IN THE SUPREME COURT OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of a Rule issued against Mr. Wasantha Wijewardena Attorney-at-Law in terms of section 42(3) read with section 42(2) of the Judicature Act No. 2 of 1978.

S C Rule No. 08/ 2014

R M Karunaratne Banda,

No. 95/1,

Kahawatta,

Ambatenna.

COMPLAINANT

-Vs-

Wasantha Wijewardena, (Attorney-at-Law)

No. 03,

Colombo Street,

Kandy.

RESPONDENT

Before: **VIJITH K MALALGODA PC J**

P PADMAN SURASENA J

S THURAIRAJA PC J

Counsel: Dr. Avanthi Perera SSC with Sureka Ahamad SC for Attorney General.

Rohan Sahabandu PC for the Bar Association of Sri Lanka.

Respondent Wasantha Wijewardena Attorney-at-Law appeared in person.

Inquiry conducted on : 03-09-2019, 02-12-2019, 10-02-2020, and 10-03-2020.

Decided on : 25-09-2020

P PADMAN SURASENA J

Upon a Complaint against the Respondent Attorney-at-Law made to this Court by the Complainant, this Court served a copy of the said complaint on the Respondent Attorney-at-Law and called for his observations thereon. Thereafter, this Court referred the said complaint to a disciplinary committee of the Bar Association of Sri Lanka in accordance with section 43 of the Judicature Act with a direction to conduct a preliminary inquiry into the alleged misconduct of the Respondent Attorney-at-Law. This was to enable this Court to determine whether further proceedings should be taken against the Respondent Attorney-at-Law to deal with him under section 42 of the Judicature Act.

The said disciplinary committee (of the Bar Association of Sri Lanka) having inquired into the said complaint, has forwarded to this Court its order dated 07-12-2013. This has been produced before this Court marked **P 11**. The said disciplinary committee had concluded that the Respondent Attorney-at-Law, who has filed an application on behalf of the Complainant after receiving fees from him, has not given an acceptable explanation for his absence in the Supreme Court on 17-06-2009 and 20-07-2009, which were the dates the Court had fixed the said application for support. Further, the said disciplinary committee also had concluded that it was long after the Court had dismissed the said application that the Respondent Attorney-at-Law had made the re-listing application. The

said disciplinary committee had also stated in its order that it is a bounden duty on the part of the Respondent Attorney-at-Law to have examined the record to check the next date for support and that he should have taken steps to file a re-listing application immediately after the order of dismissal.

It was on the above basis that the disciplinary committee of the Bar Association of Sri Lanka had finally concluded that the Respondent Attorney-at-Law has not shown due diligence in carrying out his professional obligations towards his client and decided to refer the record of its proceedings to this Court for further action.

This Court on the receipt of the said record of proceedings by the said disciplinary committee noticed the Respondent Attorney-at-Law as well as the Hon. Attorney General to appear before this Court.

Thereafter, this Court on 09-05-2014 having considered the conclusions of the disciplinary committee of the Bar Association of Sri Lanka has directed the Registrar of this Court to forward certified copies of the relevant documents to the Hon. Attorney General for the purpose of drafting a Rule against the Respondent Attorney-at-Law in terms of the relevant provisions in the Judicature Act.

It was pursuant to the above order that Hon. Attorney General had prepared a draft Rule and submitted to this Court. It was the said Rule,[1] which was issued against the Respondent Attorney-at-Law under the hand of the Registrar of this Court.

The said Rule has averred the facts and circumstances relevant to the questionable acts and conduct of the Respondent Attorney-at-Law. The several averments of facts in the said Rule point to three main alleged questionable acts/conduct on the part of the Respondent Attorney-at-Law. They are as follows.

(i) The Respondent Attorney-at-Law never informed the Complainant that the Fundamental Rights Application, which was to be filed, would be time barred and that the Complainant would never have instructed the Respondent Attorney-at-

[1] Rule dated 17th September 2014.

Law to file such an application and paid his fees if he had been appraised of the said position.

(ii) The Respondent Attorney-at-Law failed to appear for the petitioner in the relevant Fundamental Rights Application (No. SC FR 445 / 2009) when it was listed for support initially on 17-06-2009 and subsequently on 20-07-2009 and that the Supreme court dismissed the said application on the latter date as the Petitioner had been absent and unrepresented in Court.

(iii) The Respondent Attorney-at-Law failed to file or support an application to have the said dismissed application re-listed and restored until he filed a motion on 19-10-2009, which was rejected by the Supreme Court due to the delay.

It was on the premise of the above-alleged questionable acts/conduct by the Respondent Attorney-at-Law that the Rule has alleged that;

a) by reason of the said acts and conduct, the Respondent Attorney-at-Law has conducted in a manner that would reasonably be regarded as disgraceful or dishonourable by Attorneys-at-Law of good repute and competence and have thus committed a breach of Rule 60 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988, made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka;

b) by reason of the aforesaid acts and conduct, the Respondent Attorney-at-Law has conducted in a manner that would render him unfit to remain as an Attorney-at-Law and has thus committed a breach of Rule 60 of the said Rules;

c) by reason of the aforesaid acts and conduct, the Respondent Attorney-at-Law has conducted in a manner which is inexcusable and such as to be regarded as deplorable by his colleagues in the profession and has thus committed a breach of Rule 60 of the said Rules;

d) by reason of the aforesaid acts and conduct, the Respondent Attorney-at-Law has conducted in a manner unworthy of an Attorney-at-Law and has thus committed a breach of Rule 60 of the said Rules;

e) by reason of the aforesaid conduct, the Respondent Attorney-at-Law has committed acts of;

i. deceit and/or;

ii. malpractice.

Having alleged as above, the Rule has directed the Respondent Attorney-at-Law, to appear before this Court and show cause as to why he should not be suspended from practice or be removed from the office of the Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka, in terms of section 42(2) of the Judicature Act.

The Respondent Attorney-at-Law appeared in person to defend himself. This Court then read out the said Rule and handed over a copy of the said Rule to him in open court. As the Respondent Attorney-at-Law moved for time to show cause the Court then had granted him time and fixed the inquiry for another date.[2] Thereafter, the Court commenced the inquiry on 03-09-2019 and concluded it on 10-03-2020.

The main witness called in support of the Rule is Randilisi Mudiyanselage Karunaratne Banda who is the Complainant in this case. In addition, the evidence of the Registrar of the Supreme Court was also led before this Court in support of the Rule. After the learned Senior State Counsel closed the case in support of the Rule, the Respondent Attorney-at-Law also gave evidence under oath.

The Respondent Attorney-at-Law did not challenge the following factual positions in the course of the inquiry before this Court. Therefore, the said factual positions became common grounds. They are as follows.

(i) The Complainant having paid the full fees quoted, had duly retained the Respondent Attorney-at-Law, and instructed him to file a Fundamental Rights Application in the Supreme Court in order to obtain relief for the complained infringement of his Fundamental Rights.

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[2] Vide proceedings dated 17-09-2014.

(ii) Accordingly, the Respondent Attorney-at-Law has filed the Fundamental Rights Application bearing No. SC FR 445 / 2009, which was then fixed for support for 17-06-2009. The record of the Fundamental Rights Application bearing No. SC FR 445 / 2009 was produced marked **P 8**.

(iii) The Respondent Attorney-at-Law did not appear for the Petitioner in Court to support the said application on 17-06-2009. However, he has arranged another Attorney-at-Law to appear for the Petitioner in Court and make an application on his behalf for a postponement. Upon the said application, the Court re fixed the application for support for 20-07-2009.

(iv) The Respondent Attorney-at-Law failed to appear to support this application on 20-07-2009. Therefore, on that date, the Supreme Court has dismissed the application on the basis that the Petitioner was absent and unrepresented. The journal entry containing the order made by Court on 20-07-2009 has been produced marked **P 8(a)**.

(v) The Respondent Attorney-at-Law failed to file or support an application to have the said dismissed application re-listed and restored until he filed a motion on 19-10-2009, which requested to list it for 10th or 11th or 12th November 2009.

(vi) The then Hon. Chief Justice who presided on the bench, which dismissed the Complainant's application on 20-07-2009, had made order on the motion dated 19-10-2009 filed by the Respondent Attorney-at-Law. The said order dated 27-10-2009 stated, "Do not list this". The relevant journal entry in the record of the Fundamental Rights application bearing No. SC FR 445 / 2009 has been produced marked **P 2(a)**.

I have already stated above that the Rule point to three main alleged questionable acts/conduct on the part of the Respondent Attorney-at-Law. As the second of the said three main alleged questionable acts/conduct of the Respondent Attorney-at-Law is a quite straightforward complaint it would be opportune to consider it first.

The said second questionable act/conduct alleged that the Respondent Attorney-at-Law failed to appear (for the Complainant) in Court in the Fundamental Rights Application No. SC FR 445 / 2009 when it came up for support initially on 17-06-2009 and subsequently on 20-07-2009 and the said failure resulted in the Supreme court dismissing the said application on the basis that the Petitioner had been absent and unrepresented in Court on the latter date.

Rule 16 of Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 is as follows,

"Where the services of an Attorney-at-Law have been retained in any proceedings in any Court, tribunal or other institution established for the administration of justice, it shall be the duty of such Attorney-at-Law to appear at such proceedings, unless prevented by circumstances beyond his control."

The Respondent Attorney-at-Law gave evidence on his behalf in the course of the instant inquiry. He categorically admitted in his evidence that it was his responsibility to have made arrangements for an appearance of counsel on the date the Court had fixed the case for support.

I would at this stage, digress to examine how this Court has previously viewed such absence of such Attorneys-at-Law, which had resulted in failures on their part to perform their duties on behalf of their clients. It would suffice to refer to the following two cases.

In the case of Daniel vs Chandradewa,[3] the facts are as follows.

In an action filed in the District Court of Colombo, the registered Attorney on record between 22-03-1988 and 06-08-1992 was Chandradewa who was the respondent Attorney-at-Law in that case. One of the allegations against the said Attorney-at-Law was her failure to appear in Court and or not having performed her duties on behalf of her client in the said pending action before the District Court.

[3] 1994 2 Sri LR 1

The said District Court case was an action filed under Chapter 53 of the Civil Procedure Code to recover a liquid claim through summary procedure. The defendant D E Daniel[4] made an application seeking the permission of Court to file answer.

The court ordered the Defendant to file written submissions on 04-05-1988 to enable Court to decide whether it should grant leave for the Defendant to defend the said action conditionally or unconditionally.

The Defendant's written submissions was not filed on 04-05-1988 as directed by Court. His registered Attorney on record (the respondent Attorney-at-Law Chandradewa) was absent on 04-05-1988. The Court reserved its order for 06-06-1988 on which date also the registered Attorney was absent. The Court issued notice for 27-06-1988. The registered Attorney was not present on 27-06-1988 but another Attorney –at-Law Mr. Welcome appeared on that day and moved for a postponement. The Court fixed 11-07-1998 as the final date for the filing of written submissions. Mr. Welcome appeared for the Defendant on 11-07-1988 but the registered Attorney was absent. As no written submissions was filed on 11-07-1988, Court directed to call the case on 19-08-1988 for an order.

The respondent Attorney-at-Law took up the position that she was not present in Court on 19-08-1988 because on the previous date namely 11-07-1988 Mr. Welcome Attorney-at-Law had appeared on her instructions and obtained the date. She therefore took up the position that she did not know that the date given was 19-08-1988 as she was not present herself in Court at the time the said date was fixed. She further took up a position that when a counsel appears and obtains a date it is a date convenient to that counsel and therefore the responsibility shifts to that counsel to keep a track of the case and appear on the next date or prepare answer or written submissions or whatever document he had undertaken to prepare before the next date.

This Court rejecting that argument stated as follows.

[4] He is the complainant in the subsequently issued Rule against his Attorney-at-Law.

"…. While an Attorney who has been retained and instructed by a Registered Attorney to appear as counsel for the purpose of conducting the case, and who in so acting, obtains a date to suit his convenience, could be reasonably expected to appear on that date to conduct the case, Mr. Welcome had not been so retained and instructed. According to the evidence of the respondent, she retained Mr. Welcome on each of the two occasions on which he appeared for the specific and limited purpose of obtaining postponements because the respondent was engaged in the business of another Court. There was nothing to show that the date was suggested by Mr. Welcome to suit his convenience. There was no reason for him to have asked for a particular date since he was not the counsel in the case. The respondent knew the circumstances in which Mr. Welcome was retained and she could not have reasonably assumed that Mr. Welcome would appear once again. There is certainly no duty as suggested by learned counsel for the respondent that an Attorney who is merely instructed to appear for the purpose of requesting a postponement, should, without being instructed to do so, appear again. Having asked Mr. Welcome to obtain a postponement, it was her duty to ascertain what the decision of the Court was in response to his application. This, she should have ascertained form Mr. Welcome, who, she claims, she retained, or by examining the journal entries from time to time, as a Registered Attorney should do, especially if he or she has not been in Court on account of his or her presence having being dispensed with by counsel. Having ascertained the next date, the respondent should have either instructed counsel to appear on that date or personally appeared for the client on that date. Ranaweera vs Jinadasa and Gunapala[5] does not assist the respondent. If a Registered Attorney has not appointed another Attorney to act as counsel, or having appointed counsel, he has not agreed with counsel that the attendance in Court of such Registered Attorney may be dispensed with, then such Registered Attorney must personally keep a track of the dates of hearing, having regard to the usual way in which dates of hearing are fixed and notice is given in the Court or tribunal, and appear when the case comes on for hearing or other purpose decided or ordered by the Court or tribunal. In the circumstances, the absence

[5] SC Appeal 41/1991 SC minutes of 27-03-1992.

of the respondent on the 19th of August 1998 was an inexcusable contravention of her obligation to appear for the Complainant. …"

The second case I would refer to is the case of Piyadasa Vs Kurukulasuriya Attorney-at-Law.[6] It is also a case where this Court had to deal with an Attorney-at-Law who was in default of his basic obligation to exercise due diligence in an application for leave to appeal pending before the Court of Appeal.

In that case Piyadasa who was the Defendant in the District Court case No. 860/RE retained the respondent Attorney-at-Law in an application for leave to appeal against an order made in favour of said Piyadasa pending before the Court of Appeal. The said respondent Attorney-at-Law failed to enter his appearance, give his free dates and failed to keep a track of the said application. Subsequently the Court of Appeal decided the appeal against said Piyadasa who was unrepresented in Court.

Having examined the material and the arguments of the respective parties this Court stated as follows.

"…. However had the Respondent entered his appearance and given his free dates, in all probability the case would have been listed on a date suitable to him; and if it was not, that would have been a sufficient ground for re-listing. There would have been no defaults on 13-11-90 04-09-91, 27-11-91, 18-09-92, 30-10-92 and 24-11-92. Despite avoidable lapses by the registry officials, it was thus the Respondent who was principally responsible for those defaults which resulted in adverse orders being made on 13-11-90 and 24-11-92. His evidence indicated that he was waiting some intimation form the Court of Appeal, but the practice of the Court clearly did not entitle a party or his Attorney-at-Law to any such notice. Nor can this Court treat his responsibility as any less simply because he retained Attorney-at-Law Hirimuthugoda, for it is the respondent's position that Attorney-at-Law Hirimuthugoda was only asked to appear on 11-10-90 and 03-12-90 and, thereafter, "to have an eye on the appeal list" not that he was retained to argue the case.

[6] 1997 2 Sri LR 410

As the registered Attorney, it remained the respondent's responsibility to deal with the case.(See Daniel Vs Chandradewa) … "

On the above basis this Court held that the said Respondent Attorney-at-Law was in default of his basic obligation to exercise due diligence, now expressly recognized in rules 10 and 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988.

Let me now come back to the instant case. As has already been mentioned above, the Respondent Attorney-at-Law has categorically admitted that it was his responsibility to have made arrangements for an appearance of counsel on the date the Court had fixed the case for support. He has neither appeared nor made any such arrangement for an appearance by any other counsel. The Respondent Attorney-at-Law has admitted that the complainant has fully paid his fees.

The Fundamental Rights application of the complainant has been dismissed for non-prosecution with due diligence since no Attorney-at-Law had appeared on that date. When that was brought to his notice by his client and on repeated requests and reminders, the Respondent Attorney-at-Law has undertaken to file necessary papers to move Court to have the dismissed application re-listed.

The position taken up by the Respondent Attorney-at-Law in this regard is that he heard the next date of the case as 20-07-2009 when the Attorney-at-Law who appeared on his behalf in Court on 17-06-2009 telephoned him and conveyed the next date in the night of 17-06-2009 itself. However, under cross-examination the Respondent Attorney-at-Law had admitted;

(i) that the free dates he provided to the said Attorney-at-Law who appeared on 17-06-2009 were 20th, 21st and 22nd of July 2009;

(ii) that it was his responsibility to correctly ascertain the next date of the case and that the application got dismissed on 20-07-2009 because of his fault;

(iii) that one of his friends conveyed the fact that this case was dismissed by Court in the night of that date itself i.e. 20-07-2009.

In addition, the evidence of the Complainant who was also in Court on 17-06-2009 is also relevant in this regard. The Complainant, having noted the next date the Court re-fixed the case for support as 20-07-2009, has subsequently informed the Respondent Attorney-at-Law over the telephone that the case has been re-fixed for support for 20-07-2009. The Respondent Attorney-at-Law has not challenged the said evidence of the Complainant.

Thus, it is clearly established that the Respondent Attorney-at-Law was in default of his basic professional obligation towards his client. The said obligations are expressly recognized in rules 10 and 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988.

Therefore, I hold that the above-mentioned second main alleged questionable acts/conduct on the part of the Respondent Attorney-at-Law has been clearly established before this Court.

I would now proceed to consider the above-mentioned third main alleged questionable acts/conduct of the Respondent Attorney-at-Law. It is the fact that the Respondent Attorney-at-Law failed to file or support an application to have the said dismissed application re-listed and restored until he filed a motion on 19-10-2009, which was rejected by the Supreme Court due to the delay.

It is to be noted that the Supreme Court has first dismissed the said Fundamental Rights Application of the Complainant on 20-07-2009. The Respondent Attorney-at-Law had thereafter filed a motion dated 19-10-2009 with a petition and an affidavit requesting Court to re-list the dismissed application. However, the then Hon. Chief Justice who presided on the bench, which dismissed the Complainant's application on 20-07-2009, had made order on the above motion (dated 19-10-2009) stating "Do not list this". The relevant journal entry in the record of the Fundamental Rights application bearing No. SC FR 445 / 2009 has been produced marked **P 2(a)**.

The Respondent Attorney-at-Law had thereafter filed another motion dated 13-01-2010 to move Court to list the case on 25th or 27th or 28th January 2010 to enable him to

support a re-listing application. However, the then Hon. Chief Justice as per **P 9(a)** had made the following order.

"Counsel for the Petitioner has stated that he got relief after filing this application. Therefore no need to list this again. Furthermore this application was dismissed on the 20th of July and he was informed of this on the 21st but he took two months time to file a motion to get it re-listed and that is the reason why re-listing was not permitted by me on 27/10. That order stands."

The Respondent Attorney-at-Law giving evidence on his behalf in the course of the instant inquiry categorically admitted that it was his responsibility to have made arrangements for an appearance of counsel on the date the Court had fixed the case for support. He also has admitted that it was his responsibility to have moved Court in the proper manner to get the dismissed case re-listed within a reasonable time. The Respondent Attorney-at-Law at a later stage of his evidence reluctantly admitted that he had failed in the above obligations towards his client.

Rule 15 of Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 is as follows,

"On accepting any professional matter from a client or on behalf of any client, it shall be the duty of the Attorney-at-Law to exercise his skill with due diligence to the best of his ability and care in the best interests of his client in such matter as he may decide and he should do so without regard to any unpleasant consequences either to himself or to any other person. Furthermore he should at all times so act with due regard to his duty to Court, tribunal or any institution established for the Administration of Justice before which he appears and to his fellow Attorneys-at-Law opposed to him."

The excuse offered by the Respondent Attorney-at-Law with regard to his failure to take immediate steps to tender and support a re-listing application is the receipt of letter dated 29-06-2009 produced marked **R 5** and sending of a letter of demand. Although the Respondent Attorney-at-Law has attempted to justify the said failure, giving that explanation in the face of further questioning, he was compelled to admit that such a

move is not a substitute for the restoration of the dismissed case. Further, it must be noted that the letter **R 5** is dated 29-06-2-2009 while the date of dismissal is 20-07-2009. Therefore, the letter **R 5** had been received before the Court dismissed the Fundamental Rights Application.

In addition, it is the evidence of the Complainant that he continuously reminded and requested the Respondent Attorney-at-Law to take steps to file a re-listing application immediately. The Respondent Attorney-at-Law has not challenged the above evidence. Moreover, the Respondent Attorney-at-Law was silent when he was questioned as to whether he suggested the above position (excuse offered by him in his evidence) to the Complainant when he was cross-examining the Complainant.

Another excuse the Respondent Attorney-at-Law had attempted to offer in that regard is the fact that the Complainant did not approve the motion produced marked **P 1**, which he had drafted to file in order to move Court to re-list the dismissed case. At this instance, also he had attempted to state that it was necessary for him to file an affidavit from the Complainant along with a re-listing application. Again, in the face of further questioning the Respondent Attorney-at-Law has finally admitted that such an affidavit (from the Complainant) is not required in the said re-listing application. Moreover, the Respondent Attorney-at-Law in the face of further questioning admitted with reluctance that it is not necessary for an Attorney-at-Law to obtain the approval of the draft motion from the client before filing such motion in Court.

In any case, the motion marked **P 1**, is dated 01-09 2009. The Respondent Attorney-at-Law has admitted that it is a motion, which was never filed in Court. The original record of SC FR 445/2009 was produced in this inquiry marked **P 8**. The journal entries therein clearly show that the said motion **P 1** has never been filed in Court. The Complainant in his evidence has stated that the Respondent Attorney-at-Law instructed him to send to the respondents of the Fundamental Rights Application, copies of the said motion, giving him the impression that it was a motion filed in Court. The Complainant had complied with the said instruction. However, later, he had found out that, the said motion had never been filed in Court and that the Respondent Attorney-at-Law had misled him to

believe the contrary. The explanation given by the Respondent Attorney-at-Law in this regard in his evidence is that the Complainant took the said motion for his perusal and approval. However, it could clearly be observed that the motion **P 1** is not merely a draft but a completed motion signed by the Respondent Attorney-at-Law with his seal being stamped on it. Thus, I am of the view that the above explanation by the Respondent Attorney-at-Law must be rejected and the evidence of the Complainant on this point must be accepted. This leads me to conclude that the Respondent Attorney-at-Law has deliberately deceived the Complainant to believe that he had filed the motion **P 1** when he knew very well that it was not so.

On his own admission, the Respondent Attorney-at-Law has had nearly thirty years of practice. Admittedly, he is also familiar with the method of filing re-listing applications. In the light of the above, the Respondent Attorney-at-Law had finally admitted that it was solely his responsibility to ensure taking steps to file a re-listing application without delay.

The Respondent Attorney-at-Law in his evidence reluctantly admitted at the last moment, that he had failed in the above obligations to his client. Indeed, he has not offered any acceptable explanation in that regard. This is a yet another blatant defiance of his professional obligation towards his client.

Thus, I hold that the above-mentioned third main alleged questionable acts/conduct on the part of the Respondent Attorney-at-Law has also been clearly established.

Let me now turn to the first of the above-mentioned main alleged questionable acts/conduct of the Respondent Attorney-at-Law. It is the fact that the Respondent Attorney-at-Law never informed the Complainant that the Fundamental Rights application, which was to be filed, would be time barred and that the Complainant would never have instructed the Respondent Attorney-at-Law to file such an application and paid his fees if he had been appraised of the said time bar.

Following enumerated facts are revealed from the Complainant's (Randilisi Mudiyanselage Karunaratne Banda) evidence.

I. He was working as a Management Assistant at the Department of Health Services of the Central Province.

II. Although he was promoted to the Supra Grade in the Management Assistant Service, the relevant authority had not assigned him any duty comparable with the said new post.

III. Being aggrieved by the above situation he had tendered retirement papers and refrained from reporting to work.

IV. As the relevant authority also failed to process his retirement papers, he had lodged a compliant in the Human Rights Commission.

V. He has not agreed to the proposed settlement at the Human Rights Commission.

VI. It was thereafter that he consulted, retained and gave instructions to the Respondent Attorney-at-Law to file a Fundamental Rights Application in the Supreme Court.

VII. He had paid Rs. 50,000/= as an advance payment of the full fee of Rs. 100,000/= requested by the Respondent Attorney-at-Law.

VIII. The Respondent Attorney-at-Law had delayed filing the said application in the Supreme Court stating that it would be better to first obtain from the Human Rights Commission, an affirmative declaration that the Complainant's fundamental rights had been infringed.

IX. The Human Rights Commission in the meantime had considered the complaint of the Complainant on 20-01-2009 and 23-02-2009.

X. In the meantime the officials of the Department of Health had requested the Complainant to report to work and later transferred him to a position in a higher Grade but had failed to attend to his other matters.

XI. It was in the above circumstances that the Complainant had met the Respondent Attorney-at-Law, paid him the balance Rs. 50,000/= and requested him to file the promised Fundamental Rights Application in the Supreme Court.

With regard to the above-mentioned complaint relating to the failure to inform the complainant of the time bar, the Respondent Attorney-at-Law appears to be taking up the position that the alleged infringement in the relevant Fundamental Rights application is a continuing infringement. When considering the evidence of the Respondent Attorney-at-Law relating to the above position in the light of the fact that the Court has dismissed the application on the basis that the Petitioner was absent and unrepresented, I am inclined, in fairness to the Respondent Attorney-at-Law, to refrain from making any adjudication on the said first main alleged questionable acts/conduct by the Respondent Attorney-at-Law. Moreover, the fact that there had been some proceedings before the Human Rights Commission too supports taking this course of action. Thus, I would not proceed to determine and make a pronouncement on the first of the above-mentioned main alleged questionable acts/conduct of the Respondent Attorney-at-Law leaving the Respondent Attorney-at-Law to enjoy the benefit of any doubt in this regard.

In the aforesaid circumstances, and for the foregoing reasons, I hold that the above-mentioned acts namely second and third acts/misconduct by the Respondent Attorney-at-Law have been proved to the satisfaction of Court and that the said acts amount to acts of deceit and/or malpractice in terms of section 42(2) of the Judicature Act. Therefore, I find the Respondent Attorney-at-Law guilty of deceit and malpractices referred to above in paragraphs (a) to (e).

The Respondent Attorney-at-Law has not been sincerely and truly repentant over the above breaches for which he is clearly liable. Instead, he was determined to the last stages of the inquiry to contest the said allegations. He admitted his responsibility when he could no longer face the questioning. That necessarily indicates the absence of any remorse on his part in relation to the said acts of defiance.

Further, the Respondent Attorney-at-Law has not thought it important to ensure attendance at the preliminary inquiry into this incident, which was conducted by a disciplinary committee of the Bar Association of Sri Lanka. When asked about the said default, he gave a reason, which he had offered for the first time in this Court. He has had no interest to have the said reason communicated to the said disciplinary committee

within a reasonable time. This is despite the notice sent to him by the Registrar of Supreme Court. In my view, this is not the kind of conduct expected from the practitioners in this noble profession.

Rule 60 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 published in the Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka No. 535/7 dated 07-12-1988 states as follows.

"an Attorney-at-Law must not conduct himself in any manner which would be reasonably regarded as disgraceful or dishonourable by Attorneys-at-Law of good repute and competency or which would render him unfit to remain an Attorney-at-Law or which is inexcusable and such as to be regarded as deplorable by his fellows in profession."

It is also relevant to note that while rule 61 states that an Attorney-at-Law shall not conduct himself in any manner unworthy of an Attorney-at-Law, rule 62 states that these rules are not exhaustive.

In terms of section 42 of the Judicature Act, the Supreme Court has been vested with the power to suspend from practice or remove from office, any Attorney-at-Law who is found to be guilty of any deceit or malpractice.

It must be borne in mind that this Court admits and enrolls as Attorneys-at-Law in terms of section 40 of the Judicature Act, only persons of good repute and of competent knowledge and ability. Such Attorneys-at-Law are entitled by law to assist and advise clients and to appear, plead or act in every Court or other institution established by law for the administration of justice. Thus, it is a reasonable expectation of public that the Attorneys-at-Law they retain would fulfil their professional obligations towards them to the best of their ability. They would not expect the retained Attorneys to deceive them.

Section 42 has entrusted this Court with the responsibility of maintaining the aforesaid standards. Thus, this Court has a duty to take into consideration, the interests and aspirations of the general public, in particular litigants, the need to maintain the quality of administration of justice, and the need to maintain the standards expected from the

members of the legal fraternity when deciding the course of action it should take in a case of this nature.

Having considered all those circumstances, I order that the Respondent Attorney-at-Law Mr. Wasantha Wijewardena be suspended from practice for 07 years with effect from the date of this decision.

The Complainant had fully paid the fees of the Respondent Attorney-at-Law. He had also incurred other expenses due to the acts of deceit and malpractices by the Respondent Attorney-at-Law. In view of the above, I also order the Respondent Attorney-at-Law Mr. Wasantha Wijewardena to deposit within one month from the date of this order, Rs. 300,000/= to be paid to Randilisi Mudiyanselage Karunaratne Banda who is the Complainant in this case.

I order the Registrar of this Court to take necessary incidental steps to enforce this order.

JUDGE OF THE SUPREME COURT

VIJITH K MALALGODA PC J

I agree,

JUDGE OF THE SUPREME COURT

S. THURAIRAJA PC J

I agree,

JUDGE OF THE SUPREME COURT