

Privy Council Appeal No. 17 of 1963

Mahadeva Sivarajah – – – – – – – – – – *Appellant*

v.

General Medical Council – – – – – – – – – – *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH NOVEMBER 1963

Present at the Hearing:

VISCOUNT RADCLIFFE.

LORD MORRIS OF BORTH-Y-GEST.

LORD GUEST.

(Delivered by LORD GUEST)

This is an appeal from the decision of the General Medical Council Disciplinary Committee judging that the appellant had been guilty of infamous conduct in a professional respect and directing that his name be erased from the Medical Register.

The charges against the appellant were:—

“ That, being registered under the Medical Acts,

- (1) During a period commencing in June or July 1954 and continuing until September 1961 you improperly associated with Mrs. Dorothy Armstrong who formerly resided at Pools Park, London, N.4. and from and after a date in or about September 1954 you frequently committed adultery with her both at her home and at your surgery at 39 Stroud Green Road, London N.4;
- (2) You stood in professional relationship with Mrs. Armstrong at the material times.

And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect.”

After two abortive hearings on 30th November 1962 and 26th February 1963 on the first of which the appellant had not timeously instructed his solicitors and on the second of which he was confined to bed in hospital the hearing took place on 29th May 1963. The appellant had intimated to the Committee that he was not to be represented and that he wished the hearing to take place in his absence. Evidence was accordingly heard by the Committee without the appellant being present or being represented.

The only witness who gave evidence at the hearing was the complainant Mrs. Dorothy Forbes, also known as Mrs. Armstrong, who was represented by Counsel. Her evidence was that she was a married woman living in 1954 with her husband and baby daughter Angelia at 60 Pools Park, London, N.4; that in 1954 Angelia was transferred to the appellant's list of National Health Service patients: that on 31st August 1954 she (Mrs. Forbes) was transferred to his list: that the appellant continued to give treatment to Mrs. Forbes and her daughter from September 1954 until September 1961: that on an occasion in September 1954 at his surgery at Tollington Park he told her that he was in love with her: that throughout the period from January 1955 until September 1961 the appellant frequently committed adultery with

Mrs. Forbes at his surgery at Tollington Park, at his surgery at 39 Stroud Green Road, London, N.4. and at her home which was successively at 60 Pools Road, 16 Landrock Road, London, N.8. and at 65 Dresden Road, London, N.19.

She produced a piece of blotting paper on which in 1954 the appellant had written his telephone number and the time of day at which Mrs. Forbes might speak to him on the telephone. She also produced a copy of a Memorandum of Agreement, dated 17th October 1959 on which the signatures of the appellant and Mrs. Forbes appeared as joint hirers of certain furniture. There was some doubt when Mrs. Forbes was removed from the appellant's list of National Health Service patients. She said in evidence that it was in November 1959. This was clearly wrong. A document produced at the hearing suggested that the proper date was 5th February 1960 which was probably correct.

Upon this evidence the Committee found the following facts proved to their satisfaction.

“ That, being registered under the Medical Acts,

- (1) During the period commencing in June or July 1954 and continuing until September 1961, you improperly associated with Mrs. Dorothy Armstrong who formerly resided at Pools Park, London, N.4., and in the course of that association you frequently committed adultery with her both at her home and at your surgery at 39 Stroud Green Road, London, N.4.
- (2) You stood in professional relationship with Mrs. Armstrong at the material times.”

They further held that the appellant had been guilty of infamous conduct in a professional respect and decided that his name be erased from the Register.

Counsel for the appellant urged before the Board a number of points which he argued cumulatively should result in the Committee's decision being reversed. Before considering these points it is necessary to state the function of the Board in relation to appeals under the Medical Act, 1956. In *Fox v. General Medical Council* [1960] 1 W.L.R. 1017 Lord Radcliffe after stating the considerations affecting such appeals said: “ Such considerations, which are unavoidable in appeals of this kind, do sometimes require that the Board should take a comprehensive view of the evidence as a whole, and endeavour to form its own conclusion as to whether a proper inquiry was held and a proper finding made upon it, having regard to the rules of evidence under which the committee's proceedings are regulated ”. Later he said: “ It follows that the appeal must fail unless there was some defect in the conduct of the inquiry, by way of admission or rejection of evidence or otherwise, that may fairly be thought to have been of sufficient significance to the result to invalidate the committee's decision. ”

With these principles in view their Lordships approach the grounds of this appeal.

It was said that the Committee's finding went further than the charge in that the period of the appellant's adultery was extended back to June or July 1954 instead of September 1954, the date in the charge. Their Lordships consider that there is no substance in this point. The Committee's finding was that in the course of the improper association between June or July 1954 and September 1961 the appellant frequently committed adultery with Mrs. Forbes. This finding of adultery was therefore not limited to the period between June or July 1954 and September 1954 but extended over the whole period. In any case no question turned on the precise date when the adultery commenced.

A cogent criticism of the proceedings related to an observation made by the Legal Assessor in the course of his advice to the Committee. In the course of Mrs. Forbes' evidence at the hearing a document was produced purporting to be a letter dated 23rd May 1963 from the appellant to the Committee in which he stated “ I have no solicitor to represent me. I wish

the hearing to take place in my absence". To this letter was attached a statement of the same date giving his replies to the complainer's statutory declaration which had been sent to him on 15th August 1962. The relevant portions of the statement are "(i) I deny having had sexual relations with Mrs. Forbes—prior to 1960. The facts in her statement are prefabricated lies." "(vii) Mrs. Forbes came off my list on 6.2.1960 and not Nov. 1960." In the course of his advice to the Committee upon the invitation of the President the Legal Assessor said:

"Mr. Rose (Counsel for Mrs. Forbes) is plainly right as a matter of law, and in fact it is a matter of ordinary common sense, that one may infer from that that he is not prepared to deny having had sexual relations with her since some time in 1960, and you have certainly then that part of her evidence corroborated which deals with the last year of this association."

It would have been preferable if the advice tendered had been that the letter was capable of being considered as corroboration but that it was for the Committee to judge whether in fact it corroborated the complainer's evidence and that is what the Legal Assessor clearly meant to say, although it was perhaps unfortunately expressed. The Legal Assessor is however in no sense in the position of a judge summing up to a jury nor is the Committee's function analogous to that of a jury. The Legal Assessor's duties are confined to "advising on questions of law referred to him and to intervention for the purpose either of informing the Committee of any irregularity in the conduct of their proceedings which comes to his knowledge, or of advising them when it appears to him that but for such advice, there is a possibility of a mistake of law being made" (*Fox v. General Medical Council* [1960] 1 W.L.R. 1017 Lord Radcliffe at p. 1021). The Committee are masters both of the law and of the facts. Thus what might amount to a misdirection in law by a judge to a jury at a criminal trial does not necessarily invalidate the Committee's decision. The question is whether it can "fairly be thought to have been of sufficient significance to the result to invalidate the Committee's decision". Their Lordships do not consider that the advice by the Legal Assessor amounted to such a defect in the conduct of the inquiry.

There is some doubt as to whether in the absence of proof that the document of 23rd May 1963 was in the handwriting of the appellant it was evidence which might properly be considered by the Committee as implicating him. Moreover, their Lordships do not know whether the Committee did consider that the appellant's statement "I deny having had sexual relations with Mrs. Forbes—prior to 1960" amounted to corroboration of her evidence of adultery after 1960. This is inevitable in view of the nature of the hearing. Their Lordships do not therefore find it necessary to decide whether the statement amounted to corroboration.

Some attacks were made by counsel on the credibility of Mrs. Forbes, the principal attack being based on the fact that in her petition for divorce from her husband on the ground of his cruelty, decree absolute in which was pronounced on 2nd August 1960, she concealed from the Court her adultery with the appellant. But these and the other discrepancies in her evidence referred to by counsel were eminently matters for the Committee who saw and heard Mrs. Forbes. Apart from these considerations the fact that the appellant did not appear or give evidence at the hearing was a matter to which the Committee were well entitled to have regard.

If her evidence was accepted by the Committee there was ample evidence to justify the Committee's finding. The Legal Assessor warned the Committee in the clearest possible terms of the danger of a finding of adultery on the uncorroborated evidence of Mrs. Forbes and that they should look anxiously for some corroboration, but if they believed her evidence they were entitled to make their finding in the absence of corroboration. Therefore having this warning before them even if the Committee did not find corroboration in the appellant's statement they were quite entitled to come to the conclusion which they did. Their Lordships do not therefore consider that the Committee's finding can be interfered with.

The only other matter which their Lordships desire to refer is the production of the Statutory Declaration. This document receives statutory sanction from the General Medical Council Disciplinary Committee (Procedure) Rules, 1958. Rule 5 provides for the furnishing of a statutory declaration with a complaint and for its service on the practitioner against whom the complaint is made. This procedure was followed in the earlier stages of the present case. The statutory declaration however was not referred to at the hearing until a question arose as to the meaning of some of the appellant's statements attached to his letter of 23rd May 1963. The Statutory Declaration was first mentioned by Counsel for the complainer. The primary purpose of the production of the Statutory Declaration appears to have been to explain the meaning of some of the appellant's statements. But thereafter at the invitation of the Legal Assessor the Statutory Declaration was circulated to the Committee and during an adjournment the Committee read the statutory declaration. The Legal Assessor then proceeded to ask Mrs. Forbes a series of questions arising out of the statutory declaration. If the appellant had been represented his counsel could no doubt have cross-examined Mrs. Forbes on her statutory declaration, but their Lordships doubt the propriety of the Legal Assessor assuming the role of cross-examining counsel at that stage in the proceedings and referring to the statutory declaration. It was no doubt thought to be in the interests of the appellant that this course was taken. But it cannot be too strongly emphasised that this declaration can in no sense be described as evidence in the case unless and in so far as the witness assented to any of its terms. The statutory declaration contained a number of matters which were highly prejudicial to the appellant in particular some hearsay evidence as to his character. In the circumstances the statutory declaration having been produced it would have been desirable if the Committee had been warned by the Legal Assessor that the statutory declaration was not evidence and they must not consider it except for the limited purposes for which it had been used. In general their Lordships consider it undesirable that any use should be made of a statutory declaration except in so far as it is made evidence by being made use of by the practitioner or his counsel. However their Lordships cannot say in the present case that the production of the statutory declaration was in the whole circumstances sufficient ground for invalidating the Committee's finding.

As already announced their Lordships have advised Her Majesty that the appeal ought to be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

MAHADEVA SIVARAJAH

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD GUEST

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