

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 16 OF 2013

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

MOHAMMED AZEEM UD-DEAN SAHU KHAN

Respondent

Applicant : Mr. A Chand

Respondent : Mr. D Sharma

Dates of Hearing : 6th September 2013

Date of Judgment : 10th September 2013

RULING

1. The Respondent /Practitioner ("the Practitioner") having had an allegation of professional misconduct found established against him, and having had as a consequence certain penalties imposed upon him, now makes application to this Commission for stay of the orders imposing those penalties pending an appeal to the Court of Appeal.

2. In determining the merits of an application for stay pending appeal, it is now accepted that the major principles to be considered are those set out in the Court of Appeal's decision in *Natural Waters of Viti Limited v Crystal Clear Mineral Water (Fiji) Limited* (ABU 11 of 2004).

Those principles are:

- Whether if no stay is granted, the applicant's right of appeal would be rendered nugatory;
- Whether the successful party will be injuriously affected by the stay;
- the bona fides of the applicant as to the prosecution of the appeal;
- the effect on third parties;
- novelty and importance of questions involved;
- the public interest in the proceedings;
- the overall balance of convenience and the status quo.

3. In applying these tests to cases of orders made in regulation of professional practice, be they medical, accounting or legal profession, great weight has been placed by Courts both abroad and by this Commission on the sixth principle of the public interest.

4. This cannot have been stressed more than it was in the case of *NSW Bar Association v Stevens* [2003] NSWCA 95, where Spiegeman C.J. said (para104):

"the fact that the issues involved in professional rights to practise concern the protection of

the public means that the public interest is always entitled to significant weight"

and later at para 150:

"This Court must be anxious to protect public confidence in the legal profession. Such confidence is likely to be undermined if a practitioner whose right to practise is the subject of serious challenge is able to successfully call upon the Court to exercise a discretion in his or her favour permitting him or her to continue in practice pending the ultimate determination."

5. In approving these dicta the Queensland Supreme Court in **Legal Services Commission v Baker** [2005] QCA 482 added:

"The additional factors which would justify a stay must be such as outweigh the public interest in having unfit practitioners debarred from practice. That interest is to be afforded particular significance".

6. This Commission has relied on these principles and in particular the weight to be put on the public interest component of the tests in **Rajendra Chaudhry** (002 of 2012), **Haroon Ali Shah** (007 of 2010), **Vipul Mishra** (002 of 2010) and **Abhay Singh** (001 of 2009).

7. In approving this weight to be given to the public interest, the Court of Appeal(Marshall J.A.) said in **Dorsami Naidu** (ABU 0038 of 2010) at para 28:

"I have no doubt that the simple rules that govern the application in this case come down to two. These are:

(i) *Is there proven a special circumstance which stands in the way of the regulator successful at first instance, whose position is strengthened by representing an important public interest from enforcing the fruits of his judgment?*

(ii) *Are there special or exceptional chances of success with regard to the practitioners appeal?*

8. A finding of professional misconduct had been made against this practitioner on the basis of dishonesty in that he unjustifiably claimed on his letterhead over a period of some four years that he was a callee of Lincoln's Inn in London. The Commission regarded this conduct as very serious in that the practitioner was claiming to be more qualified to practise than indeed he was and therefore members of the consumer public would be misled and possibly even induced to instruct him to act on the basis of his being a Member of that renowned body.

9. The Commission ordered that the practitioner be publicly reprimanded, that he be fined the sum of \$20,000 and that he be suspended from practice for a period of 18 months. It is the fine and particularly the suspension that the practitioner appeals and by the instant application would have those orders stayed pending determination of his appeal.

10. Counsel for the practitioner has filed extensive and well ordered written submissions to which he addressed the Commission in a very eloquent and carefully argued disquisition. He sought to cover each of the "**Natural Waters**" principles in turn. He provided evidence of the appeal having been filed thereby satisfying the bona fides of the applicant, he submitted that the Chief Registrar would not be injuriously affected by the stay. He placed great emphasis on the serious

prejudice occasioned to the practitioner by the suspension order in that his practice would descend into irremediable decline which would also affect the livelihood of his 5 or 6 employees. The appeal would probably not be heard for several months and therefore any success in that cause could be rendered nugatory.

11. In an attempt to show that the appeal had "every chance of success", he submits that not enough credit was given to the practitioner's immediate acceptance of responsibility for this misconduct when first appearing before the Commission, and in particular he relies on the fact that there was ***no evidence adduced by the Applicant*** (Counsel's emphasis) of damage or loss to clients or members of the public as a result of his dishonest claim, which evidence would go to the severity of sentence.

DISCUSSION

12. The second test laid down by the Court of Appeal (per Marshall J.A.) in ***Dorsami Naidu*** (supra) is "special or exceptional chances of success" of the appeal. Apart from a cursory assessment of the appeal in that regard, it is not for me now to arrogate the functions of that Court by delving too deeply into the merits of the grounds and the matters raised by Counsel before the Commission. It would appear however that to expect evidence to be given of prejudice to the clients or other members of the public misses the point of protection of the public from dishonesty and the ***potential*** (my emphasis) harm that such dishonesty could lead to. How could it ever be known what reliance certain parties have placed on the inflated academic claim? How could it ever be known which institutions have preferred to deal with the practitioner above others on the basis of his grandiloquent pretensions. This Commission is not of the opinion that his appeal against the penalty orders has any special or exceptional chance of success in that Honorable Court.

13. In turning to the second factor of special circumstances that would warrant a stay of the orders, the Commission is of the view that irremediable harm to the practitioner's practice and to the livelihood of his members of staff is unfortunate but they are consequences that befall every practitioner who has offended against the provisions of the Legal Practitioner's Decree. In falling far below the expected standards of professional conduct, the practitioner has only himself to blame for these dire consequences.

14. The authorities dictate overwhelmingly that considerable weight must be given to the public interest when deciding whether to stay orders, especially in a professional regulatory context.

15. I accept that the practitioner has co-operated to the best of his ability, and that he was indeed initially remorseful. I accept that his practice might well fall into disarray if the suspension is allowed to run. However one of the principal *raisons d'être* of this Commission apart from regulating a profession that was until 2009 allowed to practise virtually without fetter, is the protection of the consumer public. It would send a wrong signal to the profession and to members of the consumer public, if a practitioner who has been suspended from practice after findings of dishonesty have been made against him were to be allowed to resume his practice so soon after the suspension order has been imposed.

ORDERS

1. The Application is refused.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

10 SEPTEMBER 2013