[2001] QCA 92

COURT OF APPEAL

de JERSEY CJ
WILLIAMS JA
BYRNE J

No 11225 of 2000

BARRISTERS' BOARD — Applicant

v.

IFTAKHR IQBAL AHMED KHAN — Respondent

BRISBANE

..DATE 13/03/2001

JUDGMENT

THE CHIEF JUSTICE: The Barristers' Board seeks an order that the respondent's name be removed from the roll of barristers. The respondent was served with the application and the supporting material in January and has failed to appear this morning on the hearing of the application. Neither has he filed material in opposition to the material relied on by the applicant.

The Chairman of the Barristers' Board wrote to the respondent on 29 August 2000 referring to the point taken against him, being a matter of non-disclosure to which I will come, in these terms:

> "The Board regards this non-disclosure as very serious, but before taking any further action the Board will provide you with an opportunity to place any material before it which you may consider relevant. If you wish to avail yourself of this opportunity please do so in writing before 29 November 2000. In the absence of any satisfactory explanation from you by that date, the Board may apply to the Court of Appeal to have your name removed from the roll of barristers without further notice to you."

In relation to that, the respondent neither placed material before the Board nor before this Court. The respondent was admitted to practice as a barrister in Queensland on 8 June 2000 under the Mutual Recognition (Queensland) Act 1992.

The respondent carries on practice as a barrister and solicitor in Lautoka, Fiji. In applying for admission in Queensland on 6 June 2000 under the Mutual Recognition

(Queensland) Act, he relied on his admission to legal practice in Victoria, New South Wales and the Australian Capital Territory. He had, since 1988, been admitted to practice as a solicitor in Queensland.

In the course of that practice as a solicitor, he apparently acted for one Shankar. On 14 November 1998, through his attorney, one Nath, Mr Shankar made a complaint to the professional standards department of the Queensland Law Society to the effect that the respondent was failing to progress his, Mr Shankar's, claim for damages in respect of personal injuries.

It emerged that the respondent had, in respect of that claim, been paid a sum of $35,000 by the relevant insurance company by way of settlement of the claim and that the respondent had deposited that sum into the respondent's personal bank account.

The council of the Law Society suspended the respondent's practising certificate and appointed a receiver over the limited trust property held by him. The respondent unsuccessfully sought to have that suspension lifted.

In communications with the Law Society, he denied Mr Shankar's claim to have received none of the $35,000 insurance payout, going so far as to label Mr Shankar's claim as fraudulent in

its conception. It is interesting to note however, one may add, that if there was fraud, then even on the respondent's own account, he was involved in it.

The present application is, in the immediate sense, based on the respondent's failure when applying on 6 June 2000 for admission as a barrister, to disclose the circumstances of the complaint made against him in 1998 and its subsequent treatment.

There was substantial communication between the Law Society and the respondent in relation to that complaint over the ensuing months following November 1998. It must have been to the forefront of the respondent's mind in June 2000 when he made his application seeking admission to the other branch of the profession, that he had been subject to a complaint so treated in respect of his work as a solicitor.
In his application under the Mutual Recognition (Queensland) Act the respondent stated, with verification under oath:

> "My conduct as a barrister is not the subject of disciplinary proceedings in any State or Territory (including any preliminary investigation or action that might lead to disciplinary proceedings)."

While factually accurate in that Mr Shankar's complaint and the subsequent investigation and suspension related to the respondent's conduct as a solicitor, the circumstance of his having to make a declaration in relation to that subject

matter should have brought to the respondent's mind the prime need for candour in making his application, the factual circumstances of the past complaint and their relevance to ethical considerations, and his obligation to disclose those circumstances to the admitting authority.

The respondent was plainly obliged to disclose to the admitting authority every matter which might reasonably be regarded as touching on his fitness to practice as a barrister. See In Re Davis (1947) 75 Commonwealth Law Reports 409 at 426 where Mr Justice Dixon, as he then was, spoke of the bar as indispensable to the administration of justice and the obligation of candour of an applicant for admission who sought to serve the public as what his Honour termed "an agent of justice". See also Re Evatt (1987) 92 Federal Law Reports 380 at 383 and Re A Solicitor (1952) Victorian Law Reports 385 at 390.

In Evatt the Full Court of the Supreme Court of the Australian Capital Territory said this, at page 383:

> "In the case of an interstate practitioner against whom some finding of professional misconduct has been made or against whom an outstanding complaint of professional misconduct remains undetermined by a competent tribunal or professional association, there can be no finding that the applicant is a fit and proper person to be admitted to practice in this territory unless the conduct which is the subject of the finding or the allegation is disclosed.
>
> We state unequivocally that it is not for an applicant to decide what is or is not relevant to place before the Court on the question of whether that person is a fit and proper person to be admitted to practice. The

> applicant's duty is to place before the Court any matter that might reasonably be regarded by the Court as touching on the question of fitness to practice."

This duty of candid disclosure applied, in my opinion, by whatever avenue admission was sought. The matters alleged against the respondent, especially with their having led to the current suspension of his right to practice as a solicitor, plainly fell in a category where disclosure was required. They bore directly on his ethical fitness to practise as a lawyer whether as solicitor or barrister.

It is compelling to infer, as I see the matter, that the respondent deliberately withheld this information lest it prejudice his application. It is highly significant that having, through this application, been alerted to the Board's reliance on his non-disclosure, the respondent has proffered no explanation for that non-disclosure.

In my opinion, the respondent's breach is of such significance as to warrant this Court's ordering that the respondent's name be removed from the Roll of Barristers and as follows that the respondent pay the costs of the Barristers' Board of these proceedings to be assessed.

WILLIAMS JA: The material on which the respondent sought admission as a barrister in Queensland pursuant to the provisions of the Mutual Recognition (Queensland) Act 1992 was dated 6 June 2000. The respondent was admitted as a barrister

in Queensland pursuant to that legislation two days later on 8 June 2000.

In my view, the legislation under which the respondent was admitted as a barrister ought to be reviewed to ensure that there is sufficient time between the lodgment of the papers seeking registration and the registration becoming effective for the local professional bodies to make inquiries as to the fitness of the applicant to practice in Queensland.

The way the legislation is presently framed means that persons who clearly ought not to be admitted may in fact be admitted. The consequence is that the Barristers' Board (or other appropriate body) must take the step of having the person's name removed from the Roll of Practitioners. That involves time and expense which could be avoided. I agree with all that the Chief Justice has said and with the order proposed.

BYRNE J: I agree with the Chief Justice.

THE CHIEF JUSTICE: The orders are as I have indicated.
