

9, 1955

G.M.H. 2

UNIVERSITY OF LONDON  
W.C.1.

No. 5 of 1954. -3 JUL 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

# In the Privy Council.

13526

## ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF  
MALAYA—IN THE HIGH COURT AT KUALA LUMPUR.

BETWEEN

R. P. S. RAJASOORIA . . . . . *Appellant*

AND

DISCIPLINARY COMMITTEE . . . . . *Respondent.*

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## Case for the Appellant.

RECORD.

1. This is an Appeal from an Order of the Supreme Court of the Federation of Malaya, dated the 27th day of August 1953, suspending the Appellant from practice as an Advocate and Solicitor for a period of six months in respect of each of two charges brought against him. p. 21.

2. The main question at issue in this Case and to be determined upon this Appeal is whether the Appellant has been guilty of grossly improper conduct in the discharge of his professional duty so as to render him liable to be suspended from practice as an Advocate and Solicitor by virtue of Section 26 (1) of the Advocates and Solicitors Ordinance, 1947 (hereinafter called "the Ordinance"). The further issue arises whether or not the Appellant should be suspended even if he has been guilty of such conduct. 20

3. On the 4th November 1952 a complaint of the conduct of the Appellant was made in writing to the Bar Committee of Selangor and Negri Sembilan by Lim Tam Chong & Company as secretaries on behalf of the Foh Hup Omnibus Company Limited (hereinafter called "the Company"). pp. 44-45.

4. This complaint was examined by the Bar Committee who in due course applied to the Chief Justice of the Federation of Malaya, in accordance with Section 27 of the Ordinance, for the appointment of a Disciplinary Committee to hear and investigate the complaint. 30

5. On the 12th March 1953 a Disciplinary Committee was duly appointed under Section 53 of the Ordinance and on the 7th May 1953 the complaint of the Company was heard by the Disciplinary Committee in the Bar Room at the Supreme Court at Kuala Lumpur. At the hearing oral and documentary evidence were tendered on behalf both of the Company and of the Appellant.

p. 9, ll. 12-20.

6. On the 11th June 1953 the Disciplinary Committee made a written Report in which they stated that the complaint of the Company as set out in the letter of the 4th November 1952 constituted two separate charges which the Disciplinary Committee entitled Complaint No. 1 and Complaint No. 2 respectively. 10

p. 11, ll. 20-27.

7. The Disciplinary Committee purported to find that the matters which were the basis of Complaint No. 1 constituted grossly improper conduct on the part of the Appellant.

p. 11, ll. 28-34.

8. The Disciplinary Committee further purported to find that the matters which were the basis of Complaint No. 2 also constituted grossly improper conduct on the part of the Appellant.

p. 11, ll. 35-37.

9. The Disciplinary Committee concluded their Report by stating that in their opinion the facts proved or admitted before them constituted due cause for disciplinary action under Section 26 of the Ordinance. 20

pp. 16-13.

10. On the 20th July 1953 the Honourable Mr. Justice Pretheroe made an Order upon the Motion of the Disciplinary Committee calling upon the Appellant to show cause why an Order should not be made against him under Section 26 (1) of the Ordinance.

11. On the 10th August 1953 the Appellant duly showed cause before a Court constituted in accordance with Section 31 (7) of the Ordinance and consisting of the Honourable Mr. Justice Pretheroe, Acting Chief Justice of the Federation of Malaya, the Honourable Sir Charles Murray-Aynsley, Chief Justice of Singapore and the Honourable Mr. Justice Briggs. After hearing argument on behalf both of the Appellant and of the Disciplinary Committee and the Bar Council of the Federation of Malaya the Court reserved their Judgment. 30

p. 21.

12. On the 27th August 1953 the Court delivered a reserved Judgment in which they unanimously agreed with the Disciplinary Committee that in respect both of Complaint No. 1 and Complaint No. 2 the Appellant had been guilty of grossly improper conduct. The Court ordered that the Appellant should be suspended from practice as an Advocate and Solicitor for a period of six months from the date of the Order in respect of each Complaint and that the Appellant should pay to the Disciplinary Committee a sum of \$55 as costs. 40

13. The following facts were proved or admitted at the hearing before the Disciplinary Committee or are to be inferred from the documentary evidence which was tendered :—

(1) On the 2nd June 1952 an Annual General Meeting and an Extraordinary Meeting of the Company was held at the Office of the Company at Kuala Lumpur. On that date a Board of Directors of the Company was appointed.

(2) The Meetings on the 2nd June 1952 were stormy and a number of the shareholders of the Company walked out in protest.

10 (3) Between the 2nd June 1952 and about the 10th June 1952 three undated documents were prepared calling for an Extraordinary General Meeting of the Company to enable the signatories of the documents " to protest against the unconstitutional manner in which the General Meeting on the 2nd June 1952 was held and to pass a vote of no confidence on the Secretaries, Messrs. Lim Tam Chong & Company, and the Directors holding office at present and hold a General Meeting constitutionally for election of Office Bearers." The three documents were signed by 24, 29 and 37 shareholders respectively. The originals of these three documents were not produced to the Disciplinary Committee because the Appellant was unable to obtain them, but a photostat showing all three documents was prepared by Mr. Lim Tam Chong on or about the 24th August 1952 and this photostat was marked Exhibit A. p. 2, l. 24. p. 5, ll. 28-31.

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(4) On or about the 10th June 1952 15 of the said signatories brought the three documents to the Appellant's Office. The Appellant, who was not familiar with company law, took the three documents to the Office of Mr. Prentis, the Registrar of Companies in Kuala Lumpur. p. 7, l. 6. p. 6, l. 41.

30 (5) The evidence as to what took place at the interview between the Appellant and Mr. Prentis is not altogether clear. It seems, however, that Mr. Prentis pointed out that the three documents were defective in that they did not state the names of the directors or secretaries who were to be proposed in place of the existing directors or secretaries. Mr. Prentis himself did not give evidence at the hearing before the Disciplinary Committee; he did not refer to the interview at all in the letter which he wrote at a later stage to the solicitors acting for the Omnibus Company. p. 6, ll. 23-28. p. 44.

40 (6) The Appellant thereupon asked the shareholders for a list of the directors and secretaries who were to be proposed for election and in due course he was handed the documents which were made Exhibits F and G respectively at the hearing before the Disciplinary Committee. p. 24.

(7) On the 16th June 1952 the Appellant wrote to the Secretaries of the Company asking for a copy of the Minutes of the Meetings of the 2nd June. This letter was handed to the Company's solicitors who sent a reply to the Appellant dated the 17th June 1952. p. 25. pp. 25-26.

(8) The Appellant then prepared a Requisition which would meet the objections raised by Mr. Prentis. p. 6, l. 34.

- p. 27. (9) On the 5th August 1952 the Appellant sent this new Requisition to the Registrar of Companies together with the three defective documents which had been signed before the 10th June by the shareholders instructing the Appellant. The new Requisition was an unsigned document bearing the date "July 1952" and also (at the foot) bore the words "(Sgd) Kong Sin Kee and 89 other Shareholders, Foh Hup Omnibus Co. Ltd., (owning between them share i.e. not less than one-tenth of the issued capital of the Company)." This new Requisition was made Exhibit C.4 at the hearing. 10
- p. 28. (10) On the 5th August 1952 the Appellant sent to the Secretaries of the Company a copy of C.4 and stated that the original "list" could be inspected at the Office of the Registrar of Companies.
- p. 29, l. 22. (11) On the 8th August 1952 the Registrar of Companies returned the "requisition" to the Appellant and requested him to deposit it at the Registered Office of the Company. The covering letter was not signed by Mr. Prentis himself but he did in fact approve the draft. It seems probable that the Registrar of Companies returned all the four documents which had been sent 20  
p. 44, l. 18. to him.
- p. 29. (12) On the 11th August 1952 the Appellant sent to the Secretaries of the Company the three defective documents bearing the shareholders' signatures.
- p. 30. (13) On the 20th August 1952 the Company's solicitors wrote to the Appellant pointing out that the three signed documents were not the originals of C.4, and intimated that they would convene a meeting in accordance with the terms of the signed documents.  
p. 31, l. 4.
- p. 7, l. 14. (14) The Appellant in evidence stated that he thought that it was quite clear that the meeting was to be convened on the basis 30  
of C.4.
- p. 31. (15) On the 22nd August 1952 the Appellant wrote to the Company's solicitors to confirm that the meeting to be convened was for the purpose of considering the resolutions set out in C.4 and was not to be on the basis of the three signed documents.
- p. 32. (16) On the 25th August 1952 the Company's solicitors returned the three signed documents to the Appellant. The Company probably retained their copy of C.4 which had been sent to them  
p. 7, l. 31. on the 5th August. Mr. Lim Tam Chong made photostat copies of the three signed documents and of the copy of C.4. 40
- p. 31, l. 38. (17) The Appellant, in his letter dated the 22nd August 1952, referred to having to get the signatures anew if the Company's solicitors were not content with the explanation contained in that letter. The Appellant discussed the question of obtaining the

signatures with the shareholders who came to see him in his office. They advised him that this would take two months and it seems that in view of the delay which had already taken place the Appellant thought that some of the shareholders might cause trouble in his office. p. 7, ll. 18-20, ll. 25-28.

10 (18) On the 26th or 27th August 1952 the Appellant cut off from the three defective documents which had been returned to him by the Company's solicitors the parts containing the signatures. He then pasted these parts on to three further Requisitions in the form of C.4 and so produced three composite documents which contained the resolutions originally set out in C.4 and also the signatures which had been contained originally in the three defective documents. The Appellant signed his name across the joint of each of the three composite documents. The three composite documents were dated the 27th August 1952 and were made Exhibits E.2, E.3 and E.4 respectively at the hearing. pp. 34-37.

20 (19) On the 27th August 1952 the Appellant sent E.2, E.3 and E.4 to the Company's Secretaries together with a covering letter. Before despatching the said documents the Appellant obtained an assurance from five shareholders that all the 90 signatories were still shareholders of the Company. Four of the signatories were in fact no longer shareholders on the 27th August 1952. p. 33. p. 6, l. 14. p. 5, l. 5.

(20) The matters set out in paragraphs (18) and (19) hereof formed the subject-matter of Complaint No. 1.

(21) On the 13th September 1952 the Company's Secretaries issued a notice convening a meeting in accordance with the terms of E.2, E.3 and E.4. pp. 38-39.

30 (22) On the 26th September 1952 the Company's solicitors wrote to the Appellant concerning the form of E.2, E.3 and E.4. The Appellant replied on the 29th September 1952 and the Company's solicitors wrote to the Appellant again on the 1st October 1952. The Appellant did not answer this further letter. In fact the Appellant did not see this letter until the hearing before the Disciplinary Committee. The Appellant will crave leave to refer at the hearing of this Appeal to affidavits showing that this letter was in the Appellant's office only from the 4th October 1952 (the date of its receipt) to the 6th October 1952 (when the Appellant's instructions to act on behalf of the requisitioning shareholders were withdrawn) and that during this period the Appellant was away from Kuala Lumpur. pp. 40-41. pp. 41-42. pp. 42-43. p. 8, l. 9.

40 (23) The Company's complaint in regard to the correspondence referred to in sub-paragraph (22) hereof was set out in the letter dated the 4th November 1952 from the Company's Secretaries to the Secretary of The Bar Committee of Selangor and Negri Sembilan. In the Report of the Disciplinary Committee Complaint No. 2 was postulated as being to the effect that the Appellant had informed the Company's Solicitors that it was on the advice of the Registrar of Companies that he had cut off the signatures from the "Original Requisition" and later attached them (by pasting) to a "new or amended Requisition." p. 44, ll. 13-26. p. 9, ll. 12-20.

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pp. 46-47. (24) On the 11th December 1952 the Appellant wrote a letter of explanation to the Secretary of the Bar Committee of Selangor, Negri Sembilan and Kelantan. This letter was made Exhibit D at the hearing before the Disciplinary Committee.

pp. 9-10. 14. The Disciplinary Committee in their Report made a number of findings of fact which were set out in 12 numbered paragraphs.

15. The Disciplinary Committee dealt in their Report with Complaint No. 1 as follows :—

p. 11, ll. 20-26.

“ Having carefully considered all the explanations given by Mr. Rajasooria both in his letter Exhibit D and in his evidence 10 before them the Disciplinary Committee find that, in cutting off the signatures from the Original Requisition and attaching them by pasting to the Amended Requisition about two months later, Mr. Rajasooria was guilty of grossly improper conduct as an Advocate and Solicitor but that he did not act with intention to deceive.”

16. The following submissions are made on behalf of the Appellant in regard to Complaint No. 1 and the Report of the Disciplinary Committee and the Judgment of the High Court thereon :—

(1) The Disciplinary Committee were not entitled to make a 20 finding as to the conduct of the Appellant but, by S. 29 (1) of the Ordinance, could only record their opinion.

(2) The Disciplinary Committee were satisfied that the Appellant did not act with any intention to deceive. It is submitted that it was inconsistent with this finding to decide that the Appellant was guilty of grossly improper conduct.

p. 17, l. 12.

(3) Acting Chief Justice Pretheroe accepted that “ grossly improper conduct ” means conduct which is dishonourable to a solicitor as a man and dishonourable in his profession : see *In Re. G. Mayor Cooke* (1889), 5 Times Law Reports 407 at p. 408 per 30 Lord Esher, M.R. It is submitted that it was not dishonourable to the Appellant either as a man or as a solicitor to send to the Company documents which obviously consisted of two pieces of paper pasted together.

p. 6, l. 20.

(4) Neither the Disciplinary Committee nor the Court gave proper weight to the fact that the pasting was done with a complete lack of contrivance and in the presence of four witnesses.

p. 9, l. 33.

(5) It seems that neither the Disciplinary Committee nor the Court appreciated that the Appellant sent the signed defective document to the Registrar of Companies on the 5th August 1952. 40 It is submitted that the comments made in the Report on the failure of the Appellant to send these documents to the Company in the first place were based on a misunderstanding of the evidence. Further, it is quite clear from the judgment of Chief Justice Murray-Aynsley that he did not appreciate that four documents were sent to the Registrar of Companies on the 5th August.

p. 10, l. 2.

p. 18, l. 27.

(6) Neither the Disciplinary Committee nor the Court gave proper weight to the fact that the Registrar of Companies in his letter dated the 8th August 1952 (semble) referred to the four documents sent to him as "the requisition."

p. 29, l. 14.

(7) Neither the Disciplinary Committee nor the Court gave proper weight to the fact that the Company was not misled by the pasted documents.

10 (8) Neither the Disciplinary Committee nor the Court gave proper weight to the fact that the Appellant was inexperienced in the law relating to companies.

(9) Alternatively, in all the circumstances the suspension of the Appellant from practice for a period of six months was an excessive penalty.

17. The Disciplinary Committee dealt in their Report with Complaint No. 2 as follows :—

20 "Regarding Complaint No. 2 as to the misleading statement in Mr. Rajasooria's letter (Exhibit C.18) dated 29th September 1952 the Disciplinary Committee find that that letter was written with the intention of justifying the action the subject of Complaint No. 1 and that it was definitely intended to mislead. The Disciplinary Committee find that Mr. Rajasooria's conduct in writing it and further in not replying to letter Exhibit C.19 from Messrs. Shearn Delamore & Co. amounted to grossly improper conduct and that he has given no satisfactory explanation thereof."

p. 11, ll. 27-34.

18. The following submissions are made on behalf of the Appellant in regard to Complaint No. 2 and the Report of the Disciplinary Committee and the Judgment of the High Court thereon :—

30 (1) The Disciplinary Committee were not entitled to make a finding as to the conduct of the Appellant but, by S. 29 (1) of the Ordinance, could only record their opinion.

(2) No questions as to the meaning of the letter of the 29th September 1952 were put to the Appellant either by the members of the Disciplinary Committee or in cross-examination.

p. 41.

40 (3) Neither the Disciplinary Committee nor the majority of the High Court gave proper consideration to the meaning of the word "attached" in the letter of the 29th September 1952. Mr. Justice Briggs, however (rightly, it is submitted) was of the opinion that this letter was not literally untrue. The Appellant explained at the hearing before the Disciplinary Committee what documents he had attached on the advice of the Registrar of Companies, but no consideration appears to have been given to this explanation either in the Report or in the Judgment. It is submitted that the letter from the Company's solicitors to the Appellant dated the 20th August 1952 illustrates the ambiguity of the word "attached."

p. 42, l. 1.

p. 4, ll. 13-19.

p. 30, l. 32.

(4) In considering Complaint No. 2 neither the Disciplinary Committee nor the High Court gave proper weight to the fact that the composite Requisitions were prepared without any intention to deceive.

(5) The facts relating to the receipt of the Company's solicitors letter dated the 1st October 1952 were not fully before either the Disciplinary Committee or the High Court. Furthermore, the transcript of the shorthand notes of the evidence given before the Disciplinary Committee is inaccurate in that it omits the date (stated by the Appellant in evidence) when the Appellant's instructions to act on behalf of the requisitioning shareholders were withdrawn. It is submitted that the comments made on the failure to answer the Company's solicitors' letter dated the 1st October 1952 indicate the importance which the Disciplinary Committee and the High Court would have attached to the fact that this letter was not seen by the Appellant until the hearing before the Disciplinary Committee. 10

p. 8, 1, 14.

(6) Neither the writing of the letter of the 29th September 1952 nor the failure to answer the letter of the 1st October 1952 constituted grossly improper conduct on the part of the Appellant. 20

(7) Alternatively, in all the circumstances the suspension of the Appellant from practice for a period of six months was an excessive penalty.

19. The Appellant accordingly humbly submits that this Appeal should be allowed and the Order of the High Court of the Federation of Malaya be set aside for the following (among other)

## REASONS.

- (1) BECAUSE the Appellant was not guilty of grossly improper conduct in regard to the matters which form the subject-matter of Complaint No. 1. 30
- (2) BECAUSE the Appellant was not guilty of grossly improper conduct in regard to the matters which form the subject-matter of Complaint No. 2.
- (3) BECAUSE the findings and opinions of the Disciplinary Committee and the Judgment of the High Court of the Federation of Malaya were against the weight of the evidence.
- (4) BECAUSE the findings and opinions and the Judgment of the High Court of the Federation of Malaya were wrong. 35
- (5) BECAUSE the penalties imposed by the High Court of the Federation of Malaya were excessive.

(Sgd.) P. COLIN DUNCAN.



**In the Privy Council.**

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**ON APPEAL**

*from the Supreme Court of the Federation  
of Malaya--In the High Court at Kuala  
Lumpur*

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**BETWEEN**

**R. P. S. RAJASOORIA** . *Appellant*

**AND**

**DISCIPLINARY COMMITTEE** *Respondent*

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**Case for the Appellant**

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**Hy. S. L. POLAK & CO.,**  
20-21, Tooks Court,  
Cursitor Street,  
London, E.C.4,  
*Solicitors for the Appellant.*