IN THE MATTER OF PROCEEDINGS AGAINST AN ATTORNEY-AT-LAW FOR CONTEMPT OF COURT

SUPREME COURT.
FERNANDO, J.,
KULATUNGA, J., AND
WADUGODAPITIYA, J.
SC APPLICATION NO. 89/92.
APRIL 28, 1992.

Attorney-at-Law – Making false statement to Court – Contempt – Duty not to mislead Court.

On the day fixed for supporting an application for leave to proceed for alleged violation of fundamental rights the Attorney-at-Law for the petitioner informed the Court that the application had been included in that day's list by an error and that he had been informed by the Officer-in-Charge of the Courts Branch in the Registry that it was in fact listed for the next day. However, it was found that the application had in fact been listed for that day on the motion of the Attorney-at-Law himself and that there was no error in listing it.

Held :

1. The Attorney-at-Law intentionally made a false statement to Court presumably for the purpose of obtaining a postponement of the case. In making that statement he either suppressed facts or gave a ground which he knew or had reason to know to be untrue; and thereby intended to deceive the Court. Such conduct is calculated to obstruct or interfere with the due course of justice and constitutes contempt of Court.

2. A pleader has a duty to assist in the proper administration of justice and not to mislead or deceive the Court. Whether the breach of such duty may be dealt with for professional misconduct or for contempt of Court will depend on the facts and circumstances of each case.

Cases referred to :

1. Re AG's application, *A G v. Butterworth* (1963) 1 QB 696, 723, 726.
2. *Pereira v Nadarajah,* SC (SLA) Application No. 203/88 S.C. Mins. of 21.02.89.
3. *Re Garumunige Tilakaratne* [1991] 1 Sri LR 134, 145.
4. *Wahab v. Perera* 39 NLR 475, 476.
5. *A G v. Laxapathy* 6 CLW 148.
6. *Jayasinghe v. Wijesinghe,* 40 NLR 68, 71.
7. *Re Ratnayake,* 40 NLR 99.
8. *Veerasamy v. Stewart,* 42 NLR 481, 482.
9. *A G v. Vaikunthavasan,* 53 NLR 558, 564, 655.
10. *R. v. Peiris,* 68 NLR 372, 373, 374.
11. In *re a First Grade Pleader,* AIR 1931 Mad. 520 (FB).
12. In *re Johnson* (1887) 2 QBD 68.
13. *Packer v. Peacock* 13 Commonwealth Law Reports 577.
14. *Mcleod v. St. Aubyan,* (1899) AC 549.
15. *Moosajee Ltd. v. Fernando,* 68 NLR 414.
16. *Wijeyesinghe et al v. Uluwita et al* 34 NLR 362.
17. *Ganeshanathan v. Goonewardene,* [1984] 1 Sri LR 319.

APPLICATION by Bar Association for review of order punishing Attorney-at-Law for contempt of Court.

Ranjith Abeysuriya, P.C. with *Desmond Fernando, P.C.* and *Upul Jayasuriya* for Bar Association.

Cur. adv. vult.

July 10, 1992.

***Order Of the Court* (Read by Kulatunga, J.)**

This order is in respect of an application made by the Bar Association seeking to review the decision of this Court dated 16.03.92 finding an Attorney-at-Law (hereinafter referred to as " the respondent "), guilty of contempt of Court and imposing a fine of Rs. 500 on him for such conduct. The facts are as follows :–

When the above application (No. 89/92) in which the petitioner alleged certain violations of his fundamental rights was called on 16.03.92, the respondent, the registered Attorney-at-Law for the petitioner, submitted that it had been included in that day's list by

an error, and that he had been informed by Mr. Wijedasa (the officer-in-charge of the Courts Branch in the Registry) that it was in fact listed for 17th March. However, the record showed that the said application had been filed on 09.03.92 by the respondent with a typed written motion dated 9.3.92 wherein he moved, *inter alia*, that the case be called in open Court on 16.03.92 to enable counsel to support the application ; that there was a handwritten endorsement on the face of the petition " may be supported on 16th of March 92 " together with a signature resembling that of the respondent contained in the petition ; that the first journal entry was " support application on 16.3.92 " ; and that the notice sent by the registrar to the Attorney-General stated that this matter had been listed for leave to proceed on 16th March.

The said handwritten endorsement was shown to the respondent and he was asked whether it had been made by him ; without answering the respondent immediately altered the date "16th" so that it then read "17th". Upon being questioned why he made such alteration, the respondent stated : " I could not understand what Your Lordships stated and mistakenly I altered the date and I beg your pardon ". At that stage the respondent stated that Mr. Anil Silva was due to appear in this matter having been retained the previous Saturday (14th March).

We sent for Mr. Wijedasa who confirmed that the date 16th March was given by the respondent ; he further stated that at no stage did he inform the respondent that this case was fixed for 17th March, whereupon the respondent was asked whether he had any cause to show why he should not be dealt with for contempt of this Court. The respondent stated that he had no cause to show and begged pardon of the Court. On being cautioned by Court to consider carefully what he stated in answer to the charge, the respondent said that he had nothing further to state. Accordingly, we found the respondent guilty of contempt of this Court and imposed a fine of Rs. 500 on him and directed that this sum be paid to the Registrar on or before 31.03.92 and that a copy of our order be forwarded to His Lordship the Chief Justice.

In our order dated 16.03.92 against the respondent we have recorded the facts and events on the basis of which the said order was made. In finding the respondent guilty of contempt of Court we

took into consideration the totality of his conduct including the act of promptly altering the date 16th contained in the endorsement referred to above without answering the simple question he was asked, whether he made the said endorsement. By itself the said alteration might not have constituted conduct amounting to contempt of Court. However, on the basis of the journal entry of 09.03.92, and the respondent's own motion and endorsement, it was clear that the application could not have been, and was not, listed for the 17th ; Mr. Wijedasa could not have altered the list ; and we saw no reason to disbelieve Mr. Wijedasa when he said that he did not inform the respondent that the matter was listed for the 17th. We found that for the purpose of obtaining an adjournment, the respondent falsely stated to court that Mr. Wijedasa had informed him that the case had in fact been listed for 17th March. Such conduct is " calculated to interfere with the proper administration of justice ". It is " inherently likely so to interfere " and as such constitutes contempt of Court. *Re AG's Application, AG v. Butterworth* [1] (*Per* Donovan LJ) : Borrie and Lowe's Law of Contempt 2nd ed. 53, 274, 276-278. We found him guilty of contempt of Court on his own plea that he had " no cause to show " and that he had " nothing further to state ".

On 19.03.92 Mr. Ranjith Abeysuriya, PC made submissions to us on behalf of the Bar Association with a view to have our order dated 16.03.92 set aside. He informed us that he was acting in consequence of representations made by the respondent. However, as no petition, affidavit or other papers had been filed we granted time to enable the Bar Association and or the respondent to file any papers they wished to and further suspended the operation of the order made by us, pending consideration of a proper application which may be made by the Bar Association. Accordingly, we directed that the fine imposed on the respondent need not be paid until further order is made by this Court.

Subsequently, affidavits of the respondent, Mr. Anil Silva, Attorney-at-Law and one Ranjith Upananda (the brother of the petitioner in the above application) were filed in support of the application of the Bar Association. Mr. Anil Silva speaks to having prepared the papers to be filed on behalf of the petitioner on the instructions given by the respondent and Upananda on 29.02.92. Both Mr. Anil Silva and Upananda state that on 9.03.92 the respondent informed them

that the application had been fixed for support on 17th March. Mr. Anil Silva agreed to appear for the petitioner on that day. Thereafter the respondent and Upananda met Mr. Anil Silva on 14.3.92 and were told to meet Mr. Silva again on the evening of 16.03.92 with his fees. However, on the evening of the 16th the respondent informed Mr. Silva that the application had been listed for that day and further informed what transpired in Court that day.

The respondent states that although originally it was intended to support the application on 16.03.92, when he handed over the motion to Mr. Wijedasa, a request was made to list it for 17.03.92 ; that he believed that it would be called on the 17th and took steps to retain Mr. Anil Silva to appear on that day ; that on 16.03.92 when he went to the Registry to obtain confirmation of the date, Mr. Wijedasa informed him that it was listed for that day ; that thereafter he met the Deputy Registrar and told him that Mr. Anil Silva had been retained to support the application on 17.03.92 ; that the Deputy Registrar advised that as it had already been listed for that day he should make an application in open Court ; that thereafter, he appeared before the Court and submitted that the application had been listed for that day by an error and that Mr. Wijedasa had previously informed him that it would be fixed for support on 17.03.92.

The above statement of the respondent considered in the light of the material available in the record and Mr. Wijedasa's statement to us clearly show that the respondent, in making submissions to Court on 16.03.92 stated what was false or suppressed facts. In his affidavit he states that when he handed over his motion to Mr. Wijedasa on 09.03.92, he made a request to have the case listed for 17.03.92 and believed that this would be done ; and scrupulously avoids saying that Mr. Wijedasa informed him at any time that the case was listed for 17.03.92. The journal entry of 09.03.92 and the respondent's handwritten endorsement on the petition are quite inconsistent with any request that the case be listed on 17.03.92 ; and no attempt has been made to explain this inconsistency either in the affidavit or in the submissions. In any event, before the respondent came to Court on the 16th, Mr. Wijedasa had informed him that it had been listed for that day ; and as such the respondent could not have truthfully made the submissions which he did. Even accepting Mr. Anil Silva's statement that the

respondent informed him on 09.03.92 that the matter was fixed for 17.03.92, nevertheless on 16.03.92 before he came to Court the respondent was fully aware that this was not so. The respondent's affidavit thus serves to confirm our conclusion that the respondent's submissions were false or involved suppression of facts. Such conduct amounts to contempt. Borrie and Lowe's Law of Contempt-2nd ed. p.310.

The defence of the respondent is that he is a very junior lawyer having been admitted and enrolled as an Attorney-at-Law in 1987 ; that this was his first appearance before the Supreme Court and that he was very excited when he addressed the Court. He further states that he altered the date in his endorsement on the petition under the mistaken belief that the record was given to him to amend the date by the substitution of 17th as the date for supporting the application ; and that he did not intend to deceive the Court or intend any disrespect to the Court.

Even if we were to assume that the alteration of the record was due to some confusion in the mind of the respondent, we are unable to accept the position that the false statement made by him was due to excitement and hence not intended to deceive the Court. The application had been listed for the 16th, in consequence of his motion. The respondent had confirmed that date by an endorsement on the face of the petition. As such there was no error in listing it for that day. Wijedasa did not tell him that it had been listed for the 17th. In these circumstances if the respondent believed that the application had been listed for the 17th, such belief can only be due to a mistake on his part. If so, it was his duty to have informed the Court that he had made a mistake. Instead, he made a false statement the natural consequence of which was to deceive the Court ; and he must be presumed to have intended the natural consequences of his act. He has failed to rebut this presumption. Hence our conclusion that he intended to deceive the Court.

The respondent's mistake, if any, was the result of his attempt to obtain a variation of a date by means of an oral request to the Registrar. In *Pereira v. Nadarajah* [2] (on which the petitioner relied, *inter alia,* on an oral request to the Registrar to obtain a variation of a date) this Court made it clear that the Registrar cannot deal with such applications and that they should be made either to the

Chief Justice or to the Senior Judge of the Bench before which a matter is listed or to the listing Judge nominated from time to time by His Lordship the Chief Justice. At the same time, the Court expressed the hope that counsel will (by following the correct procedure) extend their co-operation to the Court which the Court requires for the expeditious disposal of matters pending before it. The respondent has besides failing to extend such co-operation to the court, showed disrespect to the Court by making a false statement or by the suppression of facts.

This leads one to the second defence pleaded by the respondent namely, that he did not intend any disrespect to Court.

The charge against the respondent is one of criminal contempt. Oswald " Contempt of Court " 1910 3rd ed. p.10 states :

> " To speak generally, contempt of Court may be said to be constituted by any kind of conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during litigation ".

On the question of *mens rea*, Donovan L J in Re A G's application, *A G v. Butterworth* [1] expressed the following view :–

> " *R. v. Odhams Press Ltd. ex P.A.G.*, makes it clear that an intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of Court. It is enough if the action complained of is inherently likely so to interfere ".

Aiyar " Law of Contempt of Court, Legislatures and Public Servants " 8th ed. p. 29 states :

> " It is thus the evil tendency of the act, rather than the mental element by which it is accompanied that makes it an offence ".

In *Re Garumunige Tilakaratne* [3] (in which the accused was charged with contempt of the Supreme Court based on a newspaper report) it was held (p. 145) that an intention to cause disrepute or disrespect to the Supreme Court or any Court " is irrelevant

because all that is required is that the publication, viewed objectively is calculated to obstruct or interfere with the due course of justice' and this has been laid down in a stream of previous decisions (*Wahab v Perera* [4] ; *A G v Laxapathy* [5] ; *Jayasinghe v. Wijesinghe* [6] ; *Re Ratnayake* [7] ;*Veerasamy v. Stewart* [8] ; *A G v. Vaikunthavasan* [9] ; *R. v. Peiris* [10] ".

In the instant case the respondent intentionally made a false statement to Court presumably for the purpose of obtaining a postponement of the case. In making that statement he either suppressed facts or gave a ground which he knew or had reason to know to be untrue ; and thereby intended to deceive the Court. In these circumstances, it seems to us that the requirement that the respondent's conduct is " calculated to obstruct or interfere with the due course of justice " is easily established.

Barristers and Solicitors themselves may become guilty of contempt of Court by reason of their conduct which derogates from their professional duty as officers of Court. Aiyar " Contempt of Courts, Legislatures and Public Servants " 8th ed. p. 459 states :

> " Contempt of Court is (*a*) self-contained branch of law which stands by itself and a misdemeanour which affects the dignity or authority of a superior or subordinate Court may emanate from any quarter, and direction. As such a counsel, advocate, or pleader, appearing for a party to litigation, can claim no immunity from the operation of the law of contempt, if his act or conduct in relation to Court or Court proceedings interferes with or is calculated to obstruct due course of justice, or wounds the dignity of the Court. The law of contempt, in such an event, is not to be confused with professional misconduct in other domains for which other provisions exist ".

A pleader has a duty to the Court to see that the case is fairly and honestly conducted. He must not mislead the court. He must not ask for adjournments for his client when he knows that the reasons put forward are untrue or he has reason to believe them to be untrue. *In re a First Grade Pleader* [11]. In that case the Madras High Court punished the pleader for misconduct under s. 13 of the Legal Practitioners Act, No. 18 of 1879 on account of his conduct before a Magistrate

and suspended him from practice for a period of three months. This duty of a pleader to Court has been incorporated in our system by the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 in the following terms :–

Rule 50. – An Attorney-at-Law owes a duty to Court, Tribunal or other institution created for the Administration of Justice before which he appears to assist in the proper administration of justice without interfering with the independence of the Bar.

Rule 51. – An Attorney-at-Law shall not mislead or deceive or permit his client to mislead or deceive in anyway the Court or Tribunal before which he appears.

Whether an Attorney-at-Law who is in breach of his duty to Court to assist in the proper administration of justice and not to mislead or deceive the Court may be dealt with for professional misconduct or for contempt of Court will depend on the facts and circumstances of each case. We have punished the respondent for contempt of Court for his conduct in the face of this Court bearing in mind the following principles :–

(*a*) that the object of discipline enforced by Courts in case of contempt is not to vindicate the dignity of the members of the Court, but to prevent undue interference with the administration of justice, in the interest of the public in general. *In re Johnson* [12] ; *Packer v. Peacock* [13].

(*b*) that the power to punish for contempt should be sparingly used only from a sense of duty and under the pressure of public interest, not so much to punish the particular offender as to deter like conduct in the future. Aiyar " Law of Contempt of Courts, Legislatures and Public Servants " p. 535 ; *McLeod v. St. Aubyan* [14].

(*c*) that the power to punish summarily for contempt should be used with circumspection where it is absolutely necessary to do so, in the interest of discipline and respect for the administration of justice, and to ensure that public confidence in the Courts will not be undermined.

Learned President's Counsel for the Bar Association submitted that the respondent's conduct did not constitute contempt of Court ; that the statement made by the respondent in Court was due to the inelegant use of or inadequate knowledge of the English language and submitted that the Court may set aside its order dated 16.03.92 on the ground that it was made *per incuriam* or in the exercise of inherent powers, in view of the facts now before the Court. As regards the alleged difficulty of expression, there is not even a suggestion of this in the respondent's affidavit ; even if we were to assume that the respondent had some difficulty in expressing himself, it is our view (in the light of our above findings) that the respondent's conduct is not attributable to such difficulty. It was not suggested that our order was made in ignorance or forgetfulness of any case or statute. Our order was therefore not one made *per incuriam* and open to recall (before it is perfected) as was the case in *Moosajee Ltd. v Fernando* [15]. In *Wijeyesinghe et al v. Uluwita et al* [16] Macdonell, CJ held that the inherent power of the District Court under s. 839 of the Civil Procedure Code includes the power of vacating an order which has been obtained from it on insufficient or inaccurate information. The " Court " referred to in s. 839 did, in view of the definition of " Court " in s. 5 of the CPC, include the former Supreme Court ; and in *Ganeshanathem v. Goonewardena* [17] it was held that as a Superior Court of record the Supreme Court has inherent powers to correct its errors which are demonstrably and manifestly wrong and where it is necessary in the interest of justice. We are of the view that the facts of the case before us do not justify the exercise of the inherent powers of this Court to recall or set aside its order dated 16.03.92.

For the foregoing reasons we reject the application made by the Bar Association, and affirm the order dated 16.03.92 against the respondent, and direct the respondent to pay the fine of Rs. 500 imposed on him to the Registrar on or before 31st July. 1992.

Application rejected.