

Re Shankar Alan s/o Anant Kulkarni and Another Application
[2007] SGHC 68

Case Number : OS 589/2006, SUM 1692/2007
Decision Date : 17 May 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Daniel Koh (Rajah & Tann) for the Law Society of Singapore; Mahmood Gaznavi (Mahmood Gaznavi & Partners) for Shankar Alan s/o Anant Kulkarni
Parties : —

Legal Profession – Disciplinary procedures – Findings of disciplinary committee quashed by High Court – Whether costs should be ordered against Law Society for withdrawal of originating summons issued to respondent to show cause – Whether order of costs may be made against disciplinary committee

17 May 2007

Choo Han Teck J:

1 The only issue before me was whether Shankar Alan s/o Anant Kulkarni (the respondent in this Originating Summons) was entitled to costs. In January 2006, the respondent was found guilty by a Disciplinary Committee of the Law Society on three charges of gross misconduct. Consequently, the Law Society applied by this originating summons for him to appear before a court of three judges to show cause why he should not be disciplined. In the meantime, the respondent applied by Originating Summons 668 of 2006 to have the findings of the Disciplinary Committee quashed on various grounds, including the allegation that it did not discharge its duty impartially. The findings of the Committee were quashed by the High Court on 27 October 2006. With that result, this originating summons issued to the respondent to show cause was no longer viable and the Law Society thus applied for leave to withdraw it.

2 Mr Gaznavi for the respondent argued that leave to discontinue should be given together with an order for costs against the Law Society for the withdrawal of this originating summons, which costs, if payable, would not be very much in the event because not much costs had been incurred (the bulk of the work had gone into Originating Summons 668 of 2006, for which costs had been awarded to the respondent) as well as for the costs in respect of the hearing before the Disciplinary Committee.

3 Mr Daniel Koh submitted on behalf of the Law Society that no costs should be awarded by reason of Rule 24 of the Legal Profession (Disciplinary Committee Proceedings) Rules (Cap 161, Rule 2) ("the Rules"). That rule provided as follows:

(2) Except as provided in section 93(2), the Disciplinary Committee shall have no power to award costs to or against a solicitor in any Disciplinary Committee proceedings commenced against the solicitor.

Section 93(2) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") provides as follows:

In the event of the Disciplinary Committee making a determination under subsection (1)(b) or (c), the Committee may make an order for payment by any party of costs or of such sum as the

Committee may consider a reasonable contribution towards costs.

The above provisions thus excluded the power to award costs in circumstances where s 93(1)(a) applied, namely, where “no cause of sufficient gravity for disciplinary action exists under s 83”.

4 There is one other statutory provision to be set out before the issue may be discussed; that is s 103 of the Act which provides as follows:

(1) where under section 93 a Disciplinary Committee determines that no cause of sufficient gravity for disciplinary action exists and further records the opinion that the complaint was frivolous or vexatious, the Disciplinary Committee may by originating summons to be heard before a Judge ask that the court order that the costs of the complaint shall be paid by the person who made the complaint.

(2) Thereupon and after hearing that person, the court may order that those costs or any part thereof shall be paid by that person and any such order shall thereupon be enforceable in the same manner as any order for costs made in proceedings in court.

(3) The costs of and incidental to all proceedings under section 98, 100 or 102 shall be in the discretion of the Judge or of the court before whom the hearing has taken place.

(4) Such costs may include the costs of the Society or Disciplinary Committee and may be ordered to be paid by the solicitor by or against whom or by the person by whom any complaint was made or was intended to be made or partly by the solicitor and partly by the other person.

5 Rule 24 of the Rules is unequivocal in stating that the Disciplinary Committee has no power to award costs to or for the solicitor who stands charged before it. This rule applies in situations in which the Disciplinary Committee is the decision making body, that is, the adjudicator. The present circumstances are unusual. The costs sought were costs incurred by reason of the finding that the Disciplinary Committee itself was guilty of misconduct. Rule 24 does not refer to any power on the part of the Disciplinary Committee to order costs against itself. That would not make sense because any power to award costs under such circumstances implies that it also had the power not to make the order. That would allow the Committee to sit in judgment of its own cause and that would not be right or permitted.

6 Rule 24 seems to have been put in place for the purpose of having Disciplinary Committees discharge their function without fear of incurring costs for the Law Society in the event the charges were not proved against the solicitor in question. Section 103 of the Act serves a different function. It empowers the court to make orders as to costs in respect of and incidental to all proceedings such as the present Originating Summons 589 of 2006 filed ex parte pursuant to s 98(1) of the Act. Section 103, like Rule 24, does not envisage an order for costs against the Law Society, in respect of a misconduct of the Disciplinary Committee.

7 An order for costs in such circumstances is unusual, but the High Court, in the absence of any clear statutory rule to the contrary, is entitled to make an order for costs. However, in my view, the respondent ought to have made his application for costs against the Disciplinary Committee before JC Menon in Originating Summons 668 of 2006 after JC Menon had set aside the findings of the Disciplinary Committee. An order for costs in that regard is more appropriately made by the court that had determined the merits of that case. The present originating summons was an ex parte one which was a formal step leading towards a hearing that, in this case, did not take place by reason of the proceedings in Originating Summons 668 of 2006. The costs incurred in this originating summons was

negligible.

8 If the respondent had not taken out a summons (No 1692 of 2007) to strike out this ex parte originating summons, the Law Society would, in due course, have to withdraw it in any event. This was done by Mr Koh when he appeared on 4 May 2007 in response to the respondent's summons. Mr Gaznavi has no objections to the withdrawal. In the circumstances, I grant leave to the Law Society to withdraw this originating summons with costs to the respondent fixed at \$150 but no order as to costs for the hearing before the Disciplinary Committee.

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