

Re Gnaguru s/o Thamboo Mylvaganam
[2004] SGHC 180

Case Number : OM 15/2004
Decision Date : 17 August 2004
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Applicant in person; Lok Vi Ming and Koh Kia Jeng (Rodyk and Davidson) for Law Society; Cheryl Chia (State Counsel) for Attorney-General
Parties : —

Legal Profession – Application for reinstatement on the roll of advocates and solicitors – Applicant struck off the roll after conviction for offence implying defect of character which made him unfit for legal profession – Application for reinstatement made almost ten years after striking off – Whether application was premature – Whether applicant proved that he was fit to be restored on the roll – s 102 Legal Profession Act (Cap 161, 2001 Rev Ed)

17 August 2004

Yong Pung How CJ:

1 This was an application by Gnaguru s/o Thamboo Mylvaganam (“the applicant”) to have his name replaced on the roll of advocates and solicitors of the Supreme Court of Singapore, pursuant to s 102(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed) (“the LPA”). The applicant had been struck off the roll on 31 August 1994, after his conviction for an offence implying a defect of character which made him unfit for the legal profession. We dismissed his application for reinstatement, and now give our reasons.

Facts

2 The applicant was called as a barrister-at-law of England in 1984 and admitted as an advocate and solicitor of the Supreme Court of Singapore on 11 December 1985. After being called to the Singapore Bar, he commenced practice in his own firm, Guru & Partners.

3 The facts leading to the applicant’s striking off the roll were as follows. In late January 1989, his friend and family doctor, Dr Ramaswami s/o RV Narasimhalu Naidu (“Dr Ramaswami”), agreed to provide medical certificates to any of the applicant’s clients who wished to absent themselves from court, even if they were not ill. Some of the applicant’s clients took advantage of his standing arrangement with Dr Ramaswami, including one Teo In Hin (“Teo”).

4 Teo had gone to the applicant to seek legal advice a few days before 3 December 1990, the date his trial was to commence at the Subordinate Courts. The applicant told Teo to seek an adjournment on the first day of trial, instigating him to obtain a medical certificate from Dr Ramaswami to certify that he was unfit to attend court. On 3 December 1990, Teo went to see Dr Ramaswami. After ascertaining that Teo’s trial was fixed for hearing on 3 and 4 December 1990, Dr Ramaswami issued him a medical certificate certifying that he was unfit to attend court on those two days, even though Teo was not ill. The applicant tendered Teo’s medical certificate to the court, and his case was adjourned.

5 The applicant was subsequently charged with abetting Teo in intentionally omitting to attend at the Subordinate Courts in obedience to an order by the court, an offence punishable under s 174 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed). He pleaded guilty. Seven other similar

charges were taken into consideration, and he was sentenced to three weeks' imprisonment and fined \$1,000. He paid the fine and served his sentence.

6 Following the applicant's conviction, The Law Society of Singapore ("the Law Society") commenced disciplinary proceedings against him. On 30 May 1994, the disciplinary committee concluded that cause of sufficient gravity existed for disciplinary action to be taken against him. As a result, the Law Society made an application under s 98(1) of the LPA for the applicant to show cause as to why he should not be struck off the roll of advocates and solicitors.

7 The applicant did not attend the show cause proceedings on 31 August 1994. The Court of Three Judges found that the nature of his offence implied a defect of character which made him unfit for the legal profession under s 83(2)(a) of the LPA. He was accordingly struck off the roll. After a lapse of some nine years and 11 months, the applicant filed the present motion for reinstatement.

The application

8 The replacement on the roll of any advocate and solicitor who has been struck off is governed by s 102 of the LPA:

(1) The court may, if it thinks fit, at any time order the Registrar to replace on the roll the name of a solicitor whose name has been removed from, or struck off, the roll.

(2) Any application that the name of a solicitor be replaced on the roll shall be by originating motion, supported by affidavit, before a court of 3 Judges of the Supreme Court of whom the Chief Justice shall be one.

(3) Notice of the motion shall be served on the Society which shall —

(a) appear at the hearing of the motion; and

(b) place before the court a report which shall include —

(i) copies of the record of any proceedings as the result of which the name of the solicitor was removed from or struck off the roll; and

(ii) a statement of any facts which have occurred since the name of the solicitor was removed from or struck off the roll and which in the opinion of the Council or any member of the Councils are relevant to be considered or to be investigated in connection with the application.

9 Although s 102 does not provide that a minimum period of time should lapse before an applicant may seek to be restored as an advocate and solicitor, it is established that a significantly longer period than five years should pass before he considers making such an application: *Re Nirmal Singh s/o Fauja Singh* [2001] 3 SLR 608 ("*Re Nirmal Singh*"). Under s 83(1) of the LPA, the maximum period for which a lawyer may be suspended is five years. As a lawyer who is struck off the roll should not be effectively placed in substantially the same position as one who is merely suspended for the full five years, a period significantly longer than five years must have elapsed before an application for reinstatement would be entertained.

10 Although the court in *Re Nirmal Singh* was not disposed to lay down a fixed minimum time frame for bringing an application under s 102, we were satisfied that the present application was not

premature. Given that the applicant had been kept off the roll for almost ten years, it could hardly be said that he has not felt the full effects of the penalty imposed on him.

11 Nevertheless, it was still incumbent on the applicant to convince us that the substantive merits of his case warranted his replacement on the roll. In exercising our discretion under s 102, we kept in mind that our primary duty was to protect the interests of the public and the profession as a whole, over and above the private interests of the applicant: *Re Ram Kishan* [1992] 1 SLR 529. As LP Thean JA noted at [20] of *Re Nirmal Singh* (*supra* at [9]):

The court must be every bit as jealous of the honour of those admitted to the Singapore legal profession as a man is of his own reputation, for the integrity of the profession is dependant wholly on the character and virtue of its members. At the same time, we must be conscious of the ever-compelling need to protect the public from errant lawyers and the serious harm which such lawyers could inflict on the public and the reputation of the legal profession.

12 In support of his application, the applicant pointed out that he had readily accepted his punishment for his indiscretions. He had pleaded guilty to the criminal charge and had not appealed against the sentence imposed. He also did not contest the show cause proceedings by the Law Society.

13 Since his striking off the roll, the applicant has not had any further skirmishes with the law. He claimed that he had learnt a bitter lesson and would not commit the same "error of judgment" again. He also continued to maintain his links with the law, working as a legal officer for Spandek Engineering (S) Pte Ltd and later as a legal advisor for Pilecon Engineering Bhd. In September 2003, he left to work as an attaché with the law firm M Ravi & Co, assisting Mr Ravi in the conduct of his criminal matters.

14 Finally, the applicant adduced letters from six members of the Bar in support of his application, as well as letters from the Singapore Red Cross Society ("the Red Cross") evidencing his active participation in their blood donation programme.

15 Mr Lok Vi Ming and Mr Koh Kia Jeng for the Law Society did not object to his application. However, Ms Cheryl Chia, State Counsel for the Attorney-General, opposed it based on an incident that occurred at the Subordinate Courts on 20 April 2004. The applicant had attended a pre-trial conference with Mr Ravi before District Judge Victor Yeo. In the course of the proceedings, the applicant had addressed the district judge on certain aspects of the case. Ms Chia highlighted that since his striking off the roll, the applicant had lost his right of audience before any court of justice in Singapore. His actions in addressing the court were therefore unacceptable, and the Attorney-General objected to his application on this ground.

16 We agreed with Ms Chia in so far as we found that the applicant should not have addressed the court, knowing full well that he no longer had a right of audience before any court in Singapore. However, we accepted that this was a minor incident, and therefore did not take this into account when considering the substantive merits of the application.

17 After considering the rest of the evidence, including the evidence raised by the applicant, we were firmly of the view that the application for reinstatement could not succeed. We recognised that the nature of the applicant's offence was less serious than those in a number of previous s 102 cases such as *Re Lim Cheng Peng* [1987] SLR 486, *Re Ram Kishan* (*supra* at [11]) and *Re Nirmal Singh* (*supra* at [9]). In all these cases, the respective applicants had abused their authority as advocates and solicitors and exploited their clients. The applicant's conduct in this case, though reprehensible,

was nonetheless essentially a misguided attempt at helping his clients.

18 However, we had to balance this against the fact that the offence committed by the applicant clearly involved a dishonest and deliberate obstruction of the administration of justice. We accepted that the applicant had already paid a high price for his misdeeds, and, in principle, sentences of exclusion from the legal profession need not be exclusive forever: *Re Chan Chow Wang* [1982–1983] SLR 413. Nevertheless, the applicant bore the burden of proving that he was now of such a reformed character that he could be relied upon to discharge the professional duties of an advocate and solicitor with honour and integrity.

19 In this regard, the applicant's case was woefully inadequate. Apart from his own affidavits, there was no real evidence to substantiate his claims of rehabilitation. The letters of recommendation from other members of the Bar, which we considered at length, merely spoke of the applicant's deep interest in the law and his friendly and affable disposition. We found it telling that not a single letter attested to his trustworthiness and good character, which was our essential concern here. The letters from the Red Cross also added little, if any, value to his application. In the absence of any substantive evidence, we could not accept the applicant's bare assertion that his character had so changed that he was now fit to be re-admitted to the Bar.

Conclusion

20 The application for reinstatement was accordingly dismissed. As counsel for the Law Society and the Attorney-General have stated that they did not wish to have their costs of these proceedings, we made no order as to costs.

Application dismissed.