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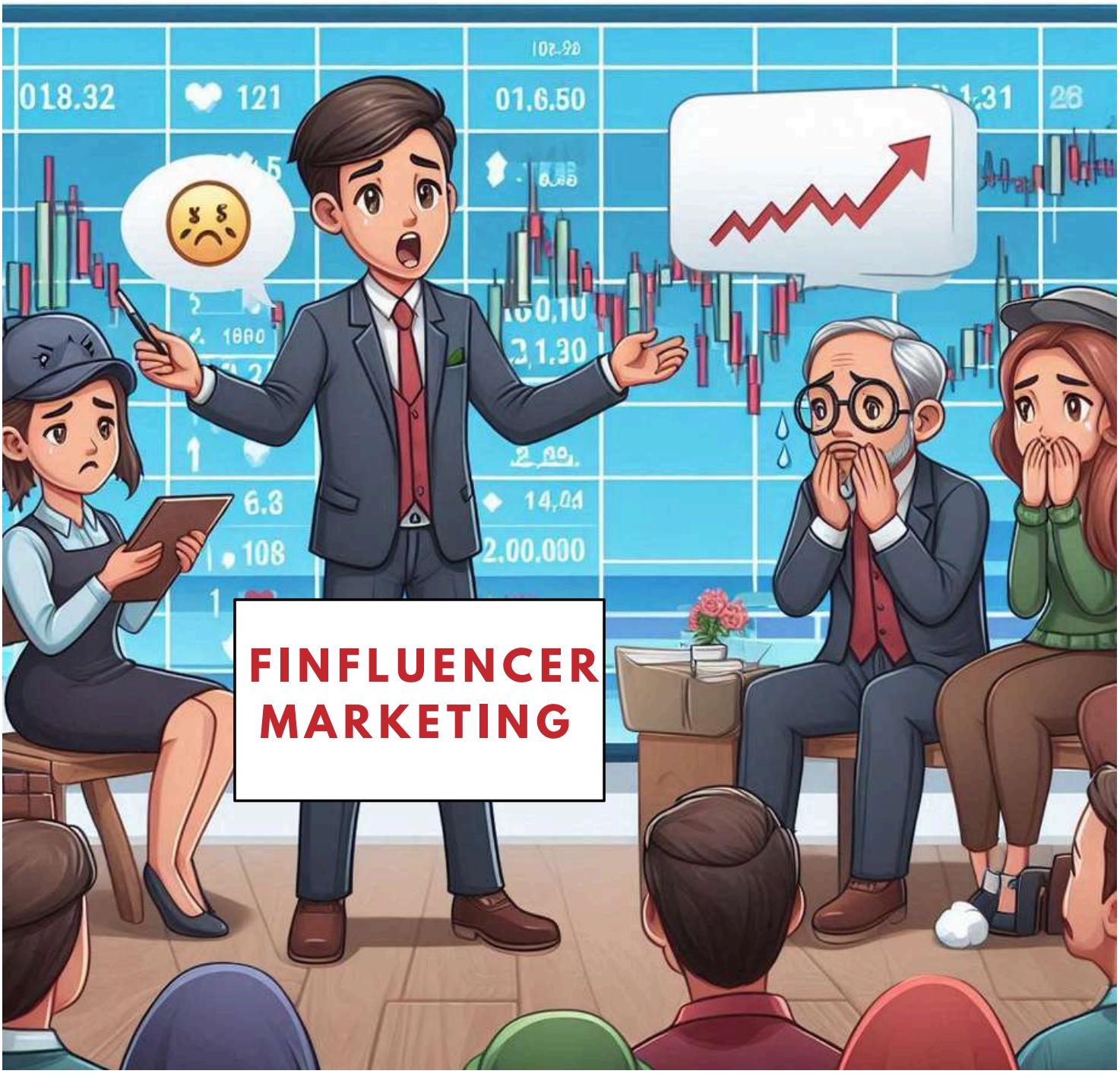


EDITORIAL

P Arun Sugavaneshvar
Founder

Where do advocates who voluntarily surrender their license really stand- A case of unclear precedents

Part VI, Chapter III of the BCI Rules, Conditions for Right to Practice, Rule 5 provides for an advocate to voluntarily suspend their practice by informing the respective Bar Council in writing, stating the reason for suspension and surrendering the original certificate of enrolment. It is common for advocates to voluntarily surrender their license when they take up full-time employment with companies or while changing professions.

Rule 47 to Rule 52 of the BCI Rules provides for the restriction on other employment for an advocate. If an advocate falls under any of the restrictions, they are expected to declare the same to the Bar Council and voluntarily suspend their license or cure the restriction so as to continue being an advocate on the roll of the Bar Council.

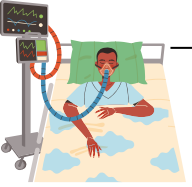
In **Saumya M S vs State of Kerala and Others [OP(KAT) NO.39 OF 2022]** against order in OA 880 of 2020 Kerala Administrative Tribunal, Thiruvananthapuram, **the Hon'ble Kerala High Court has held that a person who has voluntarily suspended their license cannot be said to be a member of the Bar.**

In **Lawyers Collective vs Bar Council of India and Others [W.P.1526 of 1995],** the Hon'ble Bombay High Court held that the Statement of Objects and Reasons of the **Advocates Act, 1961 is intended to apply not only to persons practicing before the Courts but also to apply to persons who are practicing in non-litigious matters outside the Court.**

Section 2 of the Advocates Act, 1961 defines an Advocate as an advocate entered in any roll under the provisions of this Act. Now this begs the question: Are the lawyers who have voluntarily surrendered their license completely out of the purview of the Advocates Act,1961? So, if they pursue a career in the legal field without appearing before courts, are they immune from the Advocates Act and BCI Rules?

Per Lawyers Collective judgment, lawyers who work on non-litigious matters are governed by the Advocates Act, 1961. When we read the Kerala High Court judgment along with the definition prescribed under the Advocates Act, 1961 we can clearly state that the legal professional who has opted for voluntary suspension of his or her license do not come under the purview of the Advocates Act and BCI rules. This cannot be the case where the lawyer after voluntary suspension, remains on the roll though defunct.

If the wisdom of the Court intends to bring lawyers who have voluntarily suspended their license yet are working in the field of law under the purview of the BCI Rules and Advocates Act, then it is time for legislative action or wider interpretation through a judgment.



LEGAL CRISPS

Appointment of legal guardians for persons in comatose state

-Seethala B

A comatose state is a prolonged period of deep unconsciousness in which a person is alive but unable to respond to stimuli, communicate, or manage their affairs due to significant brain injury or illness. Comatose individuals may exhibit basic life signs but lack awareness and the capacity to make decisions. In such cases, a court may appoint a guardian to handle the person's legal, financial, and medical matters.

In the case of ***Kamakshee Bisht v. State of Uttarakhand [2024:UHC:8213]***, the petitioner (wife) sought legal guardianship over her comatose husband to manage his property, bank accounts, and other essential needs. Justice Pankaj Purohit of the High Court of Uttarakhand at Nainital granted her guardianship, allowing her to take necessary actions in her husband's best interest.

With no clear legal framework in India for appointing guardians for those in a comatose state, the petitioner's counsel cited ***Shobha Gopalkrishnan v. State of Kerala [WP(C). No. 37278 of 2018]***, where the Kerala High Court had laid out guidelines for similar situations. These guidelines recommended that a medical board, including a Neurologist, confirm the comatose condition and that a person of Revenue Authority of Tehsildar rank or higher provides a report on the financial and familial context of the parties involved. Following this precedent, the High Court instructed the Chief Medical Officer of Nainital to assemble a medical board, which confirmed the husband's bedridden and comatose condition.

After the assessment, the Court stated, "There is no opposition from the side of the respondents, who includes brother, family members and partner in the property of the husband of the petitioner if the petitioner is appointed as Guardian of the husband of the petitioner". It thus granted her full authority over her husband's assets, financial accounts, and required responsibilities, including signing documents on his behalf. The Court included safeguards, allowing it to revoke her guardianship if there was **evidence of misuse, financial mismanagement, or neglect**. Additionally, if her husband was to recover, he would have the right to revoke the guardianship and regain control over his affairs.

Supreme Court's guidelines for due process in building demolitions

-Nithyaparvathy R G

The Supreme Court ruled that it is illegal to demolish buildings only because they are owned or occupied by a person accused of a crime, and issued precise directions to curb such 'bulldozer justice.'

- **Appeal Period:** Affected parties must be given an opportunity to appeal any demolition order against them.

- **Show Cause Notice:** A show cause notice must be issued before demolition begins. The notice must allow the recipient at least 15 days to respond, or the period specified in local municipal laws, whichever is longer. Notice must be sent via registered mail with acknowledgement due (A.D.) and a copy affixed to a visible area of the structure.

- **Notice Details:** The notice must clearly indicate the nature of the alleged unauthorised building, specify the violations, explain the grounds for demolition, and offer a list of documents that the recipient must submit with their response. It should also include the date and particulars of the personal hearing.

- **Notification to Authorities:** To ensure transparency and to prevent backdating allegations, notification of the digital intimation must be delivered to the Collector/District Magistrate, along with an acknowledgement of receipt.

- **Digital Portal:** A specialised online portal will be designed to track demolition notices, responses, and final orders within three months.

- **Personal Hearing Opportunity:** Affected individuals must be given the opportunity for a personal hearing, with the minutes of the hearing documented.

- **Final Order Clarification:** Following the hearing, the authority must make an exhaustive final order. This order should respond to the noticee's arguments, communicate justifications for disagreements and state whether the construction can be compounded. If it isn't compoundable, explain the reason for the same. Specifications should be given if only a portion of the construction is non-compoundable. Finally, the order must justify the decision to demolish as the only choice, stating why alternatives are not feasible.

- **Owner's Remedial Opportunity:** Owners will be given 15 days to demolish or remove unauthorised constructions before any demolition action begins.

- **Inspection Report Requirement:** Before the demolition is started, a full inspection report must be completed and signed by two witnesses (Panchas).

- **Videography and Reporting:** Demolition proceedings must be video recorded, with a report outlining participating officials must be prepared and shared with the municipal commissioner. This report shall also be accessible on the online portal.

CASE CHRONICLE

Legal action against a company providing legal services

-Sri Sai Kamalini M S

Case: Rajesh Kewat, Managing Director, Fast Info Legal Services Private Limited Vs. The State of West Bengal & Another
Citation: C.R.R. 1175 of 2023 With CRAN 1 of 2023

This case was a criminal revisional application submitted by the petitioner seeking to dismiss the proceedings against him and his company in G.R. No. 262/2023. The case stemmed from accusations of fraud and cheating under Sections 406,420 and 120B of the Indian Penal Code, 1860, filed by Manju Sharma.

Sharma alleged that she was contacted by individuals claiming to be bank employees and subsequently was defrauded of Rs. 12,000. While searching for ways to report this incident, she encountered Fast Info Legal Services' website, "Online Legal India." Sharma claimed that the company, posing as having its own cyber cell, charged her Rs. 1,179 to file an FIR but failed to provide the promised services or take any action. She further accused the company of using offensive language and duping many others similarly.

The petitioner asserted that his company legitimately provides legal services online for a fee. He stated that they filed an online complaint with the Bidhan Nagar Commissionerate on Sharma's behalf, providing her with an acknowledgement, thus fulfilling its service obligations.

During the proceedings, the prosecution presented statements from several witnesses and highlighted the seizure of incriminating documents and gadgets, suggesting fraudulent activities by the petitioner. They argued the company's modus operandi involved contacting individuals in need of legal services, convincing them to pay a fee, and then failing to take appropriate action, thus resulting in financial losses. Based on the evidence and following the guidelines established by the Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd and Ors. Vs. State of Maharashtra and Ors, (2021) SCC Online SC 315,*** the court dismissed the petitioner's application to quash the proceedings.

BEYOND THE OBVIOUS

Clickbait and capital gains: The legal risks of finfluencer marketing

-Adithya Menon

The emergence of financial influencers, or "Finfluencers," who use social media platforms to share financial advice and market insights, has transformed the financial landscape by making financial knowledge more accessible. While this democratization of information benefits the general public, it also raises concerns about the accuracy and accountability of the advice given. High-profile incidents highlight these risks: in March 2023, India's Securities and Exchange Board (SEBI) banned 31 entities, including actor Arshad Warsi and Sadhna Broadcast promoters, for misleading investors with YouTube videos promoting specific stocks. Similarly, in October 2022, the U.S. Securities and Exchange Commission (SEC) charged Kim Kardashian with unlawfully promoting cryptocurrency security, resulting in a $1.26 million penalty. These cases underscore the need for stricter oversight to ensure that Finfluencers provide accurate, compliant guidance.

To address these challenges, SEBI has introduced regulations to mitigate risks associated with digitalising retail marketing and distribution. These measures focus on unqualified Finfluencers who promote financial products without adequate disclosures. Key legal provisions include SEBI's definition of Finfluencers as individuals whose financial advice can influence their followers' decisions. The regulations prohibit unregistered Finfluencers from advertising and restrict their collaborations with advertisers. Furthermore, Finfluencers are required to register as investment advisors or research analysts to ensure compliance. Internationally, comparable regulatory frameworks exist: Australia's Securities & Investments Commission (ASIC) mandates licenses for Finfluencers offering financial product advice, while the UK's Financial Conduct Authority provides guidance to ensure compliance with social media financial promotions.

Despite these regulatory efforts, challenges persist. Effective implementation and monitoring of compliance across the vast digital ecosystem remain significant obstacles. Additionally, it is essential to clearly delineate the boundary between financial education and financial advice to avoid inadvertent violations. Regulators must also ensure that financial information remains accessible to new and young investors while enforcing these rules. Concerns exist that restrictions on partnerships between Finfluencers and advertisers might inadvertently hinder investor education initiatives, limiting the reach of valuable financial insights.

The rise of Finfluencers presents a unique regulatory dilemma, requiring a balanced approach to address evolving challenges. While their influence can empower individuals with financial knowledge, the risks of misinformation and manipulation necessitate vigilant oversight. Striking a balance between protecting investors and fostering financial literacy is critical. As digital platforms continue to shape the financial landscape, further refinement of regulations will be essential to ensure investors' safety and the accessibility of credible financial information.

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