regarding the punishment for misconduct mentioned under section 35 of the Advocates Act, 1961¹¹ was followed before coming up with the order.

After the decision was modified by the disciplinary committee of the Bar Council of India, a question as to whether they had the power to modify the decision as per section 44 of the Advocate Act, 1961¹² was raised. This question was answered by the Apex court by taking into consideration Section 44 of the Advocates Act, 1961¹³ which clearly states that the disciplinary

⁷ Advocates Act 1961, s 35

⁸ Advocates Act 1961, s 44

⁹ Advocates Act 1961, s 35

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Advocates Act 1961, s 44

¹³ *Ibid*

committee can only review the orders on its motion or otherwise within 60 days of the date on which the order has been passed, provided that if any decision is announced after reviewing, that decision needs to be approved by the Bar Council of India. Whereas in this case, the Disciplinary Committee breached jurisdiction and modified the earlier order which was later set aside.

The court in this case made it very clear that the age factor and the experience factor cannot be taken as an excuse in case of professional misconduct. The court thought that the legal profession is very noble and honest and the same attributes are of utmost importance and are required to be present in the individuals practising this profession.

CONCLUSION

The judgment in the case of *Shambhu Ram Yadav v Hanuman Das Khattry*¹⁴ has reiterated that the highest standards of morals and legal ethics are required by professionals in this profession. This judgment has set up an example of how the judiciary and the Bar Council of India are committed to protecting the integrity of the legal profession. The restoration of the original order dated 31-7-1999 by the Apex court has portrayed a clear intention that any misconduct that hampers the integrity of the legal profession will be met with stringent consequences. This case has been and will be used as a reminder of the moral responsibilities of legal practitioners.

This judgment has cleared the ambiguity and provided an appropriate interpretation of section 44 of the Advocates Act, 1961¹⁵ which talks about the power of review of orders. The stance of the Apex Court highlights that the power of review mentioned under section 44 of the Advocates Act, 1961¹⁶ should be used to clear the valid errors and oversights and it should not be misused to alter the decision of the Disciplinary Committee, making it difficult to provide fair and certain justice. The Apex court has opined that if a legal practitioner has been a part of the profession for a very long time then a greater responsibility is bestowed upon him/her for the protection of the credibility and integrity of the profession. The State Bar Council announced

¹⁴ *Shambhu ram Yadav v Hanuman Das Khattry* (2001) 6 SCC 1

¹⁵ Advocates Act 1961, s 44

¹⁶ *Ibid*

the order dated 31-7-1999 as per the provision mentioned under section 35 of the Advocates Act, 1961¹⁷. Hence, the Apex court upheld the earlier order dated 31-7-1999 after setting aside the order dated 4-6-2000.

¹⁷ Advocates Act 1961, s 35