

LEGAL PROFESSION

Admission – Petition for admission – Objection to admission – Fit and proper person – Whether petition should be allowed – Decision of judge of concurrent jurisdiction – Status of – Legal Profession Act 1976, sections 11, 16

Bar Council Malaysia and Wee Thiam Seng v Judy Blacious s/o A F Pereira

[Civil Appeal No. W-02(W)-720-05/2015], Court of Appeal

Facts The respondent, Judy Blacious s/o A F Pereira, had filed a petition (“the Petition”) to be admitted as an Advocate & Solicitor of the High Court of Malaya (“the first High Court”). The appellant, the Bar Council of Malaysia, objected his admission pursuant to section 16¹ of the Legal Profession Act 1946 on the ground that he was not a fit and proper person (“the Notice”). A caveat was entered against the admission. The respondent applied to strike out the Notice and caveat but this was dismissed and heard separately from the Petition. The objections were upheld and the respondent’s Petition was struck out. The respondent then appealed to the Court of Appeal and contended that the decision of the first High Court was defective. The appeal was allowed and the Petition was fixed for hearing at the second High Court. The appellant filed a second Notice of Objection against the respondent’s admission. The hearing of the Petition took place and the appellants argued that the objection was *res judicata*². Justice Lee Swee Seng at the second High Court allowed the Petition on the condition that the respondent complete eight hours of any human rights seminar, forum, activity or program organised by the Bar Council Human Rights Committee or the Perak State Bar (“the Order”). The Petition was then fixed before the third High Court. The appellant contended that the respondent had not complied with the Order. However the third High Court held that there was substantial compliance with the Order and allowed the respondent’s Petition on the respondent’s personal undertaking that he would fulfill the conditions set out in the Order. Dissatisfied, the appellants appealed.

Issue The issue was whether the respondent’s petition to be admitted as an Advocate & Solicitor of the High Court of Malaya should be allowed.

Held In allowing the appeal, the court held that the learned judge in the third High Court gravely fell into error of law and fact when hearing the petition and failed to give sacrosanct value to the terms of the Order made by Justice Lee Swee Seng of the second High Court. An order of a judge of concurrent jurisdiction in the same matter must be respected and given effect to unless the learned judge was hearing an application for variation of the order. The petition for admission was therefore dismissed.

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{NOVEMBER 2016\01390197}

¹ Filing of petition and objection

² The rule of *res judicata* is based on the principle that a decision once rendered by a competent court on a matter at issue between the parties after a full enquiry should not be permitted to be agitated over again.