

In Re: a Pleader

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Court : Chennai

Decided On : Jul-26-1943

Reported in : AIR1943Mad665; (1943)2MLJ273

Appellant : In Re: a Pleader

Judgement :

Alfred Henry Lionel Leach, C.J.

1. The respondent is a pleader practising in the South Arcot District. He was one of the promoters of a limited liability company called the South Indian Rural Electric and Tramway Company, Limited, which was incorporated on the 31st October, 1935. The objects of the company included the distribution and supply of electric power in the Trichinopoly, Salem, and South Arcot Districts. He was appointed to act as a director of the company, and in an application to the Bar Council and in another application to the High Court, he described himself as a 'promoting director.' The Court has been given to understand that by this he meant he was one of the promoters of the company who became a director after its registration. It was agreed between him and the board of directors that he should receive a monthly allowance of Rs. 300 for his services to the company. He has been charged with professional misconduct in that he accepted a position on the board of directors without obtaining the permission of the High Court, On the 16th November, 1935, he wrote to the Secretary of the Bar Council setting out the position and asked the Council's permission to act as a director on the terms stated. As the respondent was not an advocate, the Bar Council had no jurisdiction

in the matter, and he was directed to make his application to the High Court. This he did in a letter addressed to the Registrar dated the 18th March, 1936. The letter was returned on the 23rd March, 1936, with the direction that it should be stamped as a petition and submitted through the District Judge. The respondent took no further action in the matter, and the reason is obvious. The company was unable to carry on such a business without the permission of the Provincial Government and permission was refused. The Court has been informed that the company never carried on any business.

2. Rule 13 of the rules framed by this Court under Sections 6 and 7 of the Legal Practitioners Act, 1879, states.

If any person, having been admitted as a pleader, accepts any appointment under Government, or becomes a student of any school or college for purposes of pursuing his studies, or undertakes any trade or calling other than agricultural or literary work, or accepts employment as a Law Agent other than a pleader, mukhtar or agent certified under Act XVIII of 1879 and these rules, he shall give immediate notice thereof to the High Court, who may thereupon suspend such pleader from practice or pass such orders as the said Court may think fit.

3. In a circular order issued by the High Court in 1916, it was stated that no vakil should carry on a trade or business without the previous sanction of the High Court. A vakil carrying on a trade or business without previous sanction would be liable to suspension or removal from practice, although it was intimated that vakils might take part in the management of registered societies under the Co-operative Societies Act (II of 1912) in the areas in which they practised. The Circular further stated that no vakil so taking part should receive remuneration other than the ordinary profits without the special leave of the High Court.

4. These rules do not, of course, apply to advocates of the High Courts. So far as advocates are concerned, the position in this respect is governed by Rule 28 of the rules framed under the Bar Councils Act. Rule 28 says that no advocate shall, without the leave of the Bar Council, engage in any trade or calling. An advocate may, however, be a director of a company with or without an ordinary sitting fee; but no advocate may, without the leave of the Bar Council, be a managing

director, or a Secretary or even a director in receipt of remuneration other than the sitting fee. On the 20th September, 1936, the Bar Council passed a resolution saying that it saw no objection to advocates being directors as well as legal advisers and taking remuneration for being legal advisers, provided that the remuneration was fixed beforehand. We consider that this is a very proper attitude for the Bar Council to take. In England, there is no objection to a practising barrister acting as an ordinary director, but not as a managing director, to companies of good standing, carrying on a business which is free from anything of a derogatory nature, although it is regarded as being undesirable to accept a brief for a company of which he is a director. See Halsbury's Laws of England (Hailsham Edition) Vol. II, page 485. An advocate in this Presidency is not exactly in the same position as a barrister in England, because there is here only a single agency, and the advocate has to fulfil the functions of both solicitor and barrister. In these circumstances we see no reason why an advocate should not be allowed to act as the legal adviser of a company of which he is a director, subject to his remuneration being fixed beforehand, as the Bar Council has stipulated.

5. The respondent being a pleader, is governed by the rules framed under the Legal Practitioners Act and the directions given by this Court. The respondent did not obtain permission of the High Court to act as a director of this company, and therefore he offended against Rule 13 and the Circular Order of the High Court of 1916. Inasmuch as the company never carried on business and as the respondent received no remuneration from the company, his breach of the rule is of a technical nature, which calls for no action. We will add, however that an advocate should not act as a promoter of a trading company [The Bar Council has on the 5th Sep. 1943 resolved to accept this principle and introduce the necessary amendemnts in the Bar Council Rule-Ed.]