Prof. Chandra Prakash Agarwal

Vs

Chaturbuj Das Parikh and Others

Civil Appeal No. 2331 of 1968

(S.M. Sikri, J.M. Shelat, V. Bhargava, G.K. Mitter, C.A. Vaidialingam JJ)

18.12.1969

JUDGMENT

SHELAT, J. -

1. The appellant filed a writ petition in the High Court at Allahabad for a quo warranto against Respondent 1, challenging therein his appointment as a Judge of that High Court. The ground on which he challenged the appointment was that though Respondent 1 was enrolled as an advocate more than 20 years ago, he could not still claim to be one who "has for at least ten years been an advocate of a High Court" within the meaning of Article 217(2)(b) of the Constitution, as admittedly Respondent 1 was all along practicing at Benaras and not in the High Court.

2. The writ petition came up for a preliminary hearing before W. Broome and G. Kumar, JJ., when it was urged that the expression "an advocate of a High Court" in Article 217(2)(b) meant an advocate practicing in the High Court and not one practising in a court or courts subordinate to the High Court. In support of that interpretation, the language used in Article 124 (3) on the one hand and that in Article 233(2) on the other was relied on to show that the Constitution has employed different language in connection with different purposes thereby making a deliberate distinction between "an advocate" and "an advocate of a High Court", the former meaning an advocate practicing in a court or courts subordinate to the High Court and the latter meaning an advocate practicing in a High Court. The contention was that while dealing with the qualifications for the post of a ? District Judge Article 233(2) uses the expression "an advocate" as distinguished from the expression "advocate of a High Court" in Articles 217(2)(b) and 124(3) which lay down the qualifications for the offices of a Judge of a High Court and a Judge of the Supreme Court. The difference in the language, it was contended, indicated that whereas a person to be appointed a district judge need be only an advocate of the prescribed standing, the one to be appointed a Judge either of a High Court or the Supreme Court must be an advocate who has practiced for the required number of years in a High Court or two or more High Courts in succession. It was further contended that such an indication is also furnished by the language of Article 124(3)(a) and (b), in the sense that just as the expression "a Judge of a High Court" in sub-clause (a) must mean a Judge who has worked as a Judge in the High Court, the expression "an advocate of a High Court" must similarly mean an advocate who has practiced in a High Court.

3. There was a difference of opinion between the two learned Judges. Broom, J., held that "on a plain reading of the relevant clauses" the correct interpretation of the expression "an advocate of a High Court" meant an advocate enrolled as an advocate of a High Court, irrespective of whether on such enrolment he practiced in a High Court or a court or courts subordinate to the High Court. G. K. Kumar, J., on the other hand, accepted the contention urged on behalf of the appellant and held

that the expression "an advocate of a High Court" meant one who has practiced for the required period in a High Court, and therefore, a person who has practiced only in a court or courts subordinate to the High Court would not answer the qualification required under Article 217(2)(b). Such a difference of opinion having thus arisen between the two learned Judges, the matter was referred to Mother, J., who agreed with Broome, J., and thereupon the writ petition was dismissed. The present appeal on certificate granted by the High Court challenges the correctness of the order dismissing the writ petition.

4. Counsel for the appellant repeated before us the same contentions which were urged first before Broome and Kumar, JJ., and later on before Mathur, J. In our opinion the language used in Article 217(2)(b) is plain and incapable of bearing an interpretation other than the one given by Broome, J., and agreeing with him by Mathur, J.

5. Only broad point against the interpretation sought by counsel for the appellant would be that the expression "an advocate of a High Court" in its ordinary plain meaning must mean a person who has by enrolling himself under the relevant provisions of law become an advocate of a High Court. If it was intended that the qualification under Article 217(2)(b) should be that a person appointed to the office of a Judge of a High Court should have practiced in a High Court and that practicing in a court or courts subordinate to it would not answer the qualification, the language used in sub-clause (b) of Article 217 (2) would have been as follows :

> "A person shall not be qualified for appointment as a Judge of a High Court unless he has for at least ten years practiced as an advocate in a High Court or in two or more such Courts in succession."

6. Apart from this aspect, some of the earlier statutes bearing on the same subject have also used the very same or similar expression. The Legal Practitioners Act, 1879 defined by Section 3 a "Legal Practitioner" as meaning an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtar or Revenue-agent. Section 4 of that Act provided :

> "Every person now or hereafter entered as an Advocate or Vakil on the roll of any High Court under the Letters Patent constituting such Court, or under Section 41 of this Act, or enrolled as a Pleader in the Chief Court of the Punjab under Section 8 of this Act, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered ---- and any person so entered who ordinarily practices in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practice in any Court in the territories to which this Act extends other than a High Court on whose roll he is not entered or, with the permission of the Court ---- in any High Court on whose roll he is not entered -----."

Section 41 of the Act empowered a High Court to make rules as to the qualifications and admission of proper persons to be "Advocates of the Court" and subject to such rules to enrol such and so many advocates as it thought fit. These provisions clearly show that advocates enrolled under Section 41 were enrolled as advocates of a High Court and were entitled, once enrolled, to practice either in the High Court or courts subordinate to such High Court or both. There was thus in the case of advocates so enrolled no distinction between those who practiced in the High Court and those who practiced in the courts subordinate to such High Court as they were entitled on enrolment, as aforesaid, to practice either in the High Court or in a court or courts subordinate

thereto or both. The Indian Bar Councils Act XXXVIII of 1926 also defined an 'Advocate' meaning one "entered in the roll of advocates of a High Court under the provisions of this Act". Section 8 laid down that no person would be entitled as of right to practice in any High Court unless his name was entered in the roll of "the advocates of the High Court maintained under this Act". Under Section 8(2), the High Court was required to prepare and maintain "a roll of advocates of the High Court" in which should be entered the names of (a) all persons who were, as Advocates, Vakils or Pleaders, entitled as of right to practice in the High Court immediately before the date on which this section came into force in respect thereof; and (b) all other persons who were admitted to be "Advocates of the High Court" under this Act. Section 9 empowered the Bar council to make rules to regulate the admission of persons to be advocates of the High Court; and Section 10 gave power to the High Court in the manner therein provided to reprimand, suspend or remove from practice "any advocate of the High Court" whom it found guilty of professional or other misconduct. Section 14(1) of the Act provided that an advocate, i.e., one whose name was entered under this Act in the roll of advocates of a High Court, shall be entitled as of right to practice in the High Court of which he is an advocate or in any other court save as otherwise provided by sub-section (2) or by or under any other law for the time being in force. Once, therefore, the name of an advocate was entered in the roll of advocates of a High Court under one or the other Act, he was entitled to practice in the High Court and in courts subordinate thereto or in any other court subject of course to the provisions aforesaid. He was thus an advocate of the High Court irrespective of whether he practiced in the High Court or in the courts subordinate thereto, and as seen from Section 10 of the Bar Councils Act, he became amenable to the disciplinary jurisdiction of the High Court by reasons of his being enrolled as an advocate of the High Court. The expression "an advocate of a High Court" must, therefore, mean, in the light of these provisions, an advocate whose name has been enrolled as an advocate of a High Court, no matter whether he practiced in the High Court itself or in courts subordinate to it or both. The expression "an advocate or a pleader of a High Court" having thus acquired the meaning as aforesaid, it must be presumed that a similar expression, namely, "a pleader of a High Court for a period of not less than ten years" was used in the same sense in Section 101(3)(d) of the Government of India Act, 1915, when that section laid down the qualifications for the office of a Judge of a High Court in the case of a pleader. The same phraseology was also repeated in Section 220(3)(3) (d) of the Government of India Act, 1935 except for one change, namely, that in calculating ten years standing his standing as a pleader of two or more High Court in succession was also to be included.

7. It will be noticed that in the latter part of sub-section (3) of Section 220 which provided that in calculating the period during which a person had been a pleader, the period during which he had held judicial office after he became a pleader shall be included, the expression used is simply a "pleader" and not a pleader of any High Court. But the word "pleader" in this part of Section 220(3) must obviously mean the same person as "the pleader of any High Court" mentioned earlier in the same sub-section because the period during which he held any judicial office was to be reckoned for his standing of ten years as a pleader of a High Court. This clearly highlights the point that what Section 220(3) in the 1935 Act required as a qualification was that a person to be appointed a Judge of a High Court had to have ten years' standing as a pleader of any High Court for that period. The question as to where he was practising, whether in the High Court itself or in courts subordinate thereto, does not appear to make any difference. The same phraseology, except for the change from the word 'pleader' to the word 'advocate' has been carried into Article 217(2)(b). That was because under Section 8 of the Bar Councils Act the roll which the High Court was to prepare and maintain was the roll of the advocates of the High Court which included pleaders entitled as of right to practise in the High Court immediately before the date on which Section 8 of that Act was brought

into force.

8. It seems, therefore, indisputable that the expression 'pleader of a High Court' used in the Constitution Acts of 1915 and 1935 and the expression "an advocate of a High Court" used in Articles 217(2)(b) and 124(3) must mean respectively a pleader or an advocate on the roll as such of a High Court and entitled as of right by that reason to practice in the High Court. There is nothing in any of these provisions to indicate that an advocate of a High Court can only be that advocate who has been practising in the High Court. If the meaning of the expression "an advocate of a High Court" as suggested on behalf of the appellant were to be accepted, a very strange anomaly, as pointed out by Broome, J., would result while construing Article 124(3), namely, that an Advocate who has practised in the Supreme Court for the required period but not in a High Court would not be eligible for the office of a Judge of the Supreme Court. For these reasons we are in agreement with Broome and Mathur, JJ., on the construction placed by them on Article 217(2)(b). The first contention of counsel for the appellant, therefore, must fail.

9. Counsel next relied on Article 233(2) in support of the construction suggested by him of Article 217(2)(b) and pointed out that wherever the Constitution did not wish to insist on an appointee having been an advocate practising in a High Court, it has used a different expression, namely, an advocate simpliciter as in Article 233(2). Article 233 deals with appointment of district judges and Clause 2 thereof provides that a person not already in the service of the Union or the State shall only be eligible to be appointed a district judge if he has been for not less that seven years an advocate or a pleader and is recommended by the High Court for appointment. It is true that in this clause the word "advocate" is used without the qualifying words "of a High Court". It is difficult, however, to see how the fact that the word "advocate" only used in connection with the appointment of a district judge would assist counsel in the construction suggested by him of the expression "advocate of any High Court" in Article 217, or that expression must mean an advocate who has had the necessary number of years' practice in the High Court itself. The distinction, if any, between the words "an advocate" in Article 233(2) and the words "an advocate of a High Court" in Article 217(2)(b) has no significance in any event after the coming into force of the Advocates Act, 1961, as by virtue of Section 16 of that Act there are now only two classes of persons entitled to practice, namely, senior advocates and other advocates.

We find that in two of its decisions, in Sengalani Gramani v. Subbayya Nadar and Others, (AIR 1967 Mad 344) and V. G. Row v. A. Alagiriswamy and Others, (AIR 1967 Mad 347) the High Court of Madras also has interpreted Article 217(2)(b) in the same manner as we have done. In our view the construction of Article 217(2)(b) adopted by Broome, J., and on a reference to him by Mathur, J., as correct. The result is that the appeal fails and is dismissed with costs. One hearing fee only.

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