

**Before the Hon. Chief Justice**  
**as persona designata**

**Miscellaneous Jurisdiction**  
**HBM 33 of 2016**

**ABHAY KUMAR SINGH**

**v.**

**CHIEF REGISTRAR**

**Date of Hearing:** 18 April 2016

**Date of Decision:** 16 May 2016

**For the Petitioner:** Mr. M. Raza

**For the Objector [Chief Registrar]:** Mr. A. Chand

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**DECISION**

**[Upon Re-admission as a Legal Practitioner]**

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- [1] Having been struck off the Roll of Legal Practitioners by the Independent Legal Services Commissioner for a term of 6 years [originally an indefinite term which had been reduced upon appeal], and that period of removal from the Roll having expired, the Petitioner now applies to be restored to the Roll.
- [2] The Chief Registrar, who is responsible for the Legal Practitioners Unit, and who is charged with responsibility for the issuance of practising certificates to applicants for persons already admitted to the Bar, objects to the Petitioner's restoration. There was one other objector, a member of the public, whose objection was not particularised and who did not appear at the hearing.

### **The Procedure for Admission**

- [3] The admission of legal practitioners is governed by the Legal Practitioners Decree 2009. The power to admit to practice as a legal practitioner is conferred upon the Chief Justice by section 34 of the Decree. In this jurisdiction the power to admit to practice is given to a single person, not a court or a Bench. He or she is the persona designata, or person designated to decide the matter of admission. In this regard the Decree has kept to the procedure of the original 1965 Ordinance.
- [4] Section 34(1) of the Legal Practitioners Decree provides:
- “34(1) The Chief Justice shall have power to admit to practice as a practitioner any person duly qualified in accordance with the provisions of this Decree. The Chief Justice may, upon cause being shown, refuse to admit any person as a practitioner notwithstanding that he or she may have these qualifications.”
- [5] The applicant had previously met the qualifications for admission set out in Section 35. These deal with the satisfactory completion of a course of study of law approved by the Board of Legal Education, the obtainment of a certificate from the Board that his or her educational qualifications are sufficient to qualify for admission as a practitioner, and a requirement of prior residence in Fiji for at least 3 months.
- [6] These requirements are not significant in view of the previous admission granted. No point is raised on this aspect. As far as prior residence is required, and if it were necessary, since the applicant has been residing overseas meanwhile, I would dispense with the residential requirement because of the earlier associations of the applicant with Fiji.
- [7] Section 35 includes within the concept of “qualified for admission as a practitioner” the further requirement that the applicant be “a fit and proper person.” It is on this latter qualification issue that the Chief Registrar has raised objection to the re-admission of this applicant.
- [8] The Chief Registrar is one of the persons who is entitled to show cause why an application for admission should not be granted [section 37(1)].

- [9] If the qualifications are met as in section 35, the Chief Justice “**shall**, unless cause to the contrary is shown to his or her satisfaction ... **admit** the applicant” [section 38(1)].

### **The Objections**

#### **Mr. Latchman Singh’s objection**

- [10] The applicant faces two objections. The first is from a Mr. Latchman Singh by a handwritten letter addressed to the Chief Registrar received on 5<sup>th</sup> February 2016. The objector forwarded a copy of the decision by the Commissioner of the Independent Legal Services Commission in this matter.
- [11] The complainant said:
- “He has not paid any damages for his professional misconduct. Unless he pays me \$100,000 as damages I will oppose his admission. I am ready to give evidence during the hearing of his admission application.”
- [12] Unfortunately the complainant gave no address or telephone number by which he might be informed of the hearing date, and thus to allow his objection to be heard. His letter was served on the applicant’s solicitor and a first call mention was fixed for 11<sup>th</sup> March 2016. The notice was not collected from the High Court Civil Registry by the complainant, and no further communication was ever received from him.
- [13] I therefore directed a notice of the hearing, addressed personally to Mr. Latchman Singh be advertised in a newspaper, in the hope that the objector might see it and appear on the hearing date. It was so advertised. On the 18<sup>th</sup> April 2016, the hearing date, the objector did not appear to particularise his objection and to give evidence.
- [14] If the objector had some basis for seeking damages against the applicant he could seek redress by filing action in the Civil Division of the High Court. He had not referred to any such action being extant.

The objection as set out in the letter was not sufficient to require an answer from the applicant. It lacked any meaningful detail. Similarly it did not raise any worthy issue for consideration in these proceedings. The objection, such as it is, must be rejected.

[15] Mr. Latchman Singh's objection was an informal one in the sense it did not comply with the governing Rules, which were the Legal Practitioners (Admission) Rules 2014.

[16] Rule 5 provides:

“5(1) Any person is entitled to show cause why a petition for admission should not be granted and subject to complying with sub-rule (2), to appear on the hearing of the petition.

(2) A person, other than the Chief Registrar, who wishes to show cause why a petition for admission should not be granted must file with the Chief Registrar, within 14 days of the date of the notice of petition given under rule 2, or any further period that the Chief Justice may allow –

- (a) a written statement of the grounds of his or her objection; and
- (b) an affidavit verifying the facts contained in the written statement.

(3) If a statement is filed under sub-rule (2), the Chief Registrar must serve copies of it and of the affidavit on the petitioner at his or her address for service.”

[17] The informal letter filed by the lay objector did not comply with Rule 5(2)(a). The applicant must know the charge against him so that in fairness he or she will be able to make answer. There must be proper notice of the facts of the allegation. It is not sufficient to come to court and give evidence of the objection, thus springing his objection upon the applicant.

[18] The objector has the burden of showing cause why a petition for admission should not be granted.

[19] Mr. Latchman's complaint [complaint 4 in the proceedings before the Independent Legal Services Commissioner] resulted in a finding against the applicant that he was guilty of unsatisfactory professional conduct.

[20] The applicant had acted for 2 parties in a transaction whereby Mr. Latchman hoped to obtain some freehold land in return for the transfer of Mr. Latchman's taxi permit to the other party. He entered into a sale and purchase agreement drafted by the applicant. The date of settlement was stated to be "when the property is fully subdivided or properly marked and approved for development."

[21] The taxi permit transfer was apparently achieved prior to execution of the sale and purchase agreement. The Commissioner observed that he had no evidence as to why Mr. Latchman transferred the taxi permit "prior to execution of the agreement apart from his ill health." To say the least, the arrangement lacked prudence and wisdom. But there is nothing to say it was the applicant who urged the objector into this order of events.

[22] The Commissioner noted [at para 76]:

"The land has not been subdivided and accordingly no land has been transferred to Latchman in accordance with the agreement of the 27<sup>th</sup> April 2006. Latchman acknowledges that he had been advised by the Respondent to instruct another lawyer and sue for specific performance of the contract."

[23] For this piece of unsatisfactory professional conduct the applicant was not disbarred. He was instead fined \$1,000.

[24] I have no evidence as to who was the driving force for such an agreement. It was naive. But it would not detract from the applicant's claim to be a fit and proper person for admission.

#### **The Chief Registrar's Objection**

[25] An objection from the Chief Registrar is governed by Rule 6, which states:

6(1) If the Chief Registrar wishes to show cause why a petition for admission other than one for temporary admission should not be granted, he or she must, within 14 days of the date of the notice of petition given under rule 2, file –

- (a) a written statement of the grounds of his or her objection; and
- (b) an affidavit verifying the facts contained in the written statement.

(2) If an objection is filed under rule 5 or 6(1) of these Rules, the Chief Registrar is entitled to appear on the hearing of the petition.”

[26] No written statement [Rule 6(1)(a)] has been filed on behalf of the Chief Registrar, nor an affidavit [Rule 6(1)(b)] verifying the facts contained in the written statement.

[27] Counsel for the Chief Registrar has appeared at the hearing and put forward argument as to why the applicant should not be restored to the Roll. This is insufficient so far as substance is concerned and not a fair method of objecting to the applicant. Mr. Raza for the applicant said that he was taken by surprise and that he should have had 14 days notice. The applicant, as any person who is accused or is facing charges, needs to know the material to be used against him or her, and the nature of the case or argument which is to be answered. This is not a procedure that can be dispensed with.

**The Commissioner’s disbarment orders and the amendments made by the Court of Appeal and Supreme Court**

[28] It was on Count 1 that the applicant was ordered to be struck from the Roll. Count 1 was brought as a result of the applicant’s conviction for attempting to pervert the course of justice in which he had been sentenced to 6 months imprisonment.

[29] The order of disbarment was for an indefinite term. In the more serious cases, this was the usual order. It was however permissible for a practitioner so struck off the Roll to apply for restoration: **Michael Desmond Benefield** HBM 42.07S 18<sup>th</sup> September 2007.

[30] After the Commissioner had made his order for disbarment, the applicant took the matter on appeal. In the Court of Appeal the indefinite order of being struck off was reduced to an order that the striking off be for a period of 10 years. On appeal to the Supreme Court, the term was further reduced to 6 years. That term was fulfilled by 25<sup>th</sup> January 2016. Hence the filing of his application for restoration to the Roll on 28<sup>th</sup> January 2016.

- [31] It may be that both the Court of Appeal and the Supreme Court, in coming to the conclusion that the indefinite term of disbarment was too harsh, wished to convert the period to a lesser term so that the applicant could again continue his practice. A lifetime ban must needs be expressed as an indefinite order for striking off the Roll.
- [32] Any lesser term might have been expressed as a period of suspension. Once served and the term expired the practitioner is then free to resume his place as a member of the Bar and to take up practice again, providing he meets the criteria for being issued with a practising certificate.
- [33] The final court to deal with the disciplinary sentence was the Supreme Court. The court considered it appropriate that the sentence on count 1 be set at 6 years disbarment. If there were other issues of unsuitability or fresh disciplinary or criminal charges those could be proceeded with in the usual way. If proved, such offences might attract further orders by way of suspension or disbarment.
- [34] But it must have been contemplated by the Supreme Court that at the end of the period of disbarment fixed by that court, that the offence resulting in the disbarment had been sufficiently censured.
- [35] For me as persona designata now to hold the disciplinary offence as a reason for refusing the applicant restoration to the Roll would be a double punishment. Additionally, if that had been the intention of the Supreme Court, then the court would have maintained the order for indefinite striking off the Roll. Finally to continue to use the disciplinary offence as a permanent impediment to a return to the Roll would be an extra punishment and an undermining of the Court's fixing of a definite term. I do not believe that was a situation contemplated by the Supreme Court.
- [36] The applicant has served his term. Had the sentence in the appellate courts been expressed differently, as a suspension not a striking off, as I have earlier suggested, this application would not be before me now.

**The Application by the Petitioner**

[37] Both the petition and affidavit set out the history of this matter fully and frankly. I need not go into the details. There is no contrary evidence presented by the objector. The applicant was admitted to the High Court of Fiji on 11<sup>th</sup> June 1996. He has advertised the fact of this petition for restoration in one of the newspapers.

[38] He is now aged 59 years. Since being disbarred he has been occupied in business in Queensland, though he has been attending Continuing Legal Education Lectures.

[39] Whilst he admits he did not admit at first his wrongdoing, he recognises now the gravity of his dishonesty. In his affidavit he said:

- “17 This action on my part was extremely dishonest and was the antithesis of my obligations as an officer of the Court.
18. The excerpt also shows that I denied my conduct to the police and denied that it was my voice on the tape when I was fully aware that I had said those things to Rajendra. Again, this further conduct is the antithesis of what is expected of me as an officer of the Court.
19. I acknowledge that such lack of frankness aggravates the original offence. This latter conduct is contributed to by my shame concerning the full dimensions of my original conduct. I acknowledge, however, that, only by fully acknowledging what I have done, can I hope to restore the Court’s and the public’s faith in me as someone who may be permitted to again operate as an officer of the Court.
20. After the incident, I continued to practise law as my case had not been finalised. However, every time I appeared in Court I was embarrassed by the seriousness of the offence I had committed. This fact was rammed home to me by my Counsel, Mr. Philip Morgan QC, who appeared for me in the High Court. My remorse was evidenced by my guilty plea although I realise that I have undermined the effect of that plea by failing to acknowledge the seriousness of my conduct in subsequent proceedings including in the disciplinary proceedings. In this regard, I would ask the Court to take into consideration the last 9 years had been a regrettable years of my life.
- .....



27. I acknowledge that (at the) material time, my conduct involving Rajendra and my failure to previously acknowledge the full nature of such conduct constitute strong evidence that had caused doubt about my fitness to practise as a lawyer.”

[40] So it is not correct as counsel for the Chief Registrar has argued that there was no remorse expressed.

[41] Of course, after this history, the applicant will have to demonstrate by his conduct that an ethical approach to his practice of law will be demanded by any would-be clients. Any lapses in the future would bring about the end of his professional career.

[42] In reality the petition has not been met by matters of substance by the two purported objectors. Both were inadequate and procedurally flawed.

[43] For the reasons indicated earlier, the petitioner having served the sentence handed out to him by the Commissioner of the Independent Legal Services Commission as amended by the Supreme Court, there remains no further impediment to his taking his place again amongst his former colleagues as a Legal Practitioner. Formally, I re-admit him to the Bar.



A handwritten signature in black ink, appearing to read "A.H.C.T. Gates", is written over a horizontal dotted line.

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The Hon. Justice A.H.C.T. Gates  
**Chief Justice**

**Solicitors:**

Mehboob Raza & Associates for Applicant  
Legal Practitioners Unit for Chief Registrar