Jetha Nand

Vs

The Hon'ble Judges of The Punjab High Court

Civil Appeal No. 490 of 1860

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

05.12.1961

JUDGMENT

DAS GUPTA, J. –

The appellant, Jetha Nand (Betab) was enrolled as an Advocate in the Chief Court of Sind on May 14, 1947. He came away to India at the end of the year 1948 and practised in the courts at Delhi. On October 8, 1956 an order was passed by the Chief Justice of the Punjab High Court prohibiting the appellant from practising as an Advocate in the courts at Delhi. On November 8, 1956 the appellant presented an application to the High Court in which he contended that by virtue of his having been enrolled as an Advocate in the Chief Court of Sind he was entitled to practice in all the subordinate courts within the territory of India. This petition was however rejected by a Full Bench of the Punjab High Court on the view that the appellant could not after the partition of India be considered to be an Advocate enrolled under the provisions of the Bar Councils Act. Against this order the present appeal has been preferred on special granted by this Court.

The petitioner's case is that as immediately before the partition of India he was entitled to practise in any court in British India his right to practise in those Courts continued to exit even when on partition of India, "British India" ceased to exit and provinces of India took their place; and when thereafter on the formation of the Indian Union under the Constitution these provinces became States of India but hose same courts continued, his right to practise in those courts also continued.

On behalf of the respondents it is contended that the petitioner's right to practise in courts which were not under the Chief Court of Sind ceased as soon as Sind ceased to form part of India and the Chief Court of Sind ceased to be a High Court in India.

As the appellant bases his claim on s. 14(1)(b) of the Indian Bar Councils Act, it is necessary to examine first the scheme of that Act. This Act was passed to provide for the constitution and incorporation of Bar Councils for certain courts in British India, to confer powers and impose duties on such Bar Councils and to amend the law relating to legal practitioners entitled to practise in the courts. It extended to the whole of British India but was the first instance made applicable to only certain named High Courts - the High Court at Calcutta, and the High Courts at Madras, Bombay, Allahabad, Patna and Rangoon. It was also provided (s. 1, sub-s. 2) that the Act shall apply to such other High Courts within the meaning of cl. 24 of s. 3 of the General Clauses Act, 1897 as the Governor-General in Council may, by notification in the Gazette declare to be High Courts to which this Act applies. Sections 2, 17, 18 and 19 were to come into force at once; but as regards the other provisions it was enacted that they would come into force in respect of any High Court to which the Act applied on such date as the Governor-General in Council might by notification direct. Section 2

defined Advocate as "an advocate" entered in the roll of this Act and "High Court" as "a High Court to which this Act applies". Sections 3, 4 and 5 deal with the constitution and incorporation of Bar Councils. Section 8 makes it the duty of every High Court to prepare and maintain a roll of advocates of the High Court and also provides that no person shall be entitled as of right to practise in any High Court unless his name is entered in the roll of the advocates of the High Court. Section 10 empowers the High Court to reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional and other misconduct. The manner in which such action can be taken is dealt with in ss. 10, 11, 12 and 13. Of these, s. 12 provides inter alia that when any advocate is reprimanded or suspended under this Act a record of the punishment shall be entered against his name in the roll of the Advocates of the High Court and when an Advocate is removed from Practice his name shall forthwith be struck of the roll. Section 14 provides inter alia that an advocate shall be entitled as of right to practice in any other Court in British India.

It is not disputed before us that the Governor-General by notification in the Gazette of India did declare the Chief Court of Sind to be a High Court to which this Act applied and that by another notification he also directed that all the provisions of the Act would come into force in respect of the Chief Court of Sind on some date long before 1947. Consequently, even though these notifications have not been placed before us we must proceed on the bases that on May 14, 1947, when the appellant was enrolled as an advocate in the Chief Court of Sind he was an advocate for the purposes of the Indian Bar Councils Act and so was entitled as of right to practice in any subordinate courts in what then was British India. The question is whether this right continued to exist after Sind ceased to form a part of India. It appears to us clear that when s. 2 defines advocate as "an advocate entered in the roll of advocates of High Court", it means an advocate who has been entered in such roll of advocates and whose names continues to be on that roll. When, for example, the name of the advocate is removed form the roll under s. 12(7) he ceases to be an advocate within the meaning of s. 14 inspite of the fact that his name was once entered in that roll. An advocate entered in the roll of advocates can therefore mean only one whose name continues to be entered in that roll. What is the position if the High Court ceases to exist, by reason of abolition or otherwise ? The only possible answer to this question is that if the High Court ceases to exist; the roll which used to be maintained by it has also no legal existence and consequently a person whose name was in that roll, is not longer an advocate within the meaning of s. 14 or any other section of the Act.

That appears to be exactly the position in the present case. The Chief Court of Sind was a High Court within the meaning of ss. 3 to 19 of the Indian Bar Councils Act by reason of the notification made by the Governor-General in Council under s. 1 sub-s. 2 of the Act. It would be absurd to think that when Sind ceased to form part of India. The Chief Court of Sind still continued to be a High Court for the purposes of India law. All doubts in the matter have however been set at rest by the provisions of the India (Adaptation of Existing Indian Laws) Order, 1947. In this connection it is necessary to recall s. 18 sub-s. 3 of the Indian Independence Act which provides that the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other legislature or other authority having power in that behalf. Many adaptations were in fact found necessary to remove complications and confusions which might otherwise have arisen. Of the several adaptation orders made we are concerned here with the Adaptation Order No. 16 which was called the India (Adaptation of Existing Indian laws) Order, 1947. In this Order, the appointed dated was defined as August 15, 1947. Section 5 of the Order is in these words :-

"Any reference in an existing Indian law to a High Court which as from the appointed day ceases to be a High Court for any part of the Dominion of India, shall

(a) if the reference be to the High Court of Judicature at Lahore, be replaced by a reference to the High Court of East Punjab, and

(b) in any other case, be omitted."

The Chief Court of Sind (a High Court within the meaning of the General Clauses Act) having ceased as from August 15, 1947 to be a High Court for any part of the Dominion of India references to that Court as one to which the Act applied must be omitted in the application of the Indian Bar Councils Act, 1926 after that date. In other words, the Chief Court of Sind which was a High Court for the purposes of the Indian Bar Councils Act, 1926 up to the August 14, 1947 ceased to exist as a High Court for the purposes of the Indian Bar Councils Act with effect from the 15th day of August, 1947. The necessary consequence of this is that the roll maintained by the Chief Court of Sind was from August 15, 1947 no longer a roll maintained by a High Court within the meaning of the Indian Bar Councils Act and thus any person whose name was entered on the roll of the Chief Court of Sind ceased to be an advocate for the purposes of s. 14 of the Indian Bar Councils Act, 1926 and therefore ceased to have the right under that section to practise in courts in India.

There can be no doubt whatsoever that in making this adaptation in s. 5 of the India (Adaptation of Existing Indian Laws) Order, 1947 the intention of the authority making the order was not only to ensure that rights will not in future accrue on the basis of a High court now in Pakistan having been formerly a High Court in India but also to prevent the future exercise of any right that may have become vested in any person on such a High Court having been a High Court in India. This conclusion is inevitable from the absence of any saving clause in the Adaptation Order. Thus, even though the appellant had a right on the 14th August, 1947 to practise in the courts subordinate to any High Court in India such a right ceased to exist after the Adaptation Order mentioned above.

We need merely add that if the appellant's contention was correct, the anomolus position would have arisen that there would be no court in India which could take disciplinary action against him, in the event of misconduct. The scheme of the Bar Councils Act is as has been emphasised earlier, that each High Court in the country should have disciplinary jurisdiction over the Advocates on its rolls. The provisions of the Adaptation order have maintained this position.

In our opinion, the High Court rightly rejected the appellant's application. The appeal is accordingly dismissed.

In the circumstances of the case we make no order as to costs. But the appellant who has filed the appeal as a pauper is directed to pay the court-fees which would have been paid by him if he had not been permitted to appeal as a pauper.

Appeal dismissed.

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