

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

**In the matter of a Rule in terms of
Section 42(2) of the Judicature Act
No. 2 of 1978, against Hemantha
Situge, Attorney at Law.**

Weerasekera Arachchige Dona
Saddhawathie, No. 732,
Sri Nanda Mawatha,
Madinagoda,
Rajagiriya.

Complainant

Vs

SC RULE 03 / 2014

Hemantha Situge,
Law Library,
Hulftsdorp,
Colombo 12.

Respondent

BEFORE

**: S. EVA WANASUNDERA PCJ.
B. P. ALUWIHARE PCJ. &
SISIRA J. DE ABREW J.**

COUNSEL : Saliya Pieris PC for the Bar Association of Sri Lanka.
Thusith Mudalige Deputy Solicitor General for the Hon. Attorney General.
Dr. S. F. A. Coorey for the Respondent.

Inquiry Dates :20.02.2014, 01.12.2014, 11.12.2014,19.01.2015, 08.12.2015,24.03.2016, 17.06.2016, 01.08.2016, 24.11.2016,17.01.2017, 03.04.2017, 14.06.2017, 06.09.2017 and 03.10.2017.

DECIDED ON : 24. 01. 2018

S. EVA WANASUNDERA PCJ.

Rule dated 30.01.2014 was issued on the Respondent Attorney at Law (hereinafter referred to as the Respondent) to show cause as to why he should not be suspended from practice or removed from the office of Attorney at Law of the Supreme Court in terms of Section 42(2) of the Judicature Act No. 2 of 1978.

When the charge sheet was read out to him on 20.02.2014, the Respondent pleaded 'not guilty'. Thereafter this Court had made order on the same day 'suspending the Respondent from practicing or doing any other activity connected or concerned with the legal system until such time this matter is fully determined by this Court.'

This matter had arisen from and out of a complaint made by Weerasekera Arachchige Dona Saddhawathie, the Complainant (hereinafter referred to as the Complainant) to the Bar Association on or around **17.08.2009** complaining that the Respondent had taken Ten Thousand Rupees (Rs. 10,000/-) to file action against Perera and Sons Company regarding the said company sending / disposing of dirty water into the drain flowing down the drain along the road and into the land of the Complainant, illegally, in a manner which was causing the Complainant and her neighbours a lot of hardship, **but had failed to do so** from **20.11.2008**, the date on which the Complainant had handed over the papers and the said money to the Respondent.

In the affidavit of the Complainant, **she has annexed a copy of a notice** sent by the Respondent under Sec. 461 of the Civil Procedure Code, to the Hon. Attorney General dated **10.03.2009** and a letter of **response** in that regard dated **23.04.2009 from the Hon. Attorney General**. It is obvious that the Respondent had sent the Sec. 461 notice to the Attorney General **within 4 months from the date of undertaking to file action**.

The Complainant's prayer is only to get the Respondent to return the Rs. 10000/- to her along with the documents given to the Respondent. There is no list of the documents given by the Complainant to the Respondent in the Affidavit or the complaint made to the Bar Association.

The Bar Association had held a disciplinary inquiry and made order on 06.02.2010 stating that "the Panel is of the view that appropriate action be taken against the Respondent." The Administrative Secretary to the BASL had forwarded the same to the Registrar of the Supreme Court on 03.03.2010 and in turn by an order of the Supreme Court, the Registrar had sent a letter to the Hon. Attorney General to prepare the Draft Rule against the Respondent.

The Rule dated 30.01.2014 reads as follows:-

TO THE RESPONDENT ABOVE NAMED.

WHEREAS

- (a) A disciplinary inquiry was held by the panel 'A' of the Professional Purposes Committee of the Bar Association of Sri Lanka in respect of the deceit and malpractice by you, and the said Panel was of the view that you are guilty of professional misconduct and that this is a fit case to be reported to the Supreme Court for appropriate action,
- (b) Thereafter the findings of the said Panel was submitted to the Overall Chairman of the Professional Purposes Committee of the Bar Association of Sri Lanka, who directed that the findings of the inquiry of the said Panel be forwarded to Executive Committee of the Bar Association of Sri Lanka,
- (c) The Executive Committee endorsed the decision of the Professional Purposes Committee to refer the matter to the Supreme Court for appropriate action.

AND WHEREAS, the complaint made by the said Weerasekera Arachchige Dona Saddhawathie and the Order of the Panel 'A' of the Professional Purposes Committee of the Bar Association of Sri Lanka disclose that;

- (a) On or around 20.11.2008 the said Weerasekera Arachchige Dona Saddhawathie retained you to file action against a private company for polluting the environment by releasing waste, harmful to human life and
- (b) You were paid a sum of Rupees Ten Thousand as professional fees and
- (c) You failed to institute proceedings as undertaken by you and
- (d) Thereafter you avoided meeting the said Weerasekera Arachchige Dona Saddhawathie and
- (e) You have failed to return the total amount you received from the said Weerasekera Arachchige Dona Saddhawathie.

AND WHEREAS in the circumstances your conduct discloses that;

- (a) You being an Attorney at Law, by means of your conduct have acted in a manner detrimental and or prejudicial to the interest of the said Complainant, whom you chose to represent,
- (b) You being an Attorney at Law, have failed to exercise skill and due diligence in prosecuting the interests of the said Weerasekera Arachchige Dona Saddhawathie referred to above.

AND WHEREAS;

- (a) You have by reason of the aforesaid acts and conduct, committed ; deceit and/or malpractice within the meaning of Section 42(2) of the Judicature Act which renders you unfit to remain as an Attorney at Law, and
- (b) By reason of the aforesaid conduct you have acted in a manner which would reasonably be regarded as disgraceful or dishonourable of Attorneys at Law of good repute and competence and have thus committed a breach of Rule 60 of the Supreme Court Rule (Conduct and Etiquette of Attorneys at Law) of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka and,

- (c) By reason of the aforesaid acts and conduct, you have conducted yourself in a manner which would render yourself unfit to remain an Attorney at Law and have thus committed a breach of Rule 60 of the said Rules,
- (d) By reason of the aforesaid acts and conduct, you have conducted yourself in a manner which is inexcusable and as such to be regarded as deplorable by your fellow professionals and have thus committed a breach of Rule 60 of the said Rules,
- (e) By reason of the aforesaid acts and conduct, you have conducted yourself in a manner unworthy of an Attorney at Law and have thus committed a breach of Rule 61 of the said Rules,

AND WHEREAS this Court is of the view that proceedings must be initiated against you for suspension from practice or removal from the office of Attorney at Law should be taken under Section 42(2) of the Judicature Act read with Supreme Court Rules (Part VII) of 1978 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The evidence commenced on 01.12.2014 with the Complainant giving evidence. She produced her affidavits filed before the Disciplinary Committee of the BASL as P1 and P2. She also gave evidence marking as P3 the Money Order for Rs.10,000/-which she admitted to have encashed after she received the same from the Respondent. Documents P4 and P5 were also marked in evidence through her. They were the Sec. 461 notice sent to the Hon. Attorney General and the letter of response from the Attorney General. P6 was the last document produced, which is the file maintained by the BASL. The Respondent had not participated at the inquiry before the Disciplinary Committee even though he had been noticed to appear. It was conducted ex parte.

At the end of her evidence she was cross examined by the Counsel of the Respondent, namely Dr. Sunil Cooray. At page 18 of the proceedings on 01.12.2014, the Complainant's answers to the cross examination reads as follows:-

- ප්‍ර. සිටුවෙහි මහත්තයාට බාර දුන්නානේ නඩුව හඳුන්න.කඩදාසි බාර දුන්නනේ ඒ කඩදාසි තමුන්ට ආපසු ලැබුනාද ?
- උ. ඔව්.

- ප්‍ර. කොහොමද ලැබුණේ ? ඒ කොයි කාලෙද ?
- උ. තැපෑලෙන් ලැබුණේ. මට හරියට මතක නෑ.
- ප්‍ර. මනිඔඩරය ලැබුණාට පස්සේද ,ඊට ඉස්සරලද ලැබුණේ ?
- උ. නඩුවක් තිබුණානේ මම ඒ ආයිල් ඔක්කොම මම භාර දුන්නා සුනිල් ජයකොඩි මහත්තයාට.
- ප්‍ර. තමුන්ට තැපෑලෙන් ලැබුණ ලියවිලි තමුන් වෙත නීතිඥ මහත්තයෙකුට බාර දුන්නද?
- උ. ඔව්.
- ප්‍ර. ඒ සුනිල් ජයකොඩි නීතිඥ මහත්තයාද ?
- උ. ඔව්.
- ප්‍ර. ඒ මහත්තයා නඩුවක් ආයිල් කලාද ? ඒ නඩුව තවම ඉවර නැද්ද ?
- උ. නෑ, ඒක තියනවා.අංක එකේ. කොළඹ දිසා අධිකරණයේ.
- ප්‍ර. මම අහන්නේ ඒ ලියවිලි සුනිල් ජයකොඩි මහත්තයාට බාර දෙන්න ඉස්සරවෙලා තමුන්ට ලැබුණනේ ඒ ලියවිලි ලැබුණද?කොහොමද ලැබුණේ තැපෑලෙන්ද කොයි කාලෙද ?
- උ. තැපෑලෙන් ලැබුණා. දැන් අවුරුදු 2 ක් විතර වෙනවා.

At the end of the re-examination, Court asked questions from the Complainant and she answered as follows:-

- ප්‍ර. තමන් මේ මහත්තයාට නඩුවක් ගොනු කරන්න කියලා කිවනේ.ඒක ගොනු වුනේ නෑ. තමන් මේ අධිකරණයට පැමිණිලි කලේ ඒ නිසයි කියලා කිව්වොත් හරිද ? ඉස්සරලා නීතිඥ සංගමයට කියලා,සංගමය තුලින් මේ අධිකරණයට ඒක යොමු වුනා ?
- උ. ඔව්.
- ප්‍ර. තමුන්ට ආයිල් එක ලැබුණනේ,අවුරුදු දෙකකට කලින්, ඒ දුන්න කඩදාසි ටික ඒ කඩදාසි ලැබෙන්න ඉස්සරද, ඔය පියතිලක මහතා අන්තරා වුනේ නැත්නම් ඊට පස්සේද ?
- උ. ඊට පස්සේ.

On the same day, i.e. on 01.12.2014, the Respondent also had given evidence before this Court. He narrated the incident with the Complainant in this way. The Complainant wanted him to draft papers to be filed against the Central Environmental Authority and Perera and Sons Company. As he was of the firm belief that a notice under Sec. 461 should be sent to the Attorney General before filing action against the Central Environmental Authority, he had despatched the said notice. He had told the Complainant that he does only counselling and had asked her to suggest a name of another lawyer to file proxy. As the complainant had suggested the name of lawyer, M.A.Piyathilake, he had drafted the papers and sent the same to lawyer Piyathilake by registered post to be filed in District Court of Colombo. Mr. Piyathilake had told him that he was about to file the case but then he had passed away within one or two months. The Complainant had paid the fees for drafting, to the Respondent in three instalments. Rs. 4000/- had been paid within three or four days after the consultation. Rs. 3000/- had been paid after a long delay and the last Rs. 3000/- had been paid after he demanded the same to finish the drafting of papers. He admits that the full amount was Rs. 10,000/- and that the Complainant had paid the same to him.

The Respondent had given evidence on a second day as well, i.e. on 11.12.2014. He had denied that he ever received any notice from the Bar Association. He stressed on the point that he did not undertake to file a case but he undertook to only draft papers to get an enjoining order and an injunction against the Managing Director of Perera and Sons to stop the pollution done to the environment by disposing toxic matter into the drain by the road and into her land. He had drafted the papers and sent the same to M.A.Piyathilake , Attorney at Law to file the same. Apparently at that time he had not known Piyathilake personally but had spoken to him over the telephone. He had produced in evidence marked as R1, certified copies of pages 1 to 45 of the District Court Case No. 00187/09 DSP.

The name of the month in the draft Plaint had been tipexed and changed and filed in the District Court and an enjoining order had been obtained by the counsel , Sunil Jayakody who was retained by the Complainant to support the Plaint to get the enjoining order. By the day this evidence was given in the Supreme Court, the said case is in Appeal in the Civil Appellate High Court case number, WP/HCCA/COL 63/2013 F. The date of the Plaint is 07.10.2009. The Respondent had stated that he wanted to incorporate the Plan of the land

belonging to the Complainant into which the polluted water was directed to, by the company Perera and Sons. She had come to see him many times but had always brought wrong Plans and not the correct Plan. He had explained the delay in drafting the papers to get the enjoining order. Anyway the plaint had been filed in the District Court and supported for an enjoining order by counsel Sunil Jayakody and the case has been going on since then and now in appeal before the Civil Appellate High Court.

However, it is the stand taken by the Respondent that the job of work undertaken by the Respondent from the Complainant was only to draft the papers and none other, which he completed and sent to the lawyer Piyathilaka for filing as requested by the Complainant for a fee of Rs. 10000/-. As at the date of the Complainant giving evidence, she gave evidence and stated that the money which was paid to the Respondent for the case, had been paid back to her by the Respondent through post by money order to the value of Rs.10000/- which she had by then encashed.

As at present, it was informed to this Court that the complainant had passed away in 2016.

The Respondent gave evidence on yet another date, i.e. on 06.09.2017. Under cross examination he was questioned as to why he did not hand over the draft papers to the Complainant. He answered that Mr. U.R.De Silva, Attorney at Law, to whom the Complainant had complained at that time against the Respondent, had **advised** the Respondent to send by registered post, the documents and the draft papers to Piyathilaka, the instructing Attorney of the Complainant, to file the action. The said Piyathilaka had died at the age of 58 years. After Piyathilaka died the Complainant had retained the services of one Mrs. Bandaranaike as instructing Attorney to file proxy and the papers in Court. Then the counsel to support the papers was also retained by the Complainant and that was counsel Sunil Jayakody.

The said counsel, Mahawadu Kudupitiyage Sunil Jayakody gave evidence on 06.09.2017 and on 03.10.2017. He was called as a witness for the Defense. He had been the counsel for the Plaintiff, Weerasekera Arachchige Dona Saddhawathie in the District Court of Colombo case No. 187/2009 DSP. He was retained by the instructing Attorney, Piyathilaka, to whom the Respondent had sent by registered

post, the papers drafted by the Respondent on behalf of the Complainant, to be filed in the District Court. Witness Sunil Jayakody, Attorney at Law said that when Attorney at Law Piyathilaka asked him whether he could appear as counsel, he had answered in the affirmative and that is how he became the counsel for the said client Saddhawathie. As Piyathilaka had died soon thereafter, another instructing Attorney by the name Mrs. C.Bandaranaike had been the instructing attorney throughout the case. Sunil Jayakody had received a file of papers from Piyathilaka who had told that the papers to be filed were in the file that he handed over to him.

The file had contained a motion, the Complaint, the Affidavit and other documents with a covering letter by Situge, the Respondent in this matter, to Piyathilaka. The said covering letter on a letter head of Situge dated 21.08.2009 was marked as V2 in evidence. The draft affidavit which was in that file was marked as V3. The case number DSP 187/09 was filed in the District Court. An enjoining order was obtained from Court. The case was heard. As at present the Appeal from the judgment of the District Court was filed in the Civil Appellate High Court which bears the number as WP/HCCA/CO 63/2013 (F). Both the case records are before this court as called for by order of this Court.

After having perused the said case records, Deputy Solicitor General Thusith Mudalige cross examined the witness Jayakody on 03.10.2017. It was elicited from him that firstly he received the Complaint and Affidavit in a file and thereafter he received the original complete file from Piyathilaka, which had been sent by Situge to Piyathilake. It is only in that file that he found the covering letter sent by Situge, marked as V2. Jayakody was cross examined regarding documents mentioned as annexed to the Affidavit V3. The Complainant Saddhawathie had brought the said documents and had handed them over to Sunil Jayakody. In the proceedings of 03.10.2017 at page 15, Jayakody explained how he had been asked by Piyathilaka only to appear and support the papers which were already drafted by Situge as Situge had a difficulty in appearing and supporting the matter before court. He further submitted that he obtained an enjoining order from court when the papers were filed and supported on behalf of Saddhawathie, the Complainant in the case in hand.

The complainant's case was closed by the Deputy Solicitor General for the Complainant and the counsel for the Respondent also closed his case for the

defense, informing this court that they are not calling any other witnesses, at the end of the day on 03.10.2017.

I find from the evidence before this Court that the work undertaken by the Respondent was to draft the papers to get an enjoining order/ injunction against Perera and Sons and the Central Environment Authority. The Complainant had given Rs. 10,000/- to the Respondent in three instalments for him to draft the papers. He had completed his job of work and sent it to the instructing Attorney by registered post as directed by none other than Mr. U.R. De Silva, Attorney at Law due to the fact that there had been complaints made by the Complainant. The Complainant had complained against the Respondent to the Bar Association as she was dissatisfied with the fact that the papers were not drafted soon and she wanted the money paid to the Respondent returned.

The Respondent has been on suspension for the last three years and nine months. I do not find that he is guilty of misconduct on the charges in the Rule mentioned above. I make order discharging him from the charges. The suspension is cancelled. The Respondent is allowed to practice his profession.

Judge of the Supreme Court