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The Chairman vs M.Madhan Kumar on 31 August, 2020

Author: [Senthilkumar Ramamoorthy](#)

Bench: [A.P.Sahi](#), [Senthilkumar Ramamoorthy](#)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.670 of 2020

The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore,
Chennai - 600 008.

... Appellan

Vs.

M.Madhan Kumar

... Responde

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 8.11.2019 made in W.P.No.14274 of 2019.

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assisted by
Mr.V.Kathirvelu
Special Government Pleader

For Respondent

: Mr.A.Edwin Prabakar

The Hon'ble Chief Justice The appellant Tamil Nadu Uniformed Services Recruitment Board has challenged the judgment of the learned Single Judge dated 8.11.2019, whereby the claim of the respondent petitioner that he had been prejudiced on account of an incorrect mark being awarded as a result of a wrong question framed by the appellant, came to be accepted by the learned Single Judge on an erroneous assumption of fact and exercising jurisdiction contrary to the law laid down by the Apex Court in the case of Uttar Pradesh Public Service Commission, through its Chairman and another v. Rahul Singh and another, (2018) 7 SCC 254.

2. The respondent petitioner comes up complaining that a bewildering puzzle in the shape of a meaningless question has played with the career of the respondent petitioner and his attempt to get it resolved was successful before the learned Single Judge on a rational consideration in view of the admitted fact that the question had been incorrectly framed.

_____ <http://www.judis.nic.in>

3. The appellant Board conducted an examination for the post of Sub Inspector of Police (Finger Print). Applications were invited for around 202 vacancies that were advertised through an Advertisement No.2 of 2018 dated 29.08.2018. The respondent petitioner, who is working as a Grade II Police Constable in the Tamil Nadu Police Department, applied as a departmental candidate under 20% quota. The written examinations were conducted on 22.12.2018 wherein the respondent petitioner secured 57 marks. He was called for viva-voce, where he secured 5.30 marks, his grand total rising to 62.30. The respondent petitioner belongs to the Most Backward Community and the cut-off mark for the said category was fixed at 63.30. Thus, the respondent petitioner was short by one mark for being selected.

4. The case of the respondent petitioner is that the preliminary key answers of the examination were published on 24.12.2018 and according to the prescription in the advertisement, objections had to be filed within a week. He claims that one Arunachalam, who was also a candidate, had filed W.P.No.5542 of 2019 questioning the correctness of one particular question viz., Question No.117 in "A" series booklet. The said writ petition was entertained and the Court _____ <http://www.judis.nic.in> recorded the stand taken by the appellant that all 2388 departmental candidates who had attended the written examination were awarded marks uniformly for the said wrong question, as a result whereof, Arunachalam also succeeded in getting selected in the said category by virtue of the aforesaid pronouncement.

5. Encouraged by the order passed in the said case, which was in April 2019, the respondent petitioner sent his representation on 2.5.2019 to consider his claim in respect of another question, which was not attended to, hence, he filed the writ petition giving rise to this appeal.

6. In the case of the respondent petitioner, the wrong question complained of by him was Question No.162 in booklet "A" series that had been attempted by him. The question as framed

in English version is “The number of three digit number is ____” - Answers:

(A) 729, (B) 901, (C) 899 and (D) 900. The said English version of one of the words of the question has been wrongly spelt in Tamil and it is the case of the respondent petitioner that since he had attempted his answers in Tamil, and there was just almost one minute to answer _____ <http://www.judis.nic.in> every question, he came to answer it on the basis of his own understanding, which was on account of the wrong framing of the question in Tamil. The respondent petitioner contends that the preliminary key answer, which was published on 24.12.2018 mentioned option “C” as the correct answer for the aforesaid question, but when the final answer key was published on 5.1.2019, it was reflected as option “D”. The respondent petitioner urged that the final key answer published by the appellant is wrong and therefore, he was also entitled to a grace mark, and if such grace mark is awarded, he would also stand qualified for being selected.

7. The stand of the respondent petitioner was opposed by learned Additional Advocate General before the learned Single Judge contending that the preliminary key answers were published and then the Experts were consulted before publishing the final key answers. It is for this reason that a period of seven days is given on the publication of the preliminary key answers to all the candidates to object or represent in case they have any grievance. Since the respondent petitioner had not raised any objection, he could not have claimed any benefit and he waited till the decision in the case of _____ <http://www.judis.nic.in> Arunachalam, whereafter, he had filed his representation. Accordingly, he does not get any benefit. It is further submitted that the respondent petitioner could not have turned around and challenged his own understanding as the respondent petitioner had neither answered “C” nor “D” and he ticked his answer sheet depicting that the correct answer was “A”. Thus, the option exercised by the respondent petitioner by marking “A” as the correct answer disentitles him to any relief. Learned Additional Advocate General also relied on the judgment in the case of Uttar Pradesh Public Service Commission, through its [Chairman and another v. Rahul Singh and another](#) (supra) to urge that the Court could not have entertained the petition for the relief sought and the directions are contrary to the ratio of the Apex Court decision.

8. The learned Single Judge allowed the writ petition without appreciating the contentions raised on behalf of the appellant on the ground that there is no conflicting view and there being a translational error in the question, all four key answers appear to be correct. Learned Additional Advocate General contends that this conclusion drawn by the learned Single Judge is abrupt, without analyzing even _____ <http://www.judis.nic.in> the question or considering the submissions, including the law [laid down by](#) the Apex Court.

9. We have heard Mrs.Narmada Sampath, learned Additional Advocate General for the appellant and Mr.A.Edwin Prabakar, learned counsel for the respondent petitioner.

10. Learned counsel for the respondent petitioner contends that if the question itself is erroneous, then there is only one conclusion viz., that all the candidates are entitled for

uniform award of marks including the respondent petitioner and therefore, the reasoning given by the learned Single Judge does not suffer from any infirmity. It is urged that it is not disputed by the appellant that there is a translational error and keeping in view the proportionately of a very short time for answering each question which is almost a minute per question, the respondent petitioner or other candidates cannot be expected to have had enough time to clear this misunderstanding of the question which was on account of an incorrect translation. _____ <http://www.judis.nic.in>

11. We have considered the submissions raised.

12. The first issue is, as to the procedure prescribed in law, viz., the advertisement herein on the basis whereof a claim can be made by a candidate in respect of a wrong question or a wrong key answer. This is evident from the Note appended to Clause 17 of the advertisement, which is extracted herein under:

“Note: After Written Examination, the preliminary answer key will be published in this Board's website www.tnusrbonline.org. Candidate may represent to the Board (in writing) raising any dispute over questions and/or answers along with the material proof within 7 days from the date of publication of preliminary answer key by the post. The results of Written Examination will be published in this Board's website www.tnusrbonline.org.” The aforesaid Note is explicit that the representation to be made by a candidate has to be within seven days of the publication of the key answer.

13. The preliminary key answers were published on 24.12.2018. Admittedly, the respondent petitioner did not represent the matter _____ <http://www.judis.nic.in> within the time prescribed and rather he made his representation on 1.5.2019 after the decision in the case of Arunachalam. Thus, the respondent petitioner could not have raised any objection and even otherwise to cover up his understanding or misunderstanding of the question, he approached the High Court after five months that too even having himself attempted a wrong answer by marking “A”. Thus, the appellant had neither marked “C” nor “D”. He is, therefore, not entitled to claim any benefit and in spite of having noted this fact, the learned Single Judge has completely overlooked the same. There is no concession in the advertisement either to direct candidates or inter- departmental candidates for raising objections or making representations against the key answers beyond the time period prescribed therein. The impugned judgment is, therefore, liable to be set aside on this ground alone.

14. Our aforesaid view is also supported by the Division Bench judgments that have been relied on by learned counsel for the appellant in the cases of *K.Sasikumar v. Government of Tamil Nadu, rep. by Secretary to Government, Home (Police IV) Department, Chennai and others*, W.P.No.39654 of 2015, decided on 17.12.2015; _____ <http://www.judis.nic.in> *P.Diwakar v. The Secretary to Government, Home (Police II) Department, Fort St. George, Chennai-9 and others*, W.P.No.8391 of 2016, decided on 7.3.2016, and *M.Guruprasad v. The Secretary to Government, Home (Police II) Department, Fort St. George, Chennai-9 and others*, W.P.No.9363 of 2016 and other connected writ petitions, decided on 14.3.2016. A challenge

raised to the judgment in the case of [P.Diwakar](#) (supra) before the Apex Court in S.L.P.(C) No.26978 of 2016, was withdrawn on 10.4.2017.

15. Coming to the second issue raised with regard to the difference between the key answer and the final answer published, as also an impact of the judgment in the case of Arunachalam, suffice it to say that in the case of Arunachalam, the appellant Board itself had after taking the Expert's opinion awarded one single mark in respect of the question that was involved [in that case](#). In the present case, the learned Single Judge has taken upon himself the role of an Expert, firstly to point out the incorrect translation in Tamil version of the question and has secondly concluded that all the four key answers are correct. We do not find any connection between the incorrect translation as observed by the learned Single Judge with the nature of _____ <http://www.judis.nic.in> in the question, which we plainly understand to be asking as to how many three digit numbers would fall between the range given.

16. The incorrect spelling of one word in the Tamil version appears to have been taken notice of by the learned Single Judge. The word “Iyakka” (af;f) occurs in Tamil version, which means “movement”, whereas the word “Ilakka” (yf;f), which means “digit” appears to have been intended in the question and which is also clear from the English version of the question. This is simply a very minor typographical error, which is commonly known as printer's devil. The respondent petitioner cannot be permitted to take cover of the fact that he had attempted the examination only in Tamil language because English version was also available and it is not the case of the respondent petitioner that he does not know English at all. This would be on a simple calculation that the three digit numbers start from 100 and end at 999 which counted simply means 900 and therefore, the answer “D” as opined by the Experts in the final key answer appears to be correct. The Chart contained in ground No.10 of the Memorandum of Appeal is extracted for an appropriate understanding of the same:

_____ <http://www.judis.nic.in> “10. Further the Learned Judge ought to have considered the fact that the three digit number starts from 100 and the last three digit number is 999. Hence the total number of three digit number is 900 which works out as follows:-

Number of three digit numbers digit numbers

17. We have not been able to understand as to how all the four key answers would be correct. But, that was not within the fold of the Court to examine, analyze or test, inasmuch as, the Apex court in the case of Uttar Pradesh Public Service Commission, through its _____ <http://www.judis.nic.in> [Chairman and another v. Rahul Singh and another](#) (supra) has clearly, in no uncertain terms, laid down the law that the High Court is not supposed to enter into this method of re-valuation itself. For this, the Apex Court relied on the earlier decision in the case of [Ran Vijay Singh and others v. State of Uttar Pradesh and others](#), (2018) 2 SCC 357 and held as follows:

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

_____ <http://www.judis.nic.in> 30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and 30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.” _____
<http://www.judis.nic.in>

18. For this reason as well, we find that the learned Single Judge, in spite of having been apprised of the said law, went into the issue and as indicated above, ultimately, arrived at a wrong conclusion.

19. The third issue is that if there was an occasion for misunderstanding on account of an incorrect translation in the Tamil version of the question, then the same was within the competence of the Experts, which could have been at best looked into, and the power of judicial review could have been exercised only after obtaining the view of the Experts and not otherwise. The learned Single Judge instead of referring to this procedure assumed that since such an error was corrected in the case of Arunachalam, the writ petition could be entertained and allowed straightaway by the High Court itself. We cannot approve of this

process in the light of what has been stated herein above and therefore, the argument advanced by learned Additional Advocate General on behalf of the appellant has to be accepted.

_____ <http://www.judis.nic.in>

20. There is yet another important aspect, which we find it necessary to observe upon. The learned Single Judge has mentioned in the impugned order as if there was a suggestion from learned Additional Advocate General to award one mark to all the candidates for the said question. This brings us to the legal issue on concessions being made by counsel. We are compelled to trace out the legality in such situations, as we find a recital in the impugned judgment to the effect that learned Additional Advocate General appearing for the appellant submitted that a direction may be issued to award one mark to the candidates, who had attempted the disputed question. We may point out that firstly the said recital indicates a suggestion and not a concession, but even otherwise it will be apt to point out the law on this issue.

21. In a land acquisition matter before the High Court of Kerala, the Advocate General of the State made a concession with regard to the market value of the land to be considered for award of compensation. The matter went to the Supreme Court and the following extracted passage from the decision in the case of [Periyar and Pareekanni Rubbers Limited v. State of Kerala](#), (1991) 4 _____ <http://www.judis.nic.in> SCC 195 would throw light on the issue and also the extent of care which should be taken by the State Law Officers while offering any suggestions:-

“19. It is clear from the judgment that the learned Advocate General while arguing the case had stated across the bar, obviously on instructions or in fairness from record, that the market value can be fixed at Rs 18 per cent. This is, therefore, a concession made by the learned Advocate General on behalf of the State. The High Court, therefore, was not justified in not taking into account this submission of the Advocate General. It is undoubted that the High Court having rejected the evidence of the claimants has to confirm the offer made by the Collector in the award provided there is no other evidence on record. But in view of the concession made by the learned Advocate General, we are of the definite view that the claimants are entitled to the market value @ Rs 18 per cent to the lands other than those to which the Collector awarded @ Rs 30 per cent as the reference court shall not reduce the market value to less than that awarded by the Collector as enjoined under the statute. As a limb of the argument Shri Sanghi has placed reliance on the concession made by the government pleader in the trial court that Ex. P. 9 would form the basis for _____ <http://www.judis.nic.in> determination of the market value which worked out @ Rs 43.50 per cent. We are unable to accept the submission of the learned counsel. Any concession made by the government pleader in the trial court cannot bind the government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the

public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility. In those circumstances we have no hesitation to accept the statement of learned Advocate General and hold that the market value of the lands would be fixed at Rs 18 per cent.”

22. We may point out that a learned counsel designated as Additional Advocate General is not a constitutional authority, and as per [Article 165](#) of the Constitution of India, it is only the Advocate General who falls within the said definition. (Reference be had to the decision in the case of [M.T.Khan and others v. Government of _____](#) <http://www.judis.nic.in> Andhra Pradesh and others, (2004) 2 SCC 267). We are clarifying this as in the present case, there is no concession tendered either by the State or by the Advocate General.

23. Nonetheless the march of law has to be understood keeping in view the delicate position of a counsel representing the State, and the Courts that always proceed on the trust and confidence on the counsel. Nonetheless, the Apex Court in such matters has carved out exceptions viz., that a wrong concession on question of law is not binding on the client, for which a reference may be had to paragraphs (11) and (13) of the judgment in the case of Central Council for Research in [Ayurveda and Siddha and another v. Dr.K.Santhakumari](#), (2001) 5 SCC 60. We take support from this decision, inasmuch as, the Note appended to Clause 17 of the advertisement extracted herein above has no provision for any relaxation either in the period for moving a representation or awarding of any extra mark. The candidates as well as the appellant are bound by it, inasmuch as, any deviation in its application will result in violation of [Articles 14](#) and [16](#) of the Constitution of India. Consequently, any such suggestion or even a concession cannot create _____ <http://www.judis.nic.in> a right in favour of the respondent petitioner nor can it form the basis of discretionary exercise of jurisdiction under [Article 226](#) of the Constitution of India, as it would result in a legal and a constitutional violation.

24. The next decision which requires a reference is in the case of [Union of India and others v. Mohanlal Likumal Punjabi and others](#), (2004) 3 SCC 628, where this position of law was clarified with the aid of the Constitution Bench judgment and in paragraphs (8) and (9), the Apex Court held as follows:

“8. We shall first deal with the effect of concession, if any, made by learned counsel appearing for the present appellants before the High Court. Closer reading of the High Court's order shows that the High Court took the view that in view of the revocation of the order on 19-12-1994 and the order passed by the High Court on 11-1-1995, no further order could have been passed under Section 7 of the SAFEMA. After having expressed this view, the so-called concession is recorded. In our view the concession, if any, is really of no consequence, because the wrong concession made by a counsel cannot bind the parties when statutory provisions clearly _____ <http://www.judis.nic.in> provided otherwise. It was observed by a Constitution Bench of this Court in [Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.](#) [(1983) 1 SCC 147] that courts are not to act on the basis of

concession but with reference to the applicable provisions. The view has been reiterated in [Uptron India Ltd. v. Shammi Bhan](#) [(1998) 6 SCC 538 : 1998 SCC (L&S) 1601] and Central Council for Research in [Ayurveda & Siddha v. Dr K. Santhakumari](#) [(2001) 5 SCC 60 : 2001 SCC (L&S) 772] . In para 12 of Central Council case [(2001) 5 SCC 60 : 2001 SCC (L&S) 772] it was observed as follows: (SCC p. 64, para 12) “12. In the instant case, the selection was made by the Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter se merit and ability of the candidates and prepared the select list on that basis. The respondent, though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of ‘merit-cum-seniority’ had been applied by the Departmental Promotion Committee. The respondent has no grievance that there were any mala fides on the part of the Departmental Promotion Committee. The only contention _____ <http://www.judis.nic.in> urged by the respondent is that the Departmental Promotion Committee did not follow the principle of ‘seniority-cum-fitness’. In the High Court, the appellants herein failed to point out that the promotion is in respect of a ‘selection post’ and the principle to be applied is ‘merit-cum-seniority’. Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party.”

9. In [Uptron India Ltd. v. Shammi Bhan](#) [(1998) 6 SCC 538 : 1998 SCC (L&S) 1601] it was held that a case decided on the basis of wrong concession of a counsel has no precedent value. That apart, the applicability of the statute or otherwise to a given situation or the question of statutory liability of a person/institution under any provision of law would invariably depend upon the scope and meaning of the provisions concerned and has got to be adjudged not on any concession made. Any such _____ <http://www.judis.nic.in> concessions would have no acceptability or relevance while determining rights and liabilities incurred or acquired in view of the axiomatic principle, without exception, that there can be no estoppel against statute.”

25. The decision next to be noticed of is in the case of [Union of India and another v. S.C.Parashar](#), (2006) 3 SCC 167. Paragraphs (11) and (13) thereof are extracted herein under:

“11. Before advertng to the said question, we may record that wrong concession of a counsel on a pure question of law is not binding upon a party. It is furthermore trite that non-mentioning or wrong mentioning of a provision in an order may be held to be irrelevant if it is found that the requisite ingredients thereof were available on records for passing the same. We may further notice that the High Court proceeded on the basis that the penalty imposed upon him was a major penalty.

.....

13. However, there cannot be any doubt whatsoever that the disciplinary authority never intended to impose a minor penalty. The concession of the learned counsel appearing for the appellant before the High Court was _____ <http://www.judis.nic.in> apparently erroneous. It is now well settled that wrong concession made by a counsel before the court cannot bind the parties when statutory provisions clearly provide otherwise. (See [Union of India v. Mohanlal Likumal Punjabi](#) [(2004) 3 SCC 628 :

2004 SCC (Cri) 844] .) The penalty imposed upon the respondent, in our considered view, therefore, should be kept confined to the reduction to the minimum of the timescale of pay for a period of three years with cumulative effect. The effect of such a penalty has been considered by this Court in *Shiv Kumar Sharma v. Haryana SEB* [1988 Supp SCC 669 : 1989 SCC (L&S) 51 : (1988) 8 ATC 792 : AIR 1988 SC 1673] in the following terms: (SCC pp. 671-72, para 6) “6. We are unable to accept the above contention. The penalty was imposed on 15-4-

1968 and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the _____ <http://www.judis.nic.in> appellant above him in the seniority list and/or confirming the appellant in the post with effect from 1-12-1969, that is, long after the date of confirmation of the said Respondents 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list.”

26. In one of the latest decisions in [Himalayan Co-op. Group Housing Society v. Balwan Singh](#), (2015) 7 SCC 373, a Three Judges Bench of the Apex Court discussed the client's autonomy in such matters and the duty of the counsel to be careful in discharging such onerous responsibility, while considering the legal impact of the directions issued by the High Court on the request made by a counsel. Since the law has been elaborately discussed, it would be apt to extract paragraphs (20) to (33) herein under:

“20. The writ court after considering the merits of the case has come to the conclusion that the expulsion of _____ <http://www.judis.nic.in> the respondents from the appellant Society was justified. Having said so, in our view, the Court ought not to have issued the impugned directions merely because a request was made by the learned counsel appearing for the respondents herein. The same would hold true even if a concession was made by the counsel for the appellant Society. The Court, while

exercising its powers under [Article 227](#) of the Constitution of India, ought to have confined itself to the subject-matter and the issues raised by the parties in the writ petition. The digression of or expansion of the supervisory jurisdiction under [Article 227](#) of the Constitution of India, would open precarious floodgates of litigation should the limitation on the supervisory jurisdiction not be observed mindfully.

21. If for any reason, the writ court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the counsel for the appellant Society, the said request not being the subject-matter of the writ petition required the Court to query whether the counsel for the appellant Society has been authorised to make such a statement by the appellant Society or whether any such resolution has been passed by the appellant Society giving _____ <http://www.judis.nic.in> concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the writ court, the directions issued by the writ court suffer from infirmity and hence require to be set aside.

22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now _____ <http://www.judis.nic.in> well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

23. The Bar Council of India Rules, 1975 (for short “the BCI Rules”), in Part VI Chapter II provide for the “Standards of Professional Conduct and Etiquette” to be observed by all

the advocates under the [Advocates Act, 1961](#) (for short “the 1961 Act”). In the Preamble to Chapter II, the BCI Rules provide as follows:

“An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member _____ <http://www.judis.nic.in> of the Bar, or for a member of the Bar in his non- professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.”

24. The Preamble makes it imperative that an advocate has to conduct himself and his duties in an extremely responsible manner. They must bear in mind that what may be appropriate and lawful for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may be improper for an advocate in his professional capacity.

25. Section II of the said Chapter II provides for duties of an advocate towards his client. Rules 15 and 19 of the BCI Rules, have relevance to the subject-matter and therefore, they are extracted below:

“15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and _____ <http://www.judis.nic.in> honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence. ***

19. An advocate shall not act on the instructions of any person other than his client or his authorised agent.”

26. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other. Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorised agent. Further, the BCI Rules in Chapter I of the said Section II provide that the Senior Advocates in the matter of their practice of the profession of law

mentioned in [Section 30](#) of the 1961 Act would be subject to certain restrictions. One of such restrictions contained in clause (cc) reads as under:

“(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his _____ <http://www.judis.nic.in> clients on instructions from the junior advocate.”

27. Further, the “Code of Ethics” prescribed by the Bar Council of India, in recognition of the evolution in professional and ethical standards within the legal community, provides for certain rules which contain canons of conduct and etiquette which ought to serve as general guide to the practice and profession. Chapter III of the said Code provides for an “Advocate's duty to the client”. Rule 26 thereunder mandates that an “advocate shall not make any compromise or concession without the proper and specific instructions of his/her client”. It is pertinent to notice that an advocate under the Code expressly includes a group of advocates and a law firm whose partner or associate acts for the client.

28. Therefore, the BCI Rules make it necessary that despite the specific legal stream of practice, seniority at the Bar or designation of an advocate as a Senior Advocate, the ethical duty and the professional standards insofar as making concessions before the Court remain the same. It is expected of the lawyers to obtain necessary instructions from the clients or the authorised agent before making _____ <http://www.judis.nic.in> any concession/statement before the court for and on behalf of the client.

29. While the BCI Rules and the Act, do not draw any exception to the necessity of an advocate obtaining instructions before making any concession on behalf of the client before the court, this Court in [Periyar & Pareekanni Rubber Ltd. v. State of Kerala](#) [(1991) 4 SCC 195] has noticed the sui generis status and the position of responsibility enjoyed by the Advocate General in regard to the statements made by him before the courts. The said observation is as under:

(SCC p. 209, para 19) “19. ... Any concession made by the Government Pleader in the trial court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the Bar since the Advocate General makes the statement with all responsibility.” _____ <http://www.judis.nic.in> (See: [Joginder Singh Wasu v. State of Punjab](#) [(1994) 1 SCC 184] .)

30. The Privy Council in [Sourendra Nath Mitra v. Tarubala Dasi](#) [(1929-30) 57 IA 133 : (1930) 31 LW 803 : AIR 1930 PC 158] , has made the following two observations which hold relevance to the present discussion: (IA pp. 140-41) “Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity added by the courts to the status of

barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate.

Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.” (See: [Jamilabai Abdul Kadar v. Shankarlal Gulabchand \[\(1975\) 2 SCC 609\]](#) and [Svenska Handelsbanken v. Indian Charge Chrome Ltd. \[\(1994\) 2 SCC 155\]](#))

31. Therefore, it is the solemn duty of an advocate not _____ <http://www.judis.nic.in> to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly _____ <http://www.judis.nic.in> a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

“an advocate, in the discharge of his duty knows but one person in the world and that person is his client”. [Ed.: The statement was made by Mr Henry Brougham, as His Lordship then was, while defending Queen Caroline in the House of Lords. See The Whole Proceedings on The Trial of Her Majesty, Caroline Amelia Elizabeth, Queen of England, for “Adulterous Intercourse” with Bartolomeo Bergami, Vol. II, p. 2 containing Her Majesty's Defence, printed and published by John Fairburn, Broadway, Ludgate Hill (1820).]” _____ <http://www.judis.nic.in>

27. It is often seen that in order to get a better bargain without compromising the interest of the client, counsel make a statement before a Court in order to receive a balanced decision. Such a risk should be weighed appropriately by the counsel before making a request or a concession and keeping in mind the principle that neither the Court nor the client may find themselves bound by any such proposal.

28. On a conspectus of the aforesaid legal position, we are of the opinion that even if any such request is made, the Court should examine as to whether there was any express concession made or not, and even if it was made, it is the duty of the Court to apply the law correctly and not to go only by any suggestion or concession of a counsel. We may not be mistaken as concluding that there cannot be a compromise, in the manner provided in [Order 23 of the Code of Civil Procedure](#), or even a withdrawal of claims, but we only intend to say that a Court should not adjudicate the case on the basis of such concession without closely examining and applying the law in that regard.

_____ <http://www.judis.nic.in>

29. In the instant case, there is no such concession made on oath on behalf of the State either in the counter-affidavit filed in this case before the learned Single Judge nor any such concession appears to have been given from a perusal of the pleadings on record.

For all the reasons stated herein above, the appeal is allowed and the impugned judgment dated 8.11.2019 is set aside. Consequently, the writ petition stands dismissed. No costs. C.M.P.No.9351 of 2020 is closed.

(A.P.S., C.J.)

31.08.20

Index : Yes
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To

The Chairman,

Tamil Nadu Uniformed Services Recruitment Board, Egmore, Chennai – 600 008.

_____ <http://www.judis.nic.in> THE HON'BLE CHIEF JUSTICE AND SENTHILKUMAR RAMAMOORTHY, J.

bbr 31.08.2020 _____ <http://www.judis.nic.in>