Wee Soon Kim Anthony v The Law Society of Singapore (No 2)
[2001] SGCA 11

Case Number : CA 60/2000

Decision Date : 13 February 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Appellant in person; Kenneth Tan Wee Kheng SC (Kenneth Tan Partnership) for the respondent

Parties : Wee Soon Kim Anthony — The Law Society of Singapore (No 2)

Legal Profession – Disciplinary procedures – Complaint alleging professional misconduct to Council of Law Society, obliging of Council to refer complaint to Inquiry Panel Chairman – Whether council has discretion to reject complaint – s 85 Legal Profession Act (Cap 161, 1997 Ed)

(delivering the grounds of decision of the court): This appeal raised the question as to the appropriate steps which the Council of the Law Society (`the Society`) should take upon receiving a complaint from a member of the public against the conduct of an advocate and solicitor. At the conclusion of the hearing, we allowed the appeal as we felt the approach taken by the Council, which was upheld by the High Court, was erroneous. We now give our reasons.

The facts

On 18 August 1999, the appellant, Wee Soon Kim Anthony (`Wee`), wrote a letter of complaint alleging professional misconduct on the part of two advocates and solicitors from the firm of Drew & Napier, namely, Davinder Singh SC (`DS`) and Hri Kumar (`HK`), who were the solicitors acting for UBS AG (`UBS`) in OS 546/99. In that OS, UBS was the plaintiff, and Wee, his wife (Betty Wee) and son (Richard Wee) were the defendants.

The substance of the complaint was that DS and HK had knowingly prepared an affidavit which contained four specific falsehoods for an employee of UBS, Shirreen Sin, to affirm in that OS.

On 5 November 1999, the Society wrote to inform Wee that his letter of complaint did not contain information of misconduct warranting a reference to an Inquiry Committee (IC). Wee, being dissatisfied with the decision of the Society, applied to court by way of the present originating summons (OS 37/2000) seeking, inter alia, for a declaration that the Council of the Society should have referred his letter of complaint against DS and HK to the Chairman of the Inquiry Panel (`IP`) established under the Legal Profession Act (Cap 161, 1997 Ed) (`the Act`).

On 25 April 2000, the judge having heard the parties declared that only the fourth alleged falsehood should be referred to the Chairman of the IP (`IP Chairman`). He declined to refer the first three alleged falsehoods to the IP Chairman. The present appeal only challenged the decision of the judge below in refusing to refer the complaint relating to the first three alleged falsehoods to the IP Chairman. The fourth alleged falsehood was investigated by an IC which recommended that no action be taken against DS and HK and nothing in this appeal concerned that determination.

In refusing to refer the first three alleged falsehoods to the IP Chairman (and in turn to the IC), the judge below went into the merits of the allegations. He came to the view, after examining the allegations in some detail, that they had no merits at all to warrant any further reference.

Scheme of disciplinary proceedings under the Legal Profession Act

Part VII of the Act sets out a comprehensive framework for disciplinary action against advocates and solicitors. To better understand the scheme under the Act we will first give an outline of it. Section 85(1) of the Act provides that `any complaint of the conduct of an advocate and solicitor shall in the first place be made to the Society and the Council shall refer the complaint to the Chairman`. The IP consists of not more than 40 advocates and solicitors and not more than 40 lay persons appointed by the Chief Justice, and from among whom one shall be appointed as the IP Chairman (s 84(1)). Members of the Panel are appointed for a period of two years and are eligible for reappointment.

Independent of any complaint from any person, if the Council is in possession of information touching on the conduct of an advocate and solicitor, it may also refer it to the IP Chairman. Similarly, if a judge of the Supreme Court or the Attorney General should refer any information touching on the conduct of an advocate and solicitor, the Council shall also refer it to the IP Chairman.

Under s 85(6), the IP Chairman, upon such a reference by the Council shall forthwith constitute an Inquiry Committee (IC) consisting of -

(a) a chairman, being a member of the IP who is an advocate and solicitor;

(b) a member of the IP, who is an advocate and solicitor;

(c) a legal officer of not less than ten years` experience;

to inquire into the complaint or information. Section 86 gives power to the IC to appoint any person to make whatever preliminary inquiries it thinks necessary.

Every complaint received by the Society shall be supported by such statutory declaration or affidavits as the IP Chairman, or the Chairman of an IC, may require. An IC may require a complainant to furnish a deposit of up to $500 to cover the necessary costs and expenses. Where the complaint is found by the IC to be frivolous or vexatious, it may apply the deposit or a part thereof towards the payment of those costs and expenses.

Under s 86, the IC is expected to proceed with the Inquiry with due despatch. Specific time frames have been laid down regarding the commencement of inquiry and the submission of its report. Where an inquiry is complex or difficult, power is given to the IP Chairman to extend the time for the IC to submit its report to the Council subject to the maximum time frame of six months from the date of the appointment of the IC.

If the IC, upon inquiry, thinks that there is nothing for the advocate and solicitor to answer, it may so report to the Council. However, where the IC thinks that the advocate and solicitor should be called upon to answer any allegation, a notice of not less than 14 days shall be given to the advocate and solicitor to submit his written explanation and if the advocate and solicitor wishes, he may be heard orally.

In its report the IC is required to state whether the alleged misconduct warrants a formal investigation by a Disciplinary Committee to be appointed by the Chief Justice. If it does not think so, it shall recommend to the Council an appropriate penalty to be imposed on the errant advocate and solicitor. On the other hand, if it is of the opinion that the complaint is of no merit and should be dismissed, it shall similarly report to the Council.

Upon receipt of the report of the IC, the Council shall within one month decide on any one of these four courses:

(a) that a formal investigation is not necessary;

(b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty not exceeding $5,000;

(c) that there should be a formal investigation by a Disciplinary Committee; or

(d) that the matter be adjourned for consideration or be referred back to the IC for reconsideration or a further report.

While the Council may disagree with the recommendation of the IC that a formal investigation is not necessary, it may not disagree if the IC should recommend that there should be a formal investigation into the complaint.

Upon a determination by the Council that there should be a formal investigation, it is required forthwith to apply to the Chief Justice to appoint a Disciplinary Committee to hear and investigate the matter.

Where the Council of the Society determines that a formal investigation is not necessary, or that the advocate and solicitor need only pay a fine, the complainant may, if he is dissatisfied with the decision, within 14 days of being so notified, apply to a judge to review that decision (s 96).

If the DC should determine that cause of sufficient gravity for disciplinary action exists under s 83, an application will be made by the Society to the High Court for an order against the advocate and solicitor to show cause why he should not be struck off the roll or suspended from practice for any period not exceeding five years or censured. If the DC holds that no cause of sufficient gravity for disciplinary action exists under s 83, and the complainant is dissatisfied with the decision of the DC, he may similarly make an application to a judge of the High Court to review that decision of the DC.

Our decision

As the brief outline above shows, Part VII of the Act has set out an elaborate scheme on how a complaint against an advocate and solicitor should be dealt with. The previous law which provided for self-policing has given way to a scheme which emphasises objectivity and transparency and the need to ensure that the highest standards of professionalism and integrity are maintained.

In relation to the present matter under appeal, it involved the construction of s 85(1) which for convenience we will set out again:

> *Any complaint of the conduct of an advocate and solicitor shall in the first place be made to the Society and the Council shall refer the complaint to the Chairman of the Inquiry Panel.*

A plain reading of this provision means that a complaint, before the Council is required to refer to the IP Chairman, must relate to the conduct of an advocate and solicitor. Once that requirement is

satisfied, the Council is obliged to refer it to the IP Chairman. It is not for the Council, at that stage, to go into the merits of the complaint. The function of the Council at that point is an extremely limited one. It is for the IC to inquire into the merits. The IC is the first line of filter. A wholly unmeritorious complaint would not go beyond that stage.

This court had in the case **Suppiah v Law Society of Singapore** SLR 311 [1986] 1 MLJ 459 the occasion to consider the predecessor provision of the present sub-s 85(1) (which was then numbered as s 86(1)) and which reads:

> *Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.*

There, this court held that where a complaint was made pursuant to s 86(1), it was mandatory on the part of the Council to refer it to the Inquiry Committee, subject only to the requirement that the complaint must fall within the scope of that provision. In the context of the provision as it was then, it was an essential pre-requisite before the Council would refer a complaint to an IC that the alleged misconduct must have been carried out in a professional capacity by the advocate and solicitor.

It will be noted that the previous provision was more stringent than what we now see in s 85(1). The requirement `in his professional capacity` has been removed. This removal would necessarily mean that so long as a complaint is made against an advocate and solicitor in relation to his conduct, whether or not it is conduct in his professional capacity, that complaint would have to be referred to the IP Chairman.

In 1986, in introducing certain amendments to Part VII of the Act (Act 30 of 1986), including the alteration of the composition of the IC and DC by including a legal officer of ten years` standing and a lay member in each of the Committees, the Minister for Law reiterated a basic function of the IC in these terms:

> *Under the Legal Profession Act, the Inquiry Committee, which is a standing committee of the Law Society, conducts preliminary investigations into complaints or allegations of misconduct by a member of the Bar.*

Much of what was set out in the respondent`s case pertained to the merits of the three alleged falsehoods. Mr Tan for the Society argued before us that the Council must retain a power to determine whether the complaint was `worthy of inquiry`. Mr Tan said it could not have been intended that the Council should function in this regard merely `as a rubber stamp.` It is true that in ***Suppiah*** this court held that the Council had a duty to consider whether the complaint fell within the scope of the then s 86(1). But with the deletion of the limiting factor `in a professional capacity` in the present s 85(1), the scope of that duty is, to that extent, reduced. The only question which the Council has to ask is: does the complaint relate to the conduct of an advocate and solicitor. If it does, then that is the end of the inquiry, at that stage, and the Council must refer the complaint to the IP Chairman. It will then be for the IC appointed to inquire into the complaint and if the IC thinks, at the end of the inquiry, that the complaint is frivolous or vexatious, it is entitled in its report to recommend that the complaint be dismissed and it is only at this stage, when the IC reports comes before the Council, that the latter will have the jurisdiction to decide as we have described in [para] 14 above. Under the Act, there is a clear line of demarcation between the functions of the IC and the

Council.

Mr Tan for the Society had relied upon the following statement made by the Minister for Law in Parliament in 1993 on the occasion when the words `in his professional capacity` in s 85(1) were deleted, to argue that the Council had a duty to weed out clearly frivolous complaints:

> *The removal of these words (`in his professional capacity`) does not mean that frivolous complaints should be entertained.*

In our view, in the context, the Minister must have meant that the IC is not bound to entertain a frivolous complaint. It is free to reject such a complaint. The IC is the first filter. We did not think the Minister meant to imply that the Council may act as the filter prior to consideration by an IC, as that is not the scheme under the Act. If a complaint is really frivolous, it will not go beyond that stage and the whole or part of the deposit furnished by the complainant can be utilised for the payment of the costs and expenses of the IC. The furnishing of a deposit is undoubtedly a form of sanction which Parliament had thought fit to impose against a frivolous complainant. It is not for the Council to go into the merits of the complaint.

In [para] 16 above, we have referred to s 96 and the circumstances where a complainant may, if he is dissatisfied, apply to a judge to review the decision of the Council. It will be seen that the complainant has no right under the Act to appeal against the recommendation in the IC`s report. This right is only available against the decision of the Council after it has considered the IC`s report. If the Society`s argument is correct, that it is entitled to consider the complaint on its merits before referring it to the IP Chairman, it is strange that the Act did not provide for any recourse if the Council should rule against referring the complaint to the IP Chairman. It seems to us clear that no such right is provided in the Act because there is no cause for it, as the reference of the complaint to the IP Chairman, as well as the inquiry process, are mandatory steps, which must follow from a complaint against the conduct of an advocate and solicitor. The first decision-making process only takes place when the Council considers the report of the IC and makes its decision.

With respect to the Council, we think it had overlooked the essential characteristics of the disciplinary process under the Act.

We would reiterate that in this appeal we were only concerned with a matter of procedure. The decisions of the Council and of the judge below that the three alleged falsehoods were wholly without merits may very well be proved to be correct eventually. On that, we express no opinion at this time. What Wee alleged was that DS and HK had, knowingly, prepared an affidavit containing falsehoods for their client to execute. What Wee contended was that his complaint as a whole should be placed before the IP Chairman. On that, we agreed with him. It will then be for the IC to inquire whether the alleged falsehoods are in fact false and whether DS and HK knew they were false.

In the premises, we allowed the appeal of Wee, with costs here and below and the usual consequential orders.

Outcome:

Appeal allowed.