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In Re: Second Grade Pleaders

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Court : Chennai

Decided On : Apr-19-1910

Reported in : (1910)20MLJ500

Appellant : In Re: Second Grade Pleaders

Judgement :
ORDER

Arnold White, C.J.

1. In these proceedings two Second Grade Pleaders have been called upon to show cause why they should not be suspended or dismissed by reason of their conduct in having joined the Board of Directors of the " Circars Provident Fund Ld., of Bapatla ' and in connection with the affairs of that Company. The Company is now in liquidation. One of the pleaders was the President of the company. I will refer to him as ' the President'. The other was a Director, I will refer to him as 'the Director,' Criminal proceedings were taken against the two pleaders in connection with the affairs of the company and they were convicted of criminal breach of trust by the Sessions Judge of Guntur. On appeal these convictions were set aside. There can, I think, be no question that the convictions could not be upheld. In appropriating to their own use the sums of money which formed the subject-matter of the charge of criminal breach of trust, the President and the Director did not exceed the rights which they had conferred upon themselves by the Articles of Association. In law the Company would seem to have consisted only of 7 signatories to the Memorandum of Association.

2. The modus operandi of the Company is described in the Judgment of Abdur Rahim J, setting aside the convictions. The fund of the Company was to consist of subscriptions paid by persons who are called 'pattadars' and also described as ' subscribers ' or ' nominees ' or 'diploma-holder?.' The subscriptions payable were to be at the rate of Re. 1 a month and no subscription was to be paid after 53 payments or after the death of the person called 'Darkastdar' or 'Applicant.' At the end of each year, half the amount of the money collected during the year was to be distributed among the 'Nominees ' of those 'Applicants ' who happened to die during that year in proportion to the amount of money paid under each pattah subject to the maximum of Rs. 1,000. By Rule 14 of the Articles of Association 8 Annas out of every Rupee subscribed was to go towards the bonus fund, while the remaining 8 Annas was to be dealt with as follows:

RS. A. P.

o 2 o Reserve Fund.

O o 6 Guarantee Fund up to Rs. 5,000.

O o 6 Charity Fund.

O 2 o Commission to Agents.

3. The rest, i.e., 3 Annas out of each Rupee ' will go towards the expenses of the company,' viz., office establishment, charges, printing charges, etc., and towards the profits of the company, or company people, the vernacular words being ' company varu.' Another rule (No. 10) provided that the first Rs. 3 paid by a subscriber would be treated as entrance fee and not as subscription and ' this entrance fee will be appropriated by the company people for expenses etc; and shall not form part of the bonus which will be distributed.' The object of the guarantee fund was to secure to the nominees at least twice the amount paid by the subscribers. This is the benefit which is promised in express words to the nominees or subscribers in the bonus which in no case is to fall short of twice the amount paid as ' subscriptions', but which may extend up to Rs. 1,000.

4. The ' applicant' or ' darkhastdar' on whose death alone his pattadar or nominee is to get the bonus that may fall to his lot, need not be under any particular age-limit, nor is any certificate required as to the state of his health nor need he be in any way related to the nominee so as to give the latter an insurable interest in his life. A lucky pattadar therefore stands to win a prize of Rs. 1,000 for paying in a few rupees, may be 12 or may be 53, but not exceeding Rs. 53, and in any case a pattadar whose darkhastdar happens to die before the Company is wound up, is sure to get twice the amount subscribed. There is no proper provision for the profitable investment of the funds of the Company and the Company may go into liquidation whenever it chooses. Such a concern can only last so long as there is an accession of new diploma-holders every year and a fair proportion of the ' applicants' do not happen to die in the course of the year.' The learned Judge observes : 'Asa business undertaking it has no sound or stable financial basis and the so-called Provident Fund appears to be more in the nature of a lottery than anything else.' Benson J. said:-'Therecan be no doubt, I think, that the so-called Provident Fund with its hypocritical professions of philanthrophy and large promises of profit to all, was, from its very inception, a gambling concern cunningly devised to swindle the unwary and ignorant.''

5. In law, as I have said, the Company consisted of the President and the 6 Directors, the 7 signatories to the Memorandum of Association. These parties by the Articles of Association made due provision for lining their own pockets so long as the Company continued to do business It seems clear from the description of the modus operandi of the Company to which I have referred and from the facts that the subscriptions were limited to 53 months, that the so-called reserve and guarantee funds were wholly insufficient and that the Compan's guarantee by which the liability of the Company was limited was altogether illusory, that sooner or later the Company was bound to find itself in a position in which it could not fulfil its obligations. The prospectus states that 'the gain resulting from increase in the number of subscribers is to the starters and not to the subscribers, but it seems to me that the only thing which could have kept the Company alive for any substantial period, would have been a large increase in the number of subscribers each year. So far as the subscribers were concerned the undertaking was a pure gamble and the prospects of a success in the gamble were in direct ratio to the

badness of the life insured. If any intelligent person invested his money in the concern he can only have done so in the hope that the life which he had got insured in his favour was sufficiently bad to warrant the expectation that the Company would outlast the life. Lives were 'insured,' if one can use such an expression, without regard to the age or health of the insured person and without any suggestion of an insurable interest in the party in whose favour the insurance was effected. The Prospectus of the Company as a business statement is ridiculous. The Memorandum of Association contains statements which are misleading if not false. In paragraph 2 it is stated that the number of the subscribers of the Company shall for the present be 400. Presumably this statement is made for the purpose of Section 37 of the Indian Companies Act, 1882, which requires that the number of members with which the Company proposes to be registered should be stated. But the subscribers here mentioned are not members of the Company. They are the parties who are to have the benefit of the death of the insured persons or ' applicants.'

6. The reference to the number of subscribers being 400 would seem to have been made either with the intention to mislead, or under a misapprehension of the requirements of the law.

7. Paragraph 3 of the Memorandum of Association is false. The object of the Company is not as stated to afford to the subscribers an opportunity of making some provision for their families or friends a their death, but to enable the ' subscriber' to benefit by the death of an 'applicant.' A reference to definitions 2 and 3 in the Articles of Association makes this clear. The excuse put forward by the President was that he had no knowledge of the working of the fund and that he only consented to act on the undertaking that the business should be managed by the 6th accused in the criminal proceedings. This cannot be accepted as an excuse. The value of the President as a figure head in, assuming he was merely a figure-head, lay in the fact that he was a pleader and it was no doubt expected that this fact would help towards inspiring confidence in the public. If I took the view that the President had associated himself with this Company with the intention of swindling the public there would, in my opinion, be no alternative but to suspend him from practice altogether notwithstanding the fact that the criminal proceedings

against him had proved abortive. At any rate for the purpose of the question now before us, I prefer to deal with this case on the footing that the President and the Director did not intend to cheat the public but that they knew or must be taken to have known that this so-called Provident Society was in no sense a Provident Society and in no sense an undertaking for the purposes of life insurance in the ordinary acceptation of the term, but that it was a means of furnishing profit to the Directors by enabling those who so desired to gamble on the lives of parties who were willing to become 'applicants' to the society. The action of the President and the Director in associating themselves with such a Company as Directors to my mind is ' reasonable cause' for an order being made under Section 13 of the Legal Practitioners Act. As regards the question of law which has been argued before us, as to the construction of Section 13(f) I adhere to the view which I took in In the matter of a First Grade Pleader I.L.R. (1900) M. 17. In my opinion in the case of the President an order of suspension should be made. I think we may take into consideration the fact that he has undergone a substantial term of imprisonment under the conviction which was set aside on appeal to this Court. I think we may also take into consideration the fact that in this Presidency at any rate so-called Provident Societies of the class we have had before us are by no means uncommon and that up to now, this Court had not had occasion to mark its sense of the conduct of Legal Practitioners who, whilst keeping within the letter of the law as it now stands, avail themselves of the law to work what are really gambling undertakings under the guise of limited Companies which purport to be promoted for provident or life assurance purposes.

8. I would suspend the President for 3 months from this date. As regards the Director his excuse is, he merely lent his name. He received about Rs. 175 as profits in the first year, but he resigned in the second year without claiming any profits. He has been put to heavy expense in the criminal proceedings. I think his conduct in joining the Company without sufficient enquiry was foolish and reckless, but in all the circumstances, I do not think we are called upon to make any order of suspension in his case.

Miller, J.

9. The point of law is not without difficulty, but on the whole I am able to accept the conclusion that we have jurisdiction to make an order in this case. In the first place it is not clear to me that we ought not to read Sections 12 and 13 together as containing the enumeration of the cases in which orders may be made for the suspension or removal of a pleader; if we do that, Section 13(f) which closes the enumeration with the general words 'for any other reasonable cause' can be interpreted on the principle of ejusdem generis only if we find that the specifically enumerated cases can all be included in one genus or category- Tillmans & Co. v. S.S. Knutsford, Limited (1908) 2 K,B. 385.The genus professional misconduct is not large enough to include the case of Section 12 and we must seek for something larger, e.g., misconduct generally; this would include the cases before us.

10. If as is suggested by Section 14, the case of Section 13(a) is not a case of misconduct, it is difficult to apply the ejusdem generis principle at all. But in either case, the present cases are within the Act. If I am wrong in this view, still it seems to me pretty clear that the intention of the legislature was to give to the High Court power of control over pleaders and mukhtyars equivalent to those which are given by the Letters Patent; it seems unreasonable to suppose that the powers over the inferior classes of practitioners are intended to be less extensive than those given over the superior classes unless there is reason, and none is suggested, to think that the powers given by the Letters Patent were deemed to be too large. I think the use in Section 13(f) of the same words as are used in the same connection in Section 10 of the Letters Patent is a strong indication that they were intended to have the same extent, and, if that is so, it is unnecessary to call in any rule of construction to enable us to arrive at the meaning of the legislature. If we give to the words for any other reasonable cause' the widest meaning they can bear in Section 13, we cannot, I think, give them a meaning which is wider having regard to the scope and purpose of the Act, than was intended by the Legislature.

11. The ejusdem generis principle is applied in construing a statute when you have a word which may have a general meaning wider than that which was intended by the legislature per Lord Halslury in Yotrady fodnig and Pontypriad Main Sewerage Board v. Bensted (1907) A.C. 268 but I do not think that is so here. Ghose J., in Le

Memrier v. Wajid Hossain I.L.R. (1902) C 890 seems to hold himself constrained by the form in which the statute is framed to hold that the legislature did not intend to give to the High Court the power which he considers is a power which ought to be given; but I do not think the form of the statute is a very safe guide in this matter. It is easy to imagine reasons why the legislature in framing Sections 12 and 13 of the Act of 1879, may have thought it well to give some enumeration of causes justifying the suspension or removal of a pleader although the Letters Patent contain no such enumeration, but it: is not easy, and the form of the statute does not compel us to hold, that the intention was to give the High Courts less extensive power over pleaders than over advocates and vakils.

12. I think too there is much to be said for Mr. Rosario's contention that clauses up to (c), notably (b), of Section 13 exhaust the genus professional misconduct and, consequently, 1 he words in Clause (b) must be referred to a more extensive genus. I think we have jurisdiction to make an order in this case and on the merits I agree with the order proposed by the learned Chief Justice.

Krishnaswami Aiyar, J.

13. C.V. and another, both pleaders of the 2nd grade, were convicted of criminal breach of trust by the Sessions Judge of Guntur and acquitted on appeal by this Court. Notices were issued to them to show cause why they should not be dealt with under Section 13 of the Legal Practitioners Act. They have appeared by their vakils. The first question raised for consideration is whether Clause (f) of Section 13 is confined to professional misconduct or may be interpreted so as to include any dishonest or dishonourable conduct whether or not in the discharge of professional duty. It must be admitted that the question is not free from difficulty. But having given to the matter my best consideration I feel no hesitation in expressing my agreement with the learned Chief Justice. The question was considered in this Court in In the matter of a pleader I.L.R. (1903) M. 448. The Chief Justice and Moore J. expressed their concurrence in the view of the majority of the Calcutta High Court in In the matter of Purna Chancier Pal, Mukhtar I.L.R. (1900) C. 1023 where it was held that the words ' for any other reasonable cause ' in Clause (f) should not be given a restricted interpretation con-fining it to

professional misconduct on the doctrine of ejusdem generis. The Calcutta Court reaffirmed its view after a mor (elaborate consideration in Le Mesurier v. Wajid Hussain I.L.R. (1902) C 890 in Full Bench, Mr. Justice Ghose dissenting. In In re Ganapathi Sastri and Krishnasami Iyer (1909) 19 M.L.J. 504 the same view was taken by the Chief Justice and Benson J., though having regard to the conclusion they arrived at upon the facts it was unnecessary to decide the point. Mr. Justice Miller and Mr. Justice Sankaran Nair however, reserved their opinion. Reference was made to several other cases in the course of the argument, bnt they have no bearing on the question under consideration. The decision in In re Wallace (1866) L.R.I.P.C. 283, in In the matter of a First Grade Pleader I.L.R. (1901) M. 17 and in In re a Pleader : (1908)18MLJ184 turn upon the ground that acting as a suitor and using disrespectful language towards the Court or committing contempt of Court is properly dealt with as a suitor and not as a legal practitioner. They do not help us in determining the meaning of Clause (f) of Section 13 of the Act. The decision in In re Quarry (1890) 17 I.A. 199 : I.L.R.13 A. 93 also reported in 13 Allahabad 93 on which some reliance was placed by the dissenting Calcutta Judge, Mr. Justice Ghose, was brought to our notice. But I am unable to agree that that case is of any assistance. There certain correspondence of a pleader with the opposite party to his former client was held by their Lordships of the Privy Council to afford ample evidence that the pleader in his professional capacity was guilty of grave improprieties which amounted to reasonable cause for his suspension under Section 13 of the unamend- ed Act XVIII of 1879. Their Lordships had no occasion to consider whether dishonourable or dishonest conduct which was not in the discharge of professional duty would fall within ' the purview of 'reasonable cause' in Section 13. In the Matter of Parnathi Charam I.L.R. (1895) A. 498 related to the case of a vakil of the High Court and In re Sarbadhikari I.L.R. (1907) A. 295 to that of an advocate. Both these cases fell under the Letters Patent by which an advocate or vakil could be removed or suspended from practice 'on reasonable cause.' The acts charged against them were connected with the discharge of their professional duty. But having regard to the language of the Letters Patent no question could arise like the one with which we have to deal in the present case. The case in In the matter of Ahsan Ali (1908) 5 A.L.J. 126 was decided in favour of the pleader upon the facts. It was there held that he was the victim of a deception

in withdrawing monies to one who personated the client and that when he afterwards negotiated with the client on the mistake being discovered for acceptance of a reduced sum in discharge of the liability his conduct could not be said to have been grossly improper. These were all the cases to which our attention was invited.

14. It is clear that the Calcutta High Court in Full Bench, with the exception of Mr. Justice Ghose, and three learned Judges of this Court have expressed themselves in favour of the unrestricted interpretation of Clause (f) Section 13. I have asked myself the question whether there is sufficient reason for a departure from this trend of authority. The elaborate Judgment of Mr. Justice Hill in the Full Bench case of Le Mesurier v. Wajid Hossain I.L.R. (1902) C. 890 covers nearly the whole ground of the reasoning which must determine the conclusion. I do not, therefore, think it necessary to dwell in detail upon the steps by which I have arrived at the same conclusion. But having regard to the importance of the question 1 have thought it right to indicate in a few words what has inclined me to adopt the same view.

15. The question must be answered with reference to the language of the Act apart from any decisions in England, however useful and instructive they may be as regards the principles on which the rules laid down by the Indian Legislature may be based. It seems difficult in the first place to limit Clause (f) to professional misconduct because Clause (b) deals with 'grossly improper conduct' in the discharge of professional duty and it is not possible to name any species of professional misconduct which does not fall within the Clause (b) itself. If it is suggested that the misconduct referred to in Clause (f) need not be of a flagrant type which the words 'grossly improper conduct' indicate, I must confess that the division of misconduct in Clauses (b) and (f) into two species is altogether unnecessary and the object aimed at could have been achieved by the enactment of a single clause which would comprise both the classes of misconduct. Again it must be remarked that when the Legislature intends to strike at any species of professional misconduct by Clause (f) there is no point in selecting fraudulent and grossly improper conduct in the discharge of professional duty for special condemnation. The doctrine of ejusdem generis which has been invoked for the

limited interpretation of Clause (f) is not of universal application.

16. Hardcastle on Statutory Law quoting Anderson v. Anderson (1895) I.E. B. 749 makes the following remark:-'But the ejusdem generis rule is one to be applied with caution and not pushed too far as is the case in many decisions which treat it as automatically applicable and not as being what it is, a mere presumption in the absence of other indications of the intention of the Legislature and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words.' Clauses (a) to (e) of Section 13 are not particular cases of one genus. Bach of them may well be regarded as a group dealing with a distinct branch or subject by itself and in such a case the general words of Clause (f) cannot be controlled by ejusdem generis rule. Wilberforce on Statutes, at page 185, says that 'where the particular words exhaust a whole genus, the general words must refer to some larger genus' Fennuoc v. Schmaly L.R. 3 P.C. 815.

17. In Maxwell on the Interpretation of Statutes the idea I have sought to convey is pointedly expressed at page 509. 'The general principle in question applies only where the specific words are all of the same nature; where they are of different genera the meaning of the general word remains unaffected by its connection with them.' The learned author makes reference to two cases which illustrate the principles of the passages above cited. In Regina v. Payne (1866) L.R. 1 P.C. 27 it was held that ' any other article or thing' in the clause making it penal to convey to the prisoner 'any mask, dress or disguise of any letter or any other article or thing' included a crow-bar because the words 'disguise' and 'letter ' exhausted the whole genera; and in Regina v. Edmundsen (1859) 2 Ellis & Ellis. 77 it was held that a warehouse a mile and a half distant from a dwelling house was included in the words 'other place.' when search warrants were authorised for suspected articles in 'any dwelling house, outhouse garden or other place ' on the ground that it was reasonable to suppose, having regard to the preamble and general intention of the Statute, that the warehouse was in the contemplation of the legislature as it was a very likely place for the concealment against which the enactment was directed and a narrower construction would have restricted the effect, instead of promoting the object of the Act. Stroud in his Judicial Dictionary, in the notes on the

interprepretation of the word 'other' qualifying a general word at the end of a series of particular words, observes: 'It is perhaps impossible to lay down any workable rule to determine which of these interpretations the word should receive in any case not already covered by authority ' and classifies a number of cases under the head of 'unrestrictedly comprehensive interpretation in the sense of 'every other sort or kind.' If we look at the law in England and the history of the legislation in India it seems to me that the larger interpretation of the phrase ' for any other reasonable cause' is more in accordance with the intention of the legislature. If a solicitor is convicted of a crime involving moral turpitude, even though it has no connection with his professional duty, he is liable to be struck off the rolls; In re Weara (1893) 2 Q.B. 439; this rule corresponds to Section 12 of the Legal Practitioners' Act. It is also the law in England, where the misconduct is in character criminal though no indictment has been preferred or where a conviction has been quashed because the prisioner's admissions were wrongly received in evidence or even where a solicitor has obtained a verdict of not guilty that the solicitor may be punished by suspension or by striking off the roll. Cordery on Solicitors, page 177. In In re Hill (1866) L.R. 3 Q. B. 444(where an attorney acted as a clerk to a firm of attorneys and appropriated to his own use the balance of purchase, money which he received in the sale of certain property, the Court suspended him for the misconduct in the exercise of its summary jurisdiction though it was not in his strictly professional character) Chief Justice Cockburn observed at p. 445: 'When an attorney does that which involves dishonesty it is for the interest of suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as :an attorney of the Court. In this case if the delinquent had been proceeded against criminally upon the facts admitted by him it is plain that he would have been convicted of embezzlement and upon that conviction being brought before us we should have been bound to act. If there had been a conflict of evidence upon the affidavits that might be a sufficient reason why the Court should not interfere until the conviction had taken place. But we have the person against whom this application is made admitting the facts.' Mr. Justice Blackburn said: 'In the present case Ladhere to what 1 think is the effect of Re Blake (1860) 3 Ellis & Ellis 34 that although the misconduct is not directly or incidentally connected with his character as attorney still we must consider what

effect that has upon the question of a proper person to be an officer of the Court.' If this be the law in England, what reason is there to suppose that a different standard is adopted in India where there is more reason to guard the profession from the influx of questionable characters to whose machinations a more ignorant clientele is certain to be exposed The Letters Patent of the High Courts were issued on the 14th May 1862 and they gave the High Courts unrestricted powers ' to remove or suspend from practice advocates, vakils and attorneys on reasonable cause,' a phrase only to be interpreted in the light of English decisions. It has not been suggested that under the Letters Patent an advocate, vakil or attorney is only liable to be dealt with for misconduct in the discharge of professional duty. To use the language of Lord Westbury in In re Wallace (1866) L.R. 1. P.C. 283, 'if an attorney be found guilty of moral delinquency in his private character' he may be struck off the roll under the Letters Patent. The amended Letters Patent were issued on the 28th of December 1865. In the same year Act XX of 1865 was passed, by Section 15 of which it was enacted as follows :-' The High Court may also, after such enquiry as it may deem proper, suspend and dismiss any pleader or mukthyar enrolled as aforesaid who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or for any other reasonable cause.' This section came up for consideration before Glover and Kemp JJ. in In the matter of the petition of Gholob Khan (1871) 7 B. L.R. 179. The learned Judges were of opinion that the words ' for any other reasonable cause ' referred to cases other than professional misconduct. Gholab Khan had been acquitted of the charge of instigating a dacoity against the opinion of the assessors. The High Court did not agree in the propriety of the verdict. Though no further action was taken against him in the criminal case both the learned Judges agreed in striking the name of Gholab Khan off the rolls. Act XVIII of 1879 reproduced, in the third para of Section 13, the language of Section 15 of the older Act and there is no reason to suppose, notwithstanding the addition of a clause about taking instructions in any case except from the party on whose behalf the pleader is retained, that there was any change of intention on the part of the Legislature so as to curtail the power of the High Court in dealing with the misconduct of a pleader which was other than professional. By the amendment of 1896 a number of cases which were penalised by Section 36 of the Act, were

brought in as Clauses (c)(d) and (e) of Section 13, and the clause as to fraudulent or grossly improper conduct in the discharge of professional duty or any other reasonable cause was split up into Clauses (3) and (f) of the section. This manipulation on the part of the Legislature does not show any change of intention as regards the meaning of the phrase 'other reasonable cause,' It can hardly be supposed that pleaders of subordinate courts are intended to be dealt with more lightly than practitioners of the High Court. And the intention of the Legislature appears throughout to be consistent in giving a free hand to the High Courts in dealing with the delinquency of professional men. It was argued that Section 14 of the Act which limits the authority of subordinate courts in the inquiry into the conduct of professional men to cases where they are charged with taking instructions except as aforesaid or with any such misconduct as aforesaid indicates a limitation of the scope of Clause (f) of Section 13. The marginal notes to Sections 13 and 14 were also relied on. The note to Section 13 runs as follows.- ' Suspension and dismissal of pleaders and mukthyars guilty of unprofessional conduct.' And the note to Section 14 runs: ' Procedure when the charge of unprofessional conduct is brought in subordinate courts or revenue offices.' It is to be observed in the first place that a marginal note cannot be exhaustive of the contents of the section. ' Is it not a mere abstract of the clause intended to catch the eye?' said James L.J. in Attorney General v. Great Eastern Railway Co.(1897) 11 Ch. D. 499. In the next place marginal notes have not the authority of the legislature like the body of the sections so as to justify the controlling of the meaning of the sections by the language of the notes-.see Maxwell, page 62, and Punardeo Narain Singh v. Ram Sarup Roy I.L.R. (1898) C. 858. As regards the argument that subordinate Courts have only a restricted power it may be said that the Legislature so intended to restrict it while the scope of the enquiry of the High Court itself was left unfettered. This was the view taken in In the matter of the petition of Gholab Khan Mukhtyar (1871) 7 B.L.R.179. It has also the support of the Privy Council in an observation in In the matter of Sonthekul Krishna Row (1887) 14 I.A. 154. Sir James Hannen, delivering the Judgment of the Judicial Committee, reads Section 14, when it speaks of ' any such misconduct,' as referring to misconduct in the discharge of his professional duty and not to misconduct included in the phrase 'any other reasonable cause.' Mr. Justice Hill

who delivered the leading judgment in Le Messurier v. Waft Hossain I.L.R. (1902) C. 890 expressed himself in In the matter of Purna Chander Pal I.L.R. (1900) C. 1023 as inclined to take the view that taking instructions and misconduct referred to in Section 14 related to Clauses (a) and (b) respectively of Section 13 of the Act. If this view were correct it would follow that cases falling under Clauses (c) to (e) as well as those that come within Clause (f) of Section 13 would lie outside the purview of subordinate Courts to enquire into. It is necessary that I should express an opinion as to whether misconduct in Section 14 should be understood in such a restricted sense. But it seems to be clear that there is no warrant for cutting down the meaning of the phrase 'for any other reasonable cause ' in the light of the circumstance that the authority of the subordinate Courts under Section 13 is more restricted. I have therefore no hesitation in following the interpretation placed upon the clause in question by the learned Chief Justice-A different interpretation would necessitate the conclusion that Rules 23 and 28 framed by the High Court authorising refusal or removal of certificate, for misconduct in any position of trust or responsibility and suspension, of a pleader for carrying on a trade or business were ultra vires. Having determined the meaning of Clause (f) of Section 13,1 proceed to enquire whether the pleaders have rendered themselves liable to punishment.

18. It is unnecessary to set out the facts here as they have been fully examined and dealt with by my brother Abdur Rahim J. in his judgment in the criminal appeal. It is not seriously argued that the Circars Provident Fund started, advertised and managed by the pleader before us, was anything but a snare to the ignorant and unwary public. The Company was limited by guarantee in the ridiculously low sum of Rs. 5 per head. There were no shareholders. The Directors who numbered seven constituted the members of the Company. They promised by their prospectus, the preface to the Articles of Association and the notice on the back of the flyleaf, to each nominee, on the death of the applicant, at least double the amount of the subscription, if the death occurred after the first 3 months of the applicant joining the fund. Every one had his prize which might range from two to fifteen times the subscription. The Bonus Fund each year available for distribution amongst the nominees of applicants dying in any year was made up only of 8 annas out of every rupee received in the year after 3 months' subscription of each

set apart as entrance fees. Every applicant being bound to die sooner or later and speaking broadly there being an obligation to pay the nominee of the applicant at least 4 times each half rupee set apart for the bonus out of every rupee contributed, what was the source available for making up the difference ?

19. The answer is, two annas in each rupee contributed which constituted the Reserve Fund and six pies in each rupee so collected which constituted the Guarantee Fund. The profit of the Directors of 3 annas in the rupee would also be generously given up to make up the difference. But how could five annas and a half out of each rupee, if all the resources available were scraped together, meet the minimum liability in excess of the bonus, of one rupee and a half for each rupee received as contribution. The Company could be wound up at any time at the pleasure of the Directors. Let the working of the company be stopped any day and all the outstanding nominees unpaid are bound to suffer loss; and yet the prospectus tells every person that by joining the fund he never stands to lose. There was a note under Rule 14 of the Articles of Association that the special term as to the minimum bonus of double the subscription being made good out of profits was only to be in force till the end of December 1905. But the provision was made permanent in February 1906. This was of course the bait to intending subscribers. That the whole concern was a practical swindle it is impossible to gainsay. The lucky nominees of short-lived applicants had a good game of lottery. So long as fresh subscribers joined in progressive numbers the company might manage to stave off the evil day, and the new capital might pay off the old liability. But the concern was doomed to failure, and the inevitable crash could not be long in coming. As it was it came in about two years and a half though the number of subscribers stood at the time at over 8,000, a flourishing position for any concern conducted on business principles. There was no loss sustained by the company, no untoward event had happened. No speculation had failed and no investments lost. But the number of subscribers did not go on increasing as rapidly as it was necessary for fresh capital to cover the old liabilities and keep up the company's attractiveness to the gamblers on the lives of applicants.

20. Mr. Rangachariar for the first accused had the courage to argue that the principles of the company were the same as those of life insurance. Yes: there

was one thing in common, namely, that sums of money were payable on the death of the insured. But an insurance company would be nothing but a fraud if there was not a variable premium dependent on the chance of each life and if the premiums paid by the assured Could never exceed the policy amount. What made failure inevitable from the inception was the principle of profit to all subscribers and loss to more with gain to the conductors. The rate of profit was exorbitant and no prospect of interest to be earned on investments could minimise the danger of failure, for only 21/2 annas out of every rupee subscribed could be invested at 31/2 p. c. The accused have been rightly acquitted of criminal misappropriation of the Company's funds. They made no secret of their claim to the profit provided for by the articles. Every subscriber paid his dues with fall knowledge that 3 annas in the rupee and the entrance fee of 3 months' subscription after certain deductions would go into the pockets of the directors. But the question is different as regards the character of the concern itself. If it was bound to end in failure and to inflict grievous loss on the majority of subscribers what is the measure of the responsibility of those who ushered the company into existence and managed its affairs We must here discriminate between the first and the second accused. Bapala was the Head Office of the Provident Fund. The second accused lived and practised at Ongole. He was a pleader of about 6 months, standing. In 1906 he got to know that it was unprofessional to continue as a Director of the Fund. He resigned his place and relinquished his profit of Rs. 600 for the year. Under these circumstances it does not seem to me to be taking too favourable a view of his conduct to hold that when he joined the Fund he did so without knowing or having reason to suspect that be was associating himself with a nefarious concern. I agree with the learned Chief Justice that his recklessness in becoming a Director of the Fund without sufficient enquiry as regards its character and inevitable tendency to cause ruin may, in view to the hardships he has already undergone, be dealt with by our merely pointing out his error. As regards the first accused, however, I am inclined to take a more serious view of his conduct. I acquit him of a deliberate intention to deceive the public by misrepresentation of the financial possibilities of the enterprise, I would even go further and assume in his favour that he did not definitely realize in his own mind what a large body of subscribers must inevitabty be swindled out of their monies. But he is a graduate in arts. He is

a pleader of some years standing. He was the President of the Fund. He was intimately associated with its working. It is impossible to believe that he had not abundant reason to know the true character of the business. When the 2nd accused assigned his reason for withdrawal that it was unprofessional to be a Director of the Fund, the first had nothing to say on the subject though his attention was pointedly drawn to it. Mr. Rangachariar asked us to believe that the first accused was merely the dupe of Kondalaiyudu. I am unable to think so. I have no doubt he was a willing party to a scheme calculated to bring him profit at the expense of the ignorant public whom he inveigled into the Company's meshes by representations which he must have known were impossible of fulfilment. We are told that no criminal charge of cheating has been brought against him. But that does not oust our jurisdiction under the Act as I have already pointed out. I do not think that on the facts of this case which have been fully threshed out in a judicial trial, though on a different charge, any useful purpose will be served in directing a fresh prosecution for cheating as preparatory to proceedings under the Legal Practitioners Act, though, as observed by Chief Justice Cockburn in a case of conflicting evidence in a matter of a criminal nature such a course would be expedient. I concur in holding that the first accused is guilty of moral delinquency of such a character as to justify the sentence of three months' suspension proposed by the learned Chief Justice.

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