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BAR COUNCIL OF MAHARASHTRA

v.

M. V. DABHOLKAR ETC. ETC.

October 3, 1975

B [V. R. KRISHNA IYER, R. S. SARKARIA, A. C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.]

Advocates Act, 1961—*S.* 35(*i*) *and r.* 36 *of the Rules made under the Act—Scope of.*

Professional conduct—Soliciting work—If amounts to misconduct—Disciplinary Committee of State Bar Council—Defects in its working.

C The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as D a vehicle of justice—social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but *felt* by the collective conscience of the practitioners as right. [55 F—H].

Justice cannot be attained without the stream being pellucid throughout its course and that is of great public concern, not merely professional care. [50 F].

E The respondents, who were lawyers practising in criminal courts, were charged with professional misconduct under s. 35(1) of the Advocates Act, 1961, in that they positioned themselves at the entrance to the Magistrates' Courts, watchful of the arrival of potential litigants and at sight, rushed towards the clients in an ugly scrimmage to snatch the briefs, to lay claim to the engagements even by physical fight to undercut fees, and by this unedifying exhibition, sometimes carried even into the Bar Library, solicited and secured work for themselves. The Bar Council of Maharashtra considered the complaint received from the High Court against the lawyers and referred the matter to its Disciplinary Committee for further probe. The Disciplinary F Committee of the State Bar Council held the respondents guilty of professional misconduct and suspended them from practising as advocates for a period of three years. On appeal, the Disciplinary Committee of the Bar Council of India held that under r. 36 of the rules framed under s. 49(c) of the Advocates Act, in order to be amenable to the disciplinary jurisdiction the advocates must have (i) solicited work (ii) from a particular person and (iii) with respect to a case. It held that unless the three elements were satisfied it could not be said that an advocate had acted beyond the standard of professional conduct and etiquette. It, therefore, absolved all the respondents of the charge G of professional misconduct. The State Bar Council has come in appeal to this Court.

HELD : Rule 36 of the rules framed under s. 49(c) of the Advocates Act, fairly construed, sets out wholesome rules of professional conduct and the dissection of the said rule, the way it has been done by the Disciplinary Tribunal, disfigures it. [59 C].

H (1) The canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession. [60 C].

(2)(a) The procedure adopted by the State Bar Council in referring the cases to its Disciplinary Committee is in due compliance with s. 35(1) of the Advocates Act. [51 C—D].

(b) The contention that the resolution of the Bar Council did not *ex facie* disclose that it had reason to believe that the advocates were guilty of professional misconduct had no merit. The requirement of "reason to believe" cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the Disciplinary Committee, that it had reason to believe as prescribed by the statute. [51 D—E].

(3) The State Tribunal has, from a processual angle, fallen far short of norms like proper numbering of witnesses and exhibits, indexing and avoidance of mixing up of all cases together, default in examination of the respondents, consideration separately of the circumstances of each delinquent for convicting and sentencing purposes. More attention to the specificity in recording evidence against each deviant instead of testimonial clubbing together of all the respondents, would have made the proceedings clearer, fairer and in keeping with court methodology, without over-judicialised formalities. The consolidation of all cases and trying them all jointly, although the charges were different episodes, was obviously violative of fair trial. [59 D—F].

(4)(a) The profound regret of these cases lies not only in the appellate Disciplinary Tribunal's subversive view of the law of professional conduct that attempted solicitation by snatching briefs and catching clients is of no ethical moment, or contravention of the relevant provisions, but also in the naive innocence of fair and speedy procedure displayed by the State Disciplinary Tribunal in clubbing together various charges levelled against the advocates in one common trial, mixing up the evidence against many, recording omnibus testimony slipshodly, not maintaining a record of each day's proceedings, examining witnesses in the absence of some respondents, taking eight years to finish a trial involving depositions of four witnesses and omission to consider the evidence against each alleged delinquent individually in the semi-penal proceedings. True, a statutory Tribunal may ordinarily regulate its procedure without too much rigidity, subject to the rules of natural justice, but large-scale disregard of well-known norms of fair process makes one wonder whether some at least of the respondents had not been handicapped and whether justice may not be a casualty if the Tribunal is not alerted about its processual responsibilities. [52 B—D].

(b) The Appellate Tribunal was wholly wrong in applying r. 36 which was promulgated only in 1965 while the alleged misconduct took place earlier. What this Tribunal forgot was that the legal profession in India has been with us even before the British and coming to decades of this century, the provisions of s. 35 of the Advocates Act, s. 10 of the Bar Councils Act and other enactments regulating the conduct of legal practitioners have not turned on the splitting up of the text of any rule but on the broad canons of ethics and high tone of behaviour well-established by case law and long accepted by the soul of the bar. Professional ethics were born with the organised bar, even as moral norms arose with civilised society. The exercise in discovering the three elements of r. 36 was as unserviceable as it was supererogatory. [59 G—H].

(c) It is a misfortune that a disciplinary body of a dimensionally great and growing public utility profession has lost its vision, blinkered by r. 36 (as misconstrued and trisected by it.) [60 G].

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1461 to 1468 of 1974.

From the Judgment and Order dated the 14th April, 1974, of the Disciplinary Committee of the Bar Council of India New Delhi in D.C. Appeals Nos. 15 to 19 and 21, 22 and 25 of 1973.

A *V. S. Desai, Vimal Dave, Miss Kailash Mehta* for the Appellants.

Respondents appeared in person in CAs. 1461 and 1467-1468.

Sakuddin F. Bootwala and Mrs. Urmila Sirur for Respondents in CAs. 1462-1464.

B *V. N. Ganpule* for Respondent in C.A. 1465.

D. V. Patel and Mrs. K. Hingorani for the Bar Council of India.

S. K. Sinha for the Bihar State Bar Council.

The Judgment of the Court was delievered by

C KRISHNA IYER, J.—These appeals have filled us as much with deep sorrow as with pained surprise. The story of the alleged 'professional misconduct' and the insensitivity of the disciplinary authority to aberrant professional conduct have been the source of our distress, as we will presently explain, after unfurling the factual canvas first.

D The first chapter of the litigation in this Court related to the *standing* of the State Bar Council to appeal to this Court, under s.38 of the Advocates Act, 1961 (the Act, for short) against appeallate decision of the Disciplinary Tribunal appointed by the Bar Council of India. This Court upheld the competence to appeal, thus leading us to the present stage of disposing of the eight cases on merits.

E The epileptic episodes—what other epithet can adequately express the solicitation circus dramatised by the witnesses as practised by the panel of advocate-respondents before us ?—make us blush in the narration. For, after all, do we not all together belong to the 'inner republic of bencher and bar'? The putative delinquents are lawyers practising in the criminal courts in Bombay City. Their profession ordains a high level of ethics as much in the *means* as in the *ends*. Justice cannot be attained without the stream being pellucid throughout its course and that is of great public concern, not merely professional care. F Briefly expressed, these practitioners, according to testimony recorded by the State Disciplinary Tribunal, positioned themselves at the entrance to the Magistrates' Courts, watchful of the arrival of potential litigants. At sight, they rushed towards the clients in an ugly scrimmage to snatch the briefs, to lay claim to the engagements even by physical fight, to undercut fees, and by this unedifying exhibition, sometimes carried even into the Bar Library, solicited and secured work for G themselves. If these charges were true, any member of the Bar with elementary ethics in his bosom would be outraged at his brethren's conduct and yet, in reversal of the State Disciplinary Committee's finding, the appellate Tribunal at the national level appears to have entered a verdict, based on a three point formula, that this conduct, even if true, was after all an attempt to solicit practice and did not cross the borderline of misconduct? The Bar Council of the State of Maha- H rashtra (the appellant before us) and the Bar Council of India which is a party respondent, have expressed consternation at this view of the law of professional misconduct and we share this alarm. Were this view right, it is difficult to call the legal profession noble. Were this

understanding of deviant behaviour sound, there is little to distinguish between railway porters and legal practitioners although we do not mean to hurt the former and have mentioned a past practice, to drive home our present point? We do not wish to dilate further on the evidence in so far as it concerns each of the respondent-advocates in view of certain developments which we will presently notice. There are eight cases but we are relieved from dissecting the evidence against most of them for reasons which we will hopefully and shortly state.

The Bar Council of Maharashtra, by its resolution No. 29 dated August 8, 1964 considered the complaint received from the High Court against one Kelawala and 15 other Advocates among whom are those charged with professional misconduct and covered by the present appeals, under s.35(1) of the Act, and presumably having reason to believe that the professional misconduct alleged required a further probe referred the case to its disciplinary committee. This procedure is in due compliance with s.35(1) of the Act and, although the respondent in C.A. 1467/74 (A. K. Doshi) has contended that the resolution of the Bar Council does not *ex facie* disclose that it had reason to believe that the advocates involved were guilty of professional misconduct, we see no merit in it. The requirement of 'reason to believe' cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the disciplinary committee, that it had reason to believe, as prescribed by the statute.

Such blanket reference to the disciplinary body, so far as we are concerned, related to the respondent in C.A. 1461/74 (Dhabolkar), C.A. 1462/74 (Bhagtani), C.A. 1463/74 (Talati), C.A. 1464/74 (Kelawala), C.A. 1465/74 (Dixit), C.A. 1466/74 (Mandalia), C.A. 1467/74 (Doshi) and C.A. 1468/74 (Raisinghani). All the cases were tried together as a unified proceeding and disposed of by a common judgment by the Disciplinary Committee, a methodology conducive to confusion and prejudice as we will explain later in this judgment. The respondents in the various appeals before us were found guilty 'of conduct which seriously lowers the reputation of the Bar in the eyes of the public' and they were suspended from practising as Advocates for a period of three years. Appeals were carried to the Bar Council of India and, in accordance with the statutory provision, they were referred to the Disciplinary Committee appointed by it under s. 37(2) of the Act. The Appellate Disciplinary Committee heard the appeals and absolved them of professional misconduct. Aggrieved by this verdict of reversal, the Bar Council of Maharashtra has appealed to this Court. The initial hurdle of *locus standi* has been surmounted, as stated earlier, we have been addressed arguments on the merits by Shri V. S. Desai on behalf of the appellant. He has canvassed the correctness of the finding of fact in each case, although with varying degrees of diffidence, but turned his forensic fusillade on the somewhat startling concept of professional misconduct adopted by that disciplinary Tribunal.

A We will proceed to deal with each appeal separately so far as the factual foundation for the charges is concerned but discuss the legal question later as it affects not merely the advocates ranged as respondents but the Bar in India and the public in the country. The profound regret of these cases lies not only in the appellate disciplinary tribunal's subversive view of the law of professional conduct that B attempted solicitation by snatching briefs and catching clients is of no ethical moment, or contravention of the relevant provisions, but also in the naive innocence of fair and speedy procedure displayed by the State Disciplinary Tribunal in clubbing together various charges levelled against 16 advocates in one common trial, mixing up the evidence against many, recording omnibus testimony slipshodly, not maintaining a record of each day's proceedings, examining witnesses in C the absence of some respondents, taking eight years to finish a trial involving depositions of four witnesses and the crowning piece, omission to consider the evidence against each alleged delinquent individually in the semi-penal proceedings. True, a statutory tribunal may ordinarily regulate its procedure without too much rigidity, subject to the rules of natural justice, but large-scale disregard of well-known norm of fair process makes us wonder whether some at least of the D respondents have not been handicapped and whether justice may not be a casualty if the tribunal is not alerted about its processual responsibilities. We have some observations to make about the Tribunals at the State and at the appellate levels in the further stages of this judgment. However, we find it convenient to dispose of the appeals on the evidence, on the assumption that if, in fact, there have been snatching and fighting and like solicitation exercises indulged in by any of the respon- E dents, such conduct is in gross breach of professional behaviour and invites punishment.

A case-by-case disposal is desirable and so we begin with Dabholkar (respondent in C.A. 1461/74) who appeared in person to plead in defence. The evidence against him is far from satisfactory and suffers F from generalised imputation of misconduct against a group of guilty lawyers. To dissect and pick out is an erroneous process, except where individualised activities are clearly deposed to. Moreover, the only witness who implicates him swears : 'I have not seen him actually snatching away the papers. I did not hear the talk Mr. Dabholkar had with the persons'. Moreover, he was a senior public prosecutor. We also record the fact that he expressed distress as the arguments moved G on. Apart from the weak and mixed evidence against him, there is the circumstance that he is around 68 years old. With a ring of truth he submitted that he was too old to continue his practice in the profession and had resolved to retire into the sequestered vale of life. He frankly admitted that, even apart from the evidence, if there were any sins of the past, he would not pursue the path of professional impropriety hereafter having decided virtually to step out of the Bar, except H for a limited purpose. He had just four cases left with him which he desired to complete, having received fees. He further represented that he did not intend to accept any new briefs or appear in any Court except to the little extent that the Bombay Paints & Allied Products

Limited (Chembur, Bombay), a large company which occasionally engaged him in small cases chose to brief him. We are inclined to take him at his word, particularly because he has put himself out of harm's way by a clear assurance about his future plans. On the evidence, we exonerate him from professional misconduct and otherwise we record his solemn statement to the Court.

Shri Bhagthani, respondent in C.A. 1462/74, has not engaged counsel, nor appeared in person, but as we examined the evidence, assisted by Shri Desai, we found precious little against him. That extinguishes the charge. No need, therefore, arises for punishing him or reversing the appellate Tribunal's acquittal.

The respondent in C.A. 1463/74 is Talati. He has been found 'not guilty' in appeal but, as we perused the evidence, it became fairly clear that some acts of misconduct had been made out, although the evidence suffered from omnibus implication. His counsel, Mr. Zakiuddin F. Bootwala, however made a submission which has moved us into showing some consideration for this respondent. Shri Zaki represented that his client had stood the vexatious misfortune of a long, protracted, litigation before the two tribunals, and a later round in this Court when the question of *locus standi* of the State Bar Council was gone into. He was in poor circumstances and had suffered considerably on this score. Further, he has given an undertaking expressing unqualified regret for his deviant behaviour and has prayed for the clemency of the Court, promising to turn a new leaf of proper professional conduct, if he were permitted to practice. Taking note of the compassionate conspectus of circumstances attendant on his case and in view of the tender of unconditional regret which expiates, in part, his guilt, we allow the appeal, but reduce the period of suspension inflicted by way of punishment by the Maharashtra Tribunal from three years to a period upto December 31, this year (1975). In short, we find him guilty and reluctantly restore the verdict of the original tribunal, but reduce the punishment to suspension from practice, as aforesaid.

The respondent in C.A. 1464/74 is Kelawala. His counsel, Mr. Zaki, submitted that this practitioner had become purblind and was ready to give an undertaking to the Court that he would no longer practice in the profession. While there is some evidence against him, an overall view of the testimony does not persuade us to take a serious view of the case against him. Moreover, being old and near-blind and having undertaken to withdraw from the profession for ever, it is but fair that he spends the evening years left to him without the stigma of gross misconduct. In this view, we do not disturb the finding of the Disciplinary Committee of the Bar Council of India, but record the undertaking filed by Shri Zaki that his client Kelawala will not practice the profession of law any longer.

The respondent in C.A. 1465/74 is Dixit for whom Shri Gannule appeared. Shri Desai, for the appellant, took us through the evidence

A against this lawyer but fairly agreed that the evidence was, by any standard, inadequate to bring home the guilty of misconduct. We readily hold him rightly absolved from professional misconduct.

The respondent in C.A. 1466/74 is Mandalia. He did not appear in person or through counsel. The reason is fairly obvious. The B evidence is so little that it is not possible nor proper to pick out with precision and assurance any particular 'soliciting' act to infer guilt. Shri Desai, for the appellant, was fair enough to accede to this position. His exculpation cannot, therefore, be interfered with.

The only contesting respondent is Doshi—C.A. 1467/74. He contests his guilt and pursues his plea with righteous persistence C and challenges the evidence and its credibility projecting his grievance about processual improprieties. We will consider both these facts of his legitimate criticism despite his cantankerous arguments which we have heard with forbearance, remembering that a party arguing his own case may, perhaps, not be able to discipline himself to observe the minimal decorum that advocacy in Court obligates. The respondent displayed, as the proceedings in this Court ran on, his art of irritating D interruptions, his exercises in popping up and down heedless of the Court's admonition, and his skill in rambling references to what was not on record. The fine art of advocacy suffers mayhem when irreverant men indelicately brush with it. The State Tribunal's records reveal that Shri Doshi had not spared their patience or sense of pertinence. Having said all this, we are bound to examine the evidence against him fairly. Such a scrutiny shows that the best witness Shri E Shertukde, the President of the Bar Association and otherwise a respected Member of the Bar, has not involved him in any malpractice. Even Shri Pathare, the only one to rope him in, merely gives omnibus testimony ambivalent in places and unspecific about some, including Doshi. There is little else brought home with clarity against loquacious Doshi. To convict him out of the vague lips of Pathare may perhaps be a credulous folly. The grouping of a number of advocates in F a sort of mass trial has prejudiced Shri Doshi, a consequence which could and should have been avoided. He had other grievances of denial of fair opportunity which we could not verify for want of a daily diary or order sheet. We are satisfied by a perusal of the record that this respondent has had an impressive background of social service, commendable testimonials of his legal skills from competent persons G and some law practice in various Courts and consultancy work for social welfare institutions which are apt to dissuade him from the disreputable bouts in the 'pathological' area of the Esplanade Police Courts in Bombay. Even assuming that this overzealous gentleman had exceeded the strict bounds of propriety, we are not satisfied that the charge of professional misconduct, as laid, has been brought home to him. What we have observed about his conduct in this Court must H serve as a sufficient admonition to wean him away from improper conduct. We do not interfere with the exculpation secured by him before the appellate Tribunal hopeful that he will canalize his professional energies in a more disciplined way to be useful to himself and, more

importantly, to his 'unsolicited' clientele. After all, even a sinner has a future and given better court manners and less turbulent bellicosity, Shri Doshi appears to have a fair professional weather ahead in the City. We hold him unblemished so far as the vice of solicitation is concerned, but caution him to refine himself in advocacy.

Shri Raisinghani is the respondent in C.A. 1468/74. Shri V. S. Desai took us through the evidence against him and although he is 65 years old, the evidence shows that he has physically fought two rival advocates in the course of snatching the briefs from clients, entering the Esplanade criminal courts. One of these fights resulted in his trousers being torn and the other assault by him was on Mr. Mandalia, one of the respondents in these appeals. Shri Mandalia had filed a complaint against Raisinghani but in the criminal court they lived down their earlier skirmish and compounded the case. Be that as it may, we find that Shri Raisinghani is not merely an old man but a refugee from Pakistan who, leaving his properties there has migrated to Ahmedabad with his family. Apparently he is in penurious environs and stay in the refugee colony in Bombay, incidentally attending to his claims to the properties left behind in Pakistan and acquiring some evacuee property in lieu of what he has lost. Staying in Kalyan Refugee Camp this lawyer, afflicted with distress and dotage, is also attending the Magistrate's Court to make a living. This commisserative social milieu may not absolve him of the misconduct which, we are satisfied, the testimony in the case, has established. Even so, Shree Raisinghani has appeared in person and has given an undertaking expressing remorse, praying to be shown clemency and assuring that, economic pressure notwithstanding, he will not go anywhere near professional pollution in the last years of his practice at the Bar. We are inclined to take a sympathetic view of his septuagenarian situation, record his apology and assurance, restore the verdict of guilt by the State Disciplinary Committee but reduce the punitive part of it to a period of suspension until December 31, this year (1975).

Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice—social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but *felt* by the collective conscience of the practitioners as right:

> "It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public

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trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge(1)"—and, we may add, no lawyer.

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Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere.

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These background observations will serve to size-up the grave misapprehension of the law of professional ethics by the tribunal appointed by the Bar Council of India. The disciplinary body, acquitting everyone on non-violation of bounds of propriety argued:

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"Rule 36 (of the Bar Council of India on Standards of Professional Conduct and Etiquette) is as follows:

An Advocate shall not solicit work or advertise either directly, or indirectly whether by circular, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned.."

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Hence in order to be amendable to disciplinary jurisdiction, the Advocates must have (1) solicited work (2) from a particular person (3) with respect to a case. Unless all the three elements are satisfied, it cannot be said that an Advocate has acted beyond the standard of professional conduct and etiquette. It has been stated that the conduct of the Advocate concerned did not conform to the highest standards of the legal profession. It is not that everybody must conform to the highest standards of the legal profession. It is enough if an Advocate conforms to the standards of professional conduct and etiquette as referred to in the rules."

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"He (witness Mantri) says further that 7 Advocates who are personally present today I have seen each of them standing either on the ground floor, near the lift or on the first floor either near the lift or in the lobbies of the

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(1) Hastings, Hon. John S., "Judicial Ethics as it Relates to Participation in Money-Making Activities"—Conference on Judicial Ethics, p. 8, The School of Law, University of Chicago (1964).

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Esplanade Court and trying to solicit work from the persons coming to the Esplanade Court. *This mere attempt to solicit is nothing.*"

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"In order to be within the mischief of rule 36, *not merely canvassing is enough, but canvassing must be for a case with the person who had not till then engaged a lawyer.* There is nothing to show either of these things : none of the persons who might have been subjected to these solicitations as they are stated, have been examined to prove the case. Hence this evidence does not establish anything within rule 36."... All that is necessary for us to see is whether the three items referred to have been complied with and we find that they have not been complied with because we do not know what was the nature of the communication, we do not know in connection with which case the solicitation took place and with whom the conversation took place. Hence Mr. Shertukade's evidence is not sufficient for the purpose of taking any disciplinary action under rule 36.

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"Mr. Krishnarao V. Pathumdi is the first witness in this case (case of Raisinghani). He says : "I had seen Kelawala, Mr. Baria; Mr. Raisinghani, Mr. Bhagtani approaching the people visiting the Court and *soliciting work from them*". This we have already stated is far below the requirement required to be proved under rule 36....He says that he had seen Mr. Raisinghani approaching people and soliciting work. He did not ascertain the names of the persons who approached because it was not his business. But as stated above, this evidence does not establish the *three elements* required to be proved under rule 36 because we do not know what was the personal communication between him and the persons solicited. We do not know whether it related *to a case or not.*" ....Then the next witness is Mr. Sitaram Gajanan Shertukade. In cross-examination by Mr. Raisinghani he says : "I have seen Mr. Raisinghani *accosting people.* I have seen Mr. Raisinghani snatching the papers from the hands of the litigating public. I have seen this more than 10 times. The litigating public from whom the papers were snatched did not say anything that there was a fight between Mr. Raisinghani and other lawyer over the papers which were snatched. I did not contact those persons from whom the papers were snatched nor talked to them so he was not concerned with this. *Therefore his evidence cannot be sufficient.*" (Emphasis, ours)

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A We may, illustratively, quote an excerpt from the evidence of the Bar Association President and one-time Bar Council Member Shri Shertukade to show the injury to the profile of the profession the curious view of the disciplinary tribunal has inflicted :

> "I have seen Mr. Raisinghani accosting people. I have seen Mr. Raisinghani snatching the papers from the hands of B litigating public. I have seen this more than 10 times... There was a fight between Mr. Rasinghani and Mr. Baria. I made oral complaint to the C.P.M. I do not remember who was present at that time. In that fight Mr. Raisinghani's pant was torn... There was assault by Mr. Raisinghani on Mr. Mandalia and I had advised Mr. Mandalia to file a C complaint against Mr. Raisinghani. Mr. Mandalia did file a case against Mr. Raisinghani but it was compounded."

How can a disciplinary authority, aware of its accountability to the Indian Bar, functioning as the stern monitor holding the punitive mace to preserve professional purity and promote public commitment and appreciative of what is disgraceful, dishonourable and unbecoming judged by the standards of conduct set for this noble calling and deviations D damaging to its public image, find its way to hold such horrendous misbehaviour as snatching, catching, fighting, and under-cutting as not outraging the canons of conduct without exposing itself to the charge of dereliction of public duty on the trisection of r. 36 and blind to the 'law for lawyers'?

It has been universally understood, wherever there is an organised E bar assisting in administering justice, that an attorney, solicitor, barrister or advocate will be suspended or disbarred for soliciting legal business. And the 'snatching' species of solicitation are more revolting than 'ambulance chasing', advertising and the like. If the learned profession is not a money-making trade or a scramble for porterage but a branch of the administration of justice, the view of the appellate disciplinary tribunal is indefensible and deleterious. We, as a legal F fraternity, must and shall live up to the second and live down the first, by observance of high standards and dedication to the dynamic rule of law in a developing country.

It is unfortunate that the Maharashtra tribunal has slurred over vital procedural guidelines. Professional misconduct prescribed by s. 35 of the Act has to be understood in the setting of a calling to which G Lincoln, Gandhi, Lenin and a galaxy of great men belonged. The high moral tone and the considerable public service the bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order, has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline. This heavy public trust should not be forfeited by legalising or licensing fights for briefs, H affrays in the rush towards clients, under-cutting and wrangling among members. Indeed, we were scandalized when one of the respondents cited a decision under the Suppression of Immoral Traffic Act to prove

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what is 'soliciting'. The odious attempt to equate by implication the standards for the two professions was given up after we severely frowned on it. But the disciplinary tribunal's view that an attempt to solicit did not matter, that professional misconduct rested solely on r. 36 of the rules framed under s. 49(c) and that r. 36 was made up of three components, shows how an orientation course in canons of conduct and etiquette in the socio-ethical setting of the lawyer, the public and professional responsibility may be an educative asset to disciplinary tribunals and Bar Councils which appoint tribunals and regulate professional conduct by rules. Cicero called the law 'a noble profession', but Frederick the Great described lawyers as 'leeches'. We agree that r. 36, fairly construed, sets out wholesome rules of professional conduct although the canons of ethics existed even prior to r. 36 and the dissection of the said rule, the way it has been done by the disciplinary tribunal, disfigures it. It is also clear that r. 36 is not the only nidus of professional ethics.

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Indeed, the State tribunal has, from a processual angle, fallen far short of norms like proper numbering of witnesses and exhibits, indexing and avoidance of mixing up of all cases together, default in examination of the respondents consideration, separately, of the circumstances of each delinquent for convicting and sentencing purposes. More attention to the specificity in recording evidence against each deviant instead of testimonial clubbing together of all the respondents, would have made the proceedings clearer, fairer and in keeping with court methodology, without over-judicialised formalities. Indeed, the consolidation of 16 cases and trying them all jointly although the charges were different episodes, were obviously violative of fair trial. And 8 years for an enquiry so simple and brief : We express the hope that improvement of this branch of law relating to disciplinary proceedings will receive better attention from the Bar Council and the tribunal members. What prophylactic prescription can ensure fundamentally fair hearing or due process better than by choosing persons of sense and sensibility familiar with the basics of trial procedure and conscientious about avoidance of prejudice and delay? Rules may regulate, but men apply them. Both are important.

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The appellate disciplinary tribunal was wholly wrong in applying r. 36 which was promulgated only in 1965 while the alleged misconduct took place earlier. What this tribunal forgot was that the legal profession in India has been with us even before the British and coming to decades of this century, the provisions of r. 35 of the Advocates Act s. 10 of the Bar Councils Act and other enactments regulating the conduct of legal practitioners have not turned on the splitting up of the text of any rule but on the broad canons of ethics and high tone of behaviour well-established by case-law and long accepted by the soul of the bar. Professional ethics were born with the organised bar, even as moral norms arose with civilised society. The exercise in discovering the 'three elements' of r. 36 was as unserviceable as it was supererogatory.

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The ruling in *In the matter of 'P' an Advocate*(1); *In re : Shri M. Advocate of Supreme Court of India*(2); *In the matter of an Advocate*(3); *Govt. Pleader* v. *Siddick*(4) were cited before us and no judge, nor lawyer will be in doubt, even without study of case-law, that snatching briefs by standing at the door of the court house and in-fighting for this purpose is too dishonourable, disgraceful and unbecoming to be approved even for other professions. Imagine two or three medical men manhandling a patient to claim him as a client! The law has suffered at the hands of the appellate tribunal. Lest there should be lingering doubts, we hold that the canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession. Canon 27 of Professional Ethics of the American Bar Association states :

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> "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations."

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We wish to put beyond cavil the new call to the lawyer in the economic order. In the days ahead, legal aid to the poor and the weak, public interest litigation and other rule-of-law responsibilities will demand a whole new range of responses from the bar or organised social groups with lawyer members. Indeed, the hope of democracy is the dynamism of the new frontiersmen of the law in this developing area and what we have observed against solicitation and alleged profit-making vices are distant from such free service to the community in the jural sector as part of the profession's tryst with the People of India.

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It is a misfortune that a disciplinary body of a dimensionally great and growing public utility profession has lost its vision, blinkered by r. 36 (as misconstrued and trisected by it). For the practice of Law with expanding activist horizons, professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules of morality and utility, clear in the crystallized case-law and concrete when tested on the qualms of high norms—

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(1) (1964) 1 S. C. R. 697.
(2) (1956) S. C. R. 811.
(3) I. L. R. 63 Cal. 869.
(4) 31 Bom. L. R. 625.

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simple enough in given situations, though involved when expressed in a single sentence. We but touch upon this call to the calling of law, as more is not necessary in the facts of these cases.

The law has thus been set right, the delinquents identified and dealt with, based on individualised deserts and the appeals are disposed of in the trust that standards and sanctions befitting the national Bar will be maintained in such dignified and deterrent a manner that public confidence in this arm of the justice-system is neither shaken nor shocked.

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Parties will bear their costs throughout.

P.B.R.