SUPREME COURT OF INDIA

Babul Chand Mitra

Vs.

Chief Justice and other Judges of Patna High Court

Petn. No. 345 of 1952

(B. K. Mukherjea, S. R. Das, N. H. Bhagwati, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

11.03.1954

JUDGEMENT

B. K. MUKHERJEA :

1. In out opinion this application cannot succeed. The grievance of the petitioner seems to be that in spite of his compliance with all the requirements, that are necessary under the Bar Council Rules of the Patna High Court for being enrolled as an Advocate, the High Court refused his application for enrolment and that without assigning any reason. We think that a complete answer to this contention is furnished by the proviso to Section 9(1) of the Indian Bar Councils Act, which states expressly that the rules.

"shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion".

As the matter rests entirely upon the exercise of discretion by the High Court, and as there is no statutory duty imposed upon that Court to enrol as Advocates such person as may fulfill certain specified conditions, we do not think that the petitioner can legitimately ask use to compel the High Court to do or forbear from doing some thing, which it is legally bound to do or forbear from doing.

2. Mr. Ghose's contention in substance is that the proviso to Section 9(1) of the Indian Bar Councils Act is itself void as conflicting with the fundamental right guaranteed under Article 19 (1) (g) of the Constitution, and that it does not come within the protection afforded by Clause (6) of that Article. It may be stated at the outset that under Section 8 of the Indian Bar Council Act, no person is entitled as of right to practise in any High Court, unless his name is entered in the roll of the Advocates of that Court maintained under the Act. Under Section 9 of the Act, the Bar Council can certainly frame rules with the sanction of the High Court to regulate the admission of persons as Advocates. The proviso mentioned above however makes it quite clear that there is an overriding power in the High Court to refuse admission to any person at its discretion in spite of these rules. The vesting of power even in an unfettered form in the High Court to exercise discretion in the matter of enrolling Advocates, who would be entitled to practise before it, does not, in our opinion, amount to an unreasonable restriction. Such discretion will have to be vested in some body, and no other or more appropriate authority could be thought of, except the High Court itself.

3. Mr. Ghose argues that even if the discretion could be vested in the High Court, it will be unreasonable on the part of that Court to exercise such discretion without giving an opportunity to

the person, who is affected by its adverse order, to say what he had to say in answer to the allegations, which weighed with the High Court in refusing admission to him. To this, it may be replied that the rule itself does not say that the High Court is to exercise such discretion without giving any notice to the person, whose application is going to be refused. As a matter of fact, it is to be normally expected that the High Court would give notice to the person, whose application for enrolment is before it for consideration and give him an opportunity to explain anything that might appear against him before it rejects his application. We cannot say, therefore, that the rule is 'per se' unreasonable and hence void.

4. The question thus narrows down to the short point as to whether in the circumstances of this particular case the High Court has exercised its discretion in a manner which violates the principles of natural justice. Having regard to the history of this case and the circumstances which appear in the record, and on a perusal of the affidavits of both the parties, we are unable to answer this question in favour of the petitioner. The present petition, it must be remembered, is the fifth of a series of applications which commenced as early as the year 1938. There were three application by the petitioner for enrolment as a pleader of the District Court and all of them were dismissed. We find from the affidavit of the opposite partly that in connection with the application for enrolment as a pleader which was made in October 1933, the applicant was heard in Chamber by two learned Judges, and then the matter was considered by a Full Court.

The third application was made in 1943, and in this application the petitioner himself submitted an elaborate explanation regarding the matter which seemed to him to have weighed with the learned Judges in rejecting his earlier applications. This was registered as Miscellaneous Judicial Case No. 103 of 1943, and eventually it was withdrawn on 7th February 1944. In 1946, the first application for enrolment as an Advocate was made under the Indian Bar Councils Act, and this application again was withdrawn. On 9th October 1950 the present application was filed, and it was circulated to the full court, reference being given to the minutes of all the earlier applications. It was in connection with these minutes that the remark was made by the Chief Justice that there was no reason to modify the previous order. This observation of the Chief Justice was approved of by the majority of the Judges, and in accordance with the majority decision, the application was rejected.

5. Whether after the lapse of so many years and the consequent change of circumstances the fact of the appellant's association with his brother who was convicted of a criminal offence, could still be held to be a disqualification in standing the way of his enrolment as an Advocate, is another matter and upon that, a difference of opinion is certainly possible. We do not say that even now it may not be open to the High Court to reconsider the matter if it so desires. But we are unable to say that the proviso to sub-section (1) of Section 9 of the Indian Bar Councils Act is void, as being an unreasonable restrictions upon the freedom to practise a profession, or to carry on an occupation, trade or calling, which is guaranteed under Article 19(1) (g) of the Constitution, or that the discretion has been exercised in this case in violation of the canons of natural justice.

6. The result is, the application is dismissed. We make no order as to costs.

Application dismissed.

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