IN THE MATTER OF A RULE AGAINST AN ATTORNEY-AT-LAW

SUPREME COURT
SARATH N. SILVA, C.J.
AMARATUNGA, J. AND
SALEEM MARSOOF, J.
S.C. RULE NO. 01/2006(D)
JUNE 6, 2008

Judicature Act No. 2 of 1978 – Sections 40(1) and 42(3) – Rule issued to show cause as to why the respondent should not be suspended from practice or removed from the office of Attorney-at-Law. – Supreme Court (Conduct and etiquette for attorney-at-law) Rules 1988 – Rules 15,79,81.

The respondent's conduct within Court was observed as being in disobedience and defiance of the directions made by Court and was rude, intemperate, insolent and contemptuous, did not express any regret as to the impugned conduct to the Bench before which he appeared. The respondent upon the Rule being served took up a preliminary objection that there is no list of witnesses or documents annexed to the Rule and raised further three preliminary objection as well.

Held:

(1) Section 40(1) of the Judicature Act empowers the Supreme Court to admit and enroll as an Attorney-at-Law a person of "good repute and of competent knowledge and ability". These elements of good repute and of competent knowledge and ability should thereafter permeate the conduct of such person so long as his name remains in the Roll of Attorney-at-Law.

(2) When a person is enrolled as an Attorney-at-law by the Supreme Court, such person acquires a professional status which he cannot shed by purporting to file applications and appearing in person.

(3) The power of the Supreme Court to investigate charges against the members of the legal profession are not fettered by rigid rules and it is open to the Supreme Court to adopt a procedure which is fair and just in the circumstances.

(4) Section 42(3) of the Judicature Act only requires that a notice be served with a copy of the charges and an opportunity be afforded to show cause. The Rule that has been issued and the procedure adopted is fully compliant with this requirement.

Per Sarath N. Silva, C.J.

"The contents of the Rule of which the Respondent was given ample notice, the repeated opportunities to offer an explanation and the right to be represented by a Counsel, in my view establish that the procedure adopted is fair and reasonable."

(5) An objection to the participation of a Judge as a member of the Bench should be only on firm foundation. Any frivolous objection that is taken would only impede the due administration of justice, which may even amount to contempt of Court.

Per Sarath N. Silva, C.J.

"The impugned conduct of

(i) disobedience of orders of Court;

(ii) contemptuous disregard of the request of Court to clarify questions of law and the rude response that if the Judges wanted any clarification of the law, they could look it up themselves;

(iii) the use of intemperate language and making of gesticulations to bring the proceedings of this Court to ridicule and contempt.

constitute in my view unprecedented acts of discourtesy."

"It was open to the very bench that was hearing S.C.(F.R.) 108/06 to take appropriate action against the Respondent."

Cases referred to:

(1) *Attorney-General* v *Ellawala* 29 NLR 13.
(2) *Daniel* v *Chandradeva* (1994) 2 SLR 1.
(3) S.C. (F.R.) 232/2006.

Buvenaka Aluvihare, D.S.G. for the Attorney-General.
H.L.de Silva, P.C., with *Maureen Seneviratne*, P.C., *Aravinda Athurupana* and *U.S. Marikkar* for the respondent.
Daya Perera, P.C., and *Mohan Peiris*, P.C. for the BASL.

Cur.adv.vult.

June 6, 2008

SARATH N. SILVA, C.J.

The respondent having been admitted and enrolled by this Court as an Attorney-at-Law in terms of Section 40 of the Judicature Act No. 2 of 1979, was issued with a Rule in terms of Section 42(3) of the said Act to show cause as to why he should not be suspended from practice or removed from the office of Attorney-at-Law.

The impugned conduct of the respondent set out comprehensively in the Rule itself as follows:

"WHEREAS you filed S..C. Application No. 108/2006(FR) describing yourself as a practicing Attorney-at-Law of the Court and supported the application for Leave to proceed on 31.03.2006.

AND WHEREAS in your submissions you:

1. *Continued to read each and every averment in the Petition despite a specific direction given, that the Bench was possessed of the contents of the Petition and that you should not unduly take the time of Court by reading each and every paragraph but that you should make your submissions relating to the specific matters of law and fact, relevant to the matters in issue. Despite the said direction you in disobedience and defiance of the said direction continued to read the said paragraphs in the Petition, in disobedience of the specific orders of Court;*
2. *That in the course of the said proceedings when the Bench required you to address Court on certain issues for the purpose of clarification of questions of law that arose for consideration, you rudely and insolently refused to answer any questions despite repeated requests and you contemptuously told Their Lordships that they could look it up themselves, if they so desired.*
3. *That you used intemperate language and made gesticulations to bring the proceedings of Court into ridicule and contempt. That thereby, you engaged in conduct prejudicial to the administration of Justice; failed to assist in the proper administration of justice and.or permitted your personal feelings to influence your conduct before Court in breach of Rules 50 and 54 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules 1988 amounting to misconduct and malpractice as an Attorney-at-Law.*

AND WHEREAS, such conduct on your part warrants proceeding against you for suspension or removal from the office of Attorney-at-Law under Section 42(2) of the Judicature Act No. 2 of 1978."

It is manifest from the Rule itself that it has been issued directly in relation to the respondent's conduct within Court when he supported application bearing No. S.C.F.R. 108/06. The Rule is

based on the note made by the Presiding Judge of the Bench that heard the said application on 31.3.2006 and was issued as it is the practice in similar matters, after circulation amongst all Judges of the Court.

It has to be noted at the outset that the respondent whose conduct was observed as being in disobedience and defiance of the directions made by Court and was rude, intemperate, insolent and contemptuous, did not express any regret as to the impugned conduct to the Bench before which he appeared.

Instead of offering any explanation, regret or apology in respect of the impugned conduct, the respondent, upon the Rule being served took up a preliminary objection that there is no list of witnesses or documents annexed to the Rule and pursued this objection by seeking to obtain the note made by the Presiding Judge and the contents of the docket that was circulated amongst the Judges. The Court clearly pointed out that it is manifest from the Rule that the entirety of its content is of what took place in open Court and that the impugned conduct is based on the observation made by the Presiding Judge. Significantly. the Respondent who should have known what took place did not seek to file an affidavit after the Rule was issued, being the practice in other matters and to offer an explanation, apology or regret.

Instead, the respondent raised three preliminary objections. they are:

i) that the Court has no jurisdiction to issue the Rule in terms of section 42(2) of the Judicature Act for the suspension or removal of the Respondent as an Attorney-at-Law, since the respondent filed application No. 108/06, not as an Attorney-at-Law, but as an ordinary citizen of this country and that even if there is misconduct as alleged in the Rule he is not liable to be dealt with in that respect as an Attorney-at-Law.

ii) even assuming that he is liable to be dealt with in terms of section 42(2) of the Judicature Act, the Rule has not been issued in compliance with the procedure laid down in the applicable Rules of the Supreme Court, as specified in Rules 79 and 81,

iii) that in any event Justice Marsoof should not participate as a member of the Bench since he was also a member of the Bench in case No. S.C.F.R. 108/06 referred above.

I would now deal with these preliminary objections.

As regards the first objection, I note that although the respondent purported to file the Application S.C.(FR) 108/06 against the Attorney-General, Secretary to the President, Judges of this Court, the Speaker of Parliament, Prime Minister, Leader of the Opposition and Secretary to the Judicial Service Commission, in his personal capacity, in paragraph 1 of the petition in that application he has stated as follows:

1. "The petitioner is a citizen of Sri Lanka, aged 72 years and is presently practicing as an Attorney-at-Law of the Supreme Court of Sri Lanka."

In several paragraphs of the petition which runs into six pages the petitioner has made copious references to his role as an Attorney-at-Law. It is thus clear that the petitioner although purporting to appear in person has availed of his status as an Attorney-at-Law in presenting the application. It is a matter of common knowledge of which judicial notice can be taken that the petitioner has been continuously engaged in the practice of filing applications purporting to be in a personal capacity against numerous judicial and public officers. The case under reference could be considered a sample of his forays into Court purporting to act in the public interest. Be that as it may, **when a person is enrolled as an Attorney-at-Law by this Court in terms of section 40(1) of the Judicature Act, such person acquires a professional status which he cannot shed by purporting to file applications and appearing in person.**

The section empowers this Court to admit and enroll as an Attorney-at-Law a person of "good repute and of competent knowledge and ability". These elements of good repute and competent knowledge and ability should thereafter permeate the conduct of such person so long as his name remains in the Roll of Attorneys-at-Law.

The respondent cannot be permitted to shed his professional status as an Attorney-at-Law as and when he pleases, to make forays into this Court or into any other Court and to conduct himself in a manner that does not befit the professional status of an Attorney-at-Law. It is indeed disturbing that a person should elect to take shelter on an objection of this sort when a

clear imputation is made of malpractice and misconduct in the face of the Court. Accordingly, I would over-rule the first preliminary objection of the respondent.

The second objection raised by the respondent relates to the procedure that has been adopted. It is to be noted that by this objection he is reiterating the previous objection that there should be a list of witnesses and documents and that there should be an inquiry with the evidence of witnesses being adduced by the Attorney-General or Counsel representing him. As noted above it is plain on a reading of the Rule that the impugned conduct of the respondent, is what has been noted by the Presiding Judge. What the respondent seems to imply is that the Presiding Judge should be called as a witness and submitted for cross-examination by him. In my view even a suggestion of this nature is preposterous. In any event I wish to cite the Judgment of a Divisional Bench of this Court in the case of *Attorney-General* v *Ellawala*[1] – at 17 which reads as follows:

> *"The power of this Court to investigate charges against members of the legal profession is unfettered by rigid rules of procedure relating to the initiations of such proceedings or by any strict definition of or limitation as to the nature of material upon which alone such proceedings may be founded. Whenever in the Opinion of this Court an occasion has arisen to investigate a charge against an advocate or proctor which, if true, renders him liable to suspension, or removal from office it has the power to initiate proceedings for the investigation of the charge. It is essential, not only in the interests of the profession, but of the public, individual members of which are constrained daily to commit their most vital interests to members of the legal profession, that cases of misconduct, and especially of dishonourable conduct, which comes under or are brought to the notice of this Court should be fully investigated, and that their investigation should not be hampered or burked by mere technicalities. The rule issued in this case is well founded, and as we intimated to counsel at the hearing this preliminary objection must be rejected."*

It is clear therefore that proceedings of this nature are not fettered by rigid rules and that it is open to this Court to adopt a procedure which is fair and just in the circumstances. This matter is unique in that the impugned conduct was in a proceeding in Court itself. Transgressions within Court are rare and Attorneys-at-Law know where to draw the line and restrain themselves to keep within an acceptable norm. The impugned conduct transcends the norm by far. The Rule sets out in fair detail the circumstances and the impugned conduct. The respondent has had an ample opportunity to offer an explanation. Instead of offering an explanation he has raised preliminary objections and pleaded forgetfulness. The contents of the Rule of which the respondent was given ample notice; the repeated opportunities to offer an explanation and the right to be represented by counsel, in my view establish that the procedure adopted is fair and reasonable.

Section 42(3) of the Judicature Act only requires that a notice be served with a copy of the charges and an opportunity be afforded to show cause. The rule that has been issued and the procedure adopted is fully compliant with this requirement. In the circumstances I overrule the second objection raised by the respondent.

The **third objection** raised by the respondent relates to the participation of Hon. Justice Marsoof as a member of this Bench. The objection is that since Justice Marsoof was a member of the Bench that heard the Supreme Court Application No. S.C.F.R. 108/06, he was privy to what took place in Court and that he should not participate in this matter.

I have to note at the outset that neither proceedings in SC(FR) 108/06, nor this Rule could in any way be construed as personal matters between any of the Judges and the respondent. If the respondent has thus conceived the proceedings, it is a misconception only to his detriment. Justice Marsoof was functioning as a Judge of this Court in SC(FR) 108/06 and the merits of that case have no bearing on these proceedings. What is in issue is the impugned conduct of the respondent in making his submissions. I am of the view that it was open to the very Bench hearing S.C.F.R. 108/06 to take appropriate action against the respondent. It has to be noted that the respondent has on more

than one occasion instituted proceedings against Honourable Judges of this Court and of the Court of Appeal and on other occasions objected to Judges hearing his cases. In S.C.F.R. 108/06 when the matter came up on 22.3.2006 the respondent objected to the Presiding Judge hearing the matter, commenting that the Judge is biased. The ground of bias alleged is that applications filed by him purporting to appear in person have been dismissed by the said Judge. When it was pointed out to him that these applications had been filed several years ago and that in some cases in which the respondent appeared there had been judgments in his favour delivered by the same Judge, he has stated that the allegation of bias was only his belief, which might be right or wrong.

He had followed up by saying that although he had no facts to support his allegation, the Judge's body language had conveyed to him an impression of partiality.

I have to emphasize that an objection to the participation of a Judge should be only on firm foundation. Any frivolous objection that is taken would only impede the due administration of justice, which may even amount to contempt of Court. The respondent's objection to the participation of a Judge without offering an explanation of the impugned conduct is frivolous. I have to note at this point that although repeated opportunities have been afforded he has been evasive. He has neither admitted nor denied the impugned conduct in Court. In paragraph 38 of the affidavit he has virtually pleaded amnesia by stating " I cannot at this distance of time (more than an year later) recall what exactly was said." Hence I overrule the final objection of the respondent.

The impugned conduct of :

i) disobedience of orders of Court;
ii) contemptuous disregard of the request of Court to clarify questions of law and the rude response that if the Judges wanted any clarification of the law, they could look it up themselves;
iii) the use of intemperate language and making of gesticulations to bring the proceedings of this Court to ridicule and contempt;

constitute in my view unprecedented acts of discourtesy.

There are no reported instances of such deplorable conduct in our legal literature. The Bench that heard the matter has shown the highest leniency towards the respondent.

As regards discourtesy to Court I wish to cite the following passage from the Judgment of this Court in *Daniel* v *Chandradeva*(2) page 1–

> *"It comes as a surprise that the word "only" was used and repeated for emphasis as if discourtesy was of little or no significance in the matter of professional conduct. Discourtesy to the court is a very serious matter. The rough and rude conduct of an uncouthed attorney unaccustomed to following the usual ways of members of the profession who are of good repute is always shocking and repellent and deplorable although it may not amount to professional misconduct warranting disciplinary action. However, discourtesy to court is much more than a matter of good manners. It is axiomatic that every attorney must encourage respect for the administration of justice by treating the courts and tribunals of the country not only with candour and fairness but also with respect and courtesy. An attorney who is discourteous to Court acts in a manner prejudicial to the administration of justice in that he undermines the work of the Court. He renders himself unfit to be an officer of the court. As an officer of the Court and as a privileged member of the community who has been conditionally allowed to practice his profession to assist in the administration of justice every attorney must act with courtesy to Court. It is a duty recognized by Rule 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988."*

Malpractice that was alleged in that case was the failure to appear in Court, having accepted a retainer; Counsel for the respondent in that case had tendered written submissions suggesting that the failure of the respondent to appear in Court "only amounts to discourtesy to Court." It is this submission which drew the aforesaid observation of this Court. In comparison, the conduct that is alleged against the respondent transcends by far any conceivable level of discourtesy.

The need for deterrent action against the respondent is brought forth in another case – S.C.F.R. 232/2006,[3] which came up before Court nearly 3 months after the incident on the basis of which the Rule has been issued. That case had been filed by 2 persons purportedly in the public interest against 5 Judges of the Superior Courts, the Speaker, Prime Minister, Leader of the Opposition and so on. The respondent as Attorney-at-Law for the petitioners made submissions which caused the Court to make the following order on 30.6.2006.

> *"Mr. Elmore Perera, Counsel for the petitioner in the course of his submissions stated that he is not only addressing Court but also the people of this country. It seems to Court that this application has been filed for frivolous and vexatious considerations and also for collateral purposes.*
>
> *Court directs Attorney-General to consider whether any action is warranted against the petitioner for wasting the time of Court and also abuse of process."*

It is to be noted that S.C.F.R. 232/2006 was heard by three Judges, none of whom were members of the Bench which heard the matter in respect of which the Rule has been issued. It is thus seen that the respondent by his sheer discourtesy, disrespect, disobedience and insolence brought the Judges of this Court to a point of exasperation.

For the reasons stated above, I affirm the Rule and hold that the respondent is guilty of malpractice. The respondent is suspended from practicing as an Attorney-at-Law for a period of 7 years commencing from today.

AMARATUNGA, J. – I agree.

MARSOOF, J. – I agree.

Affirmed the Rule issued in terms of Section 42(2) of the Judicature Act No. 2 of 1978.