Pramesh Chandra Gupta And Ors. vs The Registrar, High Court Of Judicature ... on 17 December, 1954

Equivalent citations: AIR1955ALL269, AIR 1955 ALLAHABAD 269

JUDGMENT

Agarwala, J.

1. This is an application by fifteen Law Graduates who has attended the chambers of senior Advocates authorized to give them training for the puspose of enrolment as Advocates of this Court for more than a year, praying that this Court may be pleased to accept their applications for enrolment as Advocates, and admit them to the roll of Advocates of this Court authorising them, to practice in this court and in the courts subordinate thereto. It is alleged that the applicants approached the Registrar of the High Court to accept their applications for enrolment as Advocates of this Court but the Registrar informed them that such applications could not be entertained and that the applicants could not be enrolled as there was no Bar Council validly functioning in this State. The contention of the applicants is that this Court has power to enrol them as Advocates entitled to practise in this Court even in the absence of a Bar Council.

2. The difficulty in respect of the applications for enrolment being considered on their merits has arisen on account of a decision, of a Bench of this Court in -- 'Durgeshwar Dayal Seth v. Secretary, Bar Council, Allahabad', AIR 1954 All 728 (A), to the effect' that the 'ad hoc' Bar Council constituted for this Court under the Bar Councils Act, as amended by the Bar Councils (U. P. Amendment) Act, 1950, was an illegal body, as the said amending Act was ultra vires the State Legislature and the notification issued by the State Government under the amended Bar Councils Act applying Sections 3 to 16 of the Act to this High Court was consequently void and of no effect. The Bench further observed that the old Bar Councils have not been abolished and that till they are abolished a new Bar Council for this High Court which is a new High Court cannot be brought into existence and that Sections 3 to 16, Bar Councils Act of 1926 can be applied to this Court only when a fresh notification is issued by the State Government under Section 1(3) of the Act. In a subsequent case reported in -- 'Saroj Rawat v. Secretary, Bar Council, High Court, Allahabad', AIR 1954 All 735 (B), the same Bench held that the Bar Councils Act of 1926 could not apply to this High Court unless the State Government issued a fresh notification under Sections 1(2) and 1(3) of the unamended Bar Councils Act of 1926. The matter at first came up for decision before a Bench of this Court consisting of Agarwala and Sahai JJ. and, as they were of opinion that some of the observations made by the Bench which decided the above noted two cases required reconsideration, the case was referred to this Pull Bench.

3. To understand the contentions of the parties and to pronounce an opinion on them, it is necessary to trace the history of the power of the High Court to enrol Advocates on its roll entitling them to

practice in the Court.

4. By a Letters Patent of 17-3-1866, a High Court of Judicature was established in the North Western Provinces on 1-6-1866, with its seat at Agra. In 1869 the High Court was shifted to Allahabad. On 11-3-1915 the Letters Patent of the North-Western Provinces High Court were amended and the name of the Court was changed into the High Court of Judicature at Allahabad. This Court had jurisdiction in the territories of the Province of Agra. The power to enrol Advocates entitling them to practise before the High Court was described in paras. 7 and 8, Letters Patent. By para. 7 the Court was authorized and empowered in the following words :

> "..... To approve, admit and enrol such . and so many Advocates, Vakeels and Attorneys as to the said High Court shall seem meet and such Advocates, Vakeels and Attorneys shall be and are hereby authorized to appear for the Suitors of the Said High Court and to plead or to act or to plead and act for the said suitors according as the said High Court may by its rules and directions determine and subject to such rules and directions."

Para 8 provided :

> '". . . The said High Court of Judicature, at Allahabad shall have power to make rules for the qualification and admission of proper persons- to be Advocates, Vakeels and Attorneys at Law of the Said High Court and shall be empowered to remove or to suspend from practice on reasonable cause the said Advocate, Vakeels or Attorneys at Law."
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> This power was, by para. 35, Letters Patent, subject to the Legislative powers of the appropriate Legislature.

5. For the province of Oudh, a Chief Court was established under Act IV of 1925 with its seat at Lucknow. The power to enrol Advocates was derived from the Legal Practitioners Act, 1879.

6. In 1926, the Indian Bar Councils Act (Act 38 of 1926) came into force. By this Act the whole law relating to Advocates entitled to practise in the High Courts in India was consolidated. The Act in the first instance extended to the then High Court of Allahabad and certain other High Courts and under Section 1(2) it could be made applicable to such other High Courts as the Governor-General in Council may, by a notification in the official gazette, declare to be High Courts to which the Act applied. Sub-section (3) of Section 1 of the Act provided that "Section 1 and Sections 2, 17, 18 and 19 shall come into force at once";

and that the Governor-General in Council may, by notification in the Gazette of India, direct that the other provisions of the Act or any provision thereof specified in the notification, shall come into force in respect of any High Court to which the Act applied on such date as he may by the notification appoint. A notification under Sub-section (2) of Section 1 applying the Act to the Oudh Chief Court was made on the 1-3-1928, and, a notification of the same date applied to that Court

Sections 3 to 16 also, so that all the sections of the Act applied to the Chief Court of Oudh as from 1-3-1928. As the High Court of Judicature at Allahabad was already mentioned in the original Sub-section (2) of Section 1, no notification under that section was required. A notification under Sub-section (3) of Section 1 of the Act was made by the Governor-General applying Sections 3 to 16 of the Act to the High Court of Judicature at Allahabad as from the 1-6-1928. As an argument has been based upon the language of this notification, we may quote it here in full. It runs:

> "In pursuance of Sub-section (3) of Section 1, Indian Bar Councils Act, 1926 (38 of 1926), the Governor General in Council is pleased to appoint the first day of June, 1928 as the date on which the provisions of the said Act not yet in operation shall come into force in respect of the High Court of Judicature at Allahabad." (Vide Gazette of India, dated April 7, 1928, Part I, p. 400).
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> Thereafter the Bar Councils for the two Courts at Allahabad and Lucknow came into existence according to the provisions of the Bar Councils Act and continued to function separately under the two Courts. Section 8(1), Bar Councils Act.
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> provided:
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> "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 maintained under this Act."

Sub-section (2) of Section 8 directed the High Court to prepare and maintain a roll of Advocates of the High Court in which shall be entered the names of "(a) all persons who were entitled to practice in the High Court before the date on which the section came into force, and

(b) all other persons who were admitted to be Advocates of the High Court under the Act."

Under Section 9, the Bar Council was, with the previous sanction of the High Court, empowered to make rules to regulate the admission of persons as Advocates of the High Court, but there was a proviso to this to the effect that such rules shall not limit or in any' way affect the power of the High Court to refuse admission to any person at its discretion. Section 19(2) of the Act provided that--

> "When Sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have repealed."

7. Under the rules made under Section 9 of the Act, all applications for enrolment as Advocates had to be made to the High Court and were to be sanctioned or refused, by the High Court, but it was provided, vide Rule 1(4) that "On receipt of the application the Registrar shall cause a notice of the said application to be served on the Secretary, Bar Council, together with a copy of the application, intimating that the application will be taken into consideration after fifteen days from the date of the

service of the notice and whether the Bar Council has any objection to the granting of the application."

Sub-rule (5) of Rule 1 provided that--

> "If the Bar Council prefers any objection to the admission of the applicant, such objection shall be laid before the High Court for hearing in accordance with the provisions of Section 9, Sub-sections 2(d), Bar Councils Act."

Sub-section (8) of Rule 1 provided that-

> "If the objection preferred by the Bar Council to the application is upheld, the application shall be deemed to have been refused."

It is obvious from the above rules that 11 the Bar Council failed to file any objections within the period of fifteen days, the Ear Council was not bound to be heard. Similar rules were made by the Bar Council of Oudh.

8. This was the state of affairs in 1948 when the two Courts, at Allahabad and at Lucknow, were amalgamated by the United Provinces High Courts (Amalgation) Order, 1948. which was passed under the provisions of Section 229, Government of India Act of 1935. The new High Court under the Amalgamation Order came into existence on 26-7-1948. Para 3 of the Amalgamation Order pro vided that--

> "As from the appointed day (namely, 26-7-1948) the High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and shall constitute one High Court by the name of the High Court of Judicature at Allahabad."

Para 8(1) of the said Order provided that-

> "The new High Court shall have the like powers to approve, admit, enrol, remove and suspend advocates and attorneys, and to make rules with respect to advocates and attorneys, in the whole of the United Provinces as are, under the law in force immediately, before the appointed day, exercisable by either of the existing High - Courts."

Para 17 (c) provided that--

> "references in any Indian Law to either of the existing High Courts by whatever name shall unless the context otherwise requires, be construed as references to the new High Court."

One such Indian Law was the Bar Councils Act, and, therefore, the reference to the High Court of Judicature at Allahabad in Section 1(2), Bar Councils Act would be a reference to the new High

Court of Judicature at Allahabad. This is not in dispute. But the question that has been contested at the Bar is whether the notification of the Governor-General in Council, dated 1-6-1928, already quoted, made under Section 1(3) can make the provisions of Sections 3 to 16, Bar Councils Act applicable to the new High Court. We shall deal with this question later.

9. In the Amalgamation Order, however, no provision was made with regard to the existing Bar Councils, one functioning at Allahabad and the other at Lucknow. The two Bar Councils, therefore, continued to act for some time till the term of office of the members of the Bar Councils expired. These members were to be elected for a term of three years. In the case of the Allahabad Bar Council their term expired in 1949. In the case of the Lucknow Bar Council, it had expired earlier. The State Government was advised that the old Bar Councils could be abolished and a new Bar Council established only by means of a fresh legislative enactment, and that a fresh notification applying Sections 3 to 16, Bar Councils Act to the new High Court had to be made. Accordingly in 1950, after the new Constitution of India had come into force, the State Legislature enacted the Indian Bar Councils (Uttar Pradesh Amendment) Act, 1950 by which the original Bar Councils Act was amended in respect of the constitution of the Bar Council for the new High Court, the old Bar Councils were abolished and a new Bar Council was to be established by holding elections under the amended Act, and for the period that was to elapse before the duly elected new Bar Council came into existence, the Chief Justice of the new High Court was empowered to constitute an 'ad hoc' Bar Council.

The Uttar Pradesh Government issued a notification, under Section 1(3), Bar Councils Act as amended by the Indian Bar Councils (Uttar Pradesh Amendment) Act, 1950, on 24-5-1952, applying Sections 3 to 16, Bar Councils Act as amended by the Indian Bar Councils (Uttar Pradesh Amendment) Act, to the new High Court. The Chief Justice constituted an 'ad hoc' Bar Council for the new High Court. A new roll of Advocates was prepared and some Advocates were freshly enrolled under the new rules framed under the Amended Act. The enrolment was stopped after the decision in AIR 1954 All 728 (A).

10. Learned counsel for both sides have proceeded before us on the assumption that the decision of the Bench declaring that the Indian Bar Councils (Uttar Pradesh Amendment) Act was ultra vires and the notification issued by the State Government on 24-5-1952, under the amended Bar Councils Act applying Sections 3 to 16 of the amended Bar Councils Act to the new High Court was void and Of no effect. The position therefore now is that there is no legally constituted Bar Council for the new High Court in existence, and the question is whether the High Court has power to enrol Advocates in such a situation. We have first to consider whether Sections 3 to 16, Bar Councils Act apply to the new High Court.

11. It is clear from the Amalgamation Order that this High Court is a new High Court in spite of the fact that it bears the old name of the High Court of Judicature at Allahabad. The name could have been different, and the mere 'fact that it is the same, does not mean that it is the old High Court of Judicature at Allahabad. Nevertheless, the new High Court is not entirely unconnected with the old Courts. Paragraph of the Amalgamation Order clearly states that the two old High Courts shall be 'amalgamated and shall constitute one High Court'; so that the new High Court is an amalgamation

of the two old High Courts. The Judges of the two Courts were continued to function as Judges of the new High Court; the officers and servants of the two courts were to be the officers and servants of the new court; the jurisdiction of the new High Court was to the same extent as the jurisdiction of both the old Courts; the Advocates entitled to practice in the two old Courts were entitled to practice in the new High Court and the new High Court was to have the same powers of enrolling, approving, admitting, removing and suspending Advocates as the two old Courts had, and the practice and procedure of the new Court was to be the same as was in force in the old High Court at Allahabad.

The old rules and orders made by either of the existing High Courts continued in force and the proceedings pending before the old Courts were to be deemed to be transferred to the new High Court and were to continue as if they were proceedings instituted in the new High Court. It is therefore, obvious that the new High Court is a continuation of the two old Courts and the intention was that the law applicable to the old High Courts should continue to apply to the new High Court with such modifications as may be necessary in the circumstances.

One would, therefore think that the notification of the Governor-General in Council dated 1-6-1928 in respect of the old High Court of Judicature at Allahabad continued to apply to the new High Court. It may be observed that the phrase "Indian Law" as mentioned in para 17(c) of the Amalgamation Order includes not only an Act of the Legislature, but also all rules, bye-laws and orders or notifications made thereunder, vide Section 3(29), General Clauses Act. The word "order" in that section would include a notification; because a notification is nothing but an order. This view is fortified by a decision of the Supreme Court in -- 'Dr. Ram Krishan v. State of Delhi', AIR 1953 SC 318 (C) in which a notification under the Bombay Excise Act was held to be included within the phrase 'Indian Law' by virtue of Section 3(29), General Clauses Act. .

But it was urged that under Section 1(3), Bar Councils Act, a date has to be mentioned in the notification from which Sections 3 to 16 of the Act are to apply to a Court and that the notification of 1928 fixing 1-6-1928 as the date, could not possibly apply to the new High Court which was not in existence on that date and for this reason the notification of the Governor-General already could not apply to the new High Court. This argument is falacious. If the notification made under the Indian Bar Councils Act is an 'Indian Law' (as has been held that it is), then the notification is to apply to the new High Court with such modifications as would be necessary in the nature of things and circumstances. The date, 1-6-1928, mentioned in the notification could obviously not apply to the new High Court, but as the intention underlying the Amalgamation Order was that the law applicable to the old Courts was to be continued in the altered circumstances and was to be applicable to the new High Court, it is clear that the notification would apply to the new High Court as from the date the new High Court came into existence and the appointed date in connection with the new High Court would consequently be the date of the coming into existence of the new High Court. Reasonable effect must be given to a provision of law which is deemed to be applicable to a new state of affairs, and this is the only way in which effect can be given to the said notification of the Governor General. We are, therefore, of opinion that Sections 3 to 16, Bar Councils Act are already applicable to the new High Court and no new notification by the State Government is required and that consequently the new High Court can proceed to bring into existence a new Bar Council.

12. In AIR 1954 All 728 (A) after holding that Section 1(2), Bar Councils Act applied to the new High Court by virtue of para 17(c) of the Amalgamation Order, the Bench (Desai and Mukerji , JJ.) observed that--

> "It has not the effect of conferring a power upon the new High Court to do afresh everything that the old High Court was empowered to do. There existed the Bar Councils at Allahabad and at Lucknow, and so long as they were not dissolved, another Bar Council could not be created. The principal Act did not contain any provision for the dissolution of a Bar Council. There cannot possibly be two Bar Councils for the same High Court under the Act. Therefore, even if it could be said that the clause empowered the new High Court to do over again all the acts that were to be done by the old High Court, the context requires that a new Bar Council cannot be created so long as the old Bar Councils exist."

13. In AIR 1954 All 735 (B) the Bench observed :

> "The amalgamated Court of Allahabad and Oudh is a new High Court and is not covered by the High Court to which reference has been made in Section 1(2), Bar Councils Act of 1926. If the amalgamated High Court is a new High Court, as indeed it is under the Amalgamation Order of 1948, then it is not one of the High Court's which has been specifically named in Section 1(2), Bar Councils Act and, therefore, if the Bar Councils Act is to be made applicable to this new High Court then a notification in respect thereof has to be issued by the State Gov--eminent extending the provisions of the Bar Councils Act to it. Further, if the provisions of the Bar Councils Act mentioned in Sub-section (3) of Section 1 are to apply to this new High Court then the requisite. notification has to be issued by the State Government and so long as these notifications do not issue, the provisions of the Bar Councils Act of 1926 cannot apply to the new High Court."

With respect, we are unable to agree with these observations. It appears that the Bench did not consider the effect of para 17 (c). of the Amalgamation Order read with Section 3(29), General Clauses Act, and the notification of the Governor General in Council referred to above. The observation of the Bench in 'Saroj Rawat's case (B)' that Section 1(2), Bar Councils Act did not apply to the new High Court is contrary to what the same Bench. had held in the earlier case of 'D. D. Seth (A)'. . Obviously it was under some misapprehension that the Bench made contradictory observations on this point in the two cases. Moreover it does not appear that the provisions of the Part B Laws Act, 1951 which makes Section 1(2), Bar Councils Act applicable to all High Courts in Parts A and B States, were brought to the notice of the Bench.

14. We agree that there cannot possibly be two Bar Councils for the same High Court under the Act, but we respectfully disagree with the observation that so long as Bar Councils at Allahabad and Lucknow were not dissolved another Bar Council cannot be created. The old Bar Councils were created under Section 3, Bar Councils Act, which provided--

> "(1) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.
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> (2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and to contract, and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued."

It is true that the Bar Councils Act does not contain any provision for the dissolution of a Bar Council created under the Act, but from the very fact that the Bar Council is constituted for a particular High Court, it follows necessarily that when the High Court itself ceases to exist, the Bar Council must also come to an end. It may continue to exist, as it is a body corporate, only for winding up its affairs after the High Court for which it is constituted ceases to exist, but obviously it cannot carry out any function connected with the High Court which has ceased to exist, and since the old Bar Council cannot act for the "new High Court for which it is not constituted a new Bar Council must be brought into existence for the new High Court if Sections 3 to 16, Bar Councils Act apply to the new High Court.

15. We therefore hold that the Bar Councils Act in its entirety applies to the new High Court, and the old rules as to enrolment of Advocates which were made for the old Courts are still in force by virtue of para 8 of the Amalgamation Order.

16. The next question is: can the applicants be enrolled when there is no Bar Council for the new High Court in existence? It will be observed that the old rules, which are still in force, contain provisions to the effect that all applications for enrolment shall be notified to the Bar Council which shall have a right to object to the enrolment and that such objections shall be heard by the court and then only will the applications for enrolment be decided. It has been contended by learned counsel for the applicants that these rules are merely directory and do not aSect the power of the Court to enrol and that they merely prescribe a procedure which may or may not be followed by the Court.

It is further contended that even if these provisions are mandatory, they are not conditions precedent for the exercise of the Court's jurisdiction of enrolling Advocates, and, therefore, since by the non-existence of the Bar Council they cannot be given effect to or complied with, the Court has power to waive those rules and to enrol the applicants without complying with them.

We think that these contentions of the learned, counsel are correct. The rules appear to us to be merely directory. It will be observed that the power to -enrol Advocates is not conferred by these rules. That power was conferred upon the old Court at Allahabad under paras 7 and 8, Letters Patent and has been continued for the new High Court by para 8 of the Amalgamation Order. The Jurisdiction to enrol is one thing and the procedure to be followed for making the enrolment is quite different. The power of the Court to enrol, as preserved to the new Court by para 8 of the Amalgamation Order is not dependent upon the observance of the rules and procedure for its exercise. Prom a consideration of the rules it is clear to us that the procedure prescribed for giving notice of the applications for enrolment to the Bar Council is merely directory. For, it is the Court

which entertains the applications for enrolment; and it is the Court which makes the order of enrolment. The Bar Council may merely prefer an objection to the enrolment, but that may be accepted or may not be accepted by the Court. The jurisdiction of the Bar Council is merely advisory and it cannot be said that if the aforesaid procedure is not followed, the order of enrolment by the Court is rendered nugatory.

17. We are further of opinion that even if the rules are mandatory they are not conditions prer cedent to the exercise of jurisdiction by the court, and since it is impossible to comply with them because there is no Bar Council in existence, their performance can be dispensed with. As has been observed in Maxwell on the Interpretations of Statutes, Edn. 10 at p. 385--

> "Enactments which impose duties or conditions are, when these are not conditions precedent to the exercise of a jurisdiction, subject to the maxim that 'lex non cogit ad impossibilia aut inutilia'. They are understood as dispensing with the performance of what is prescribed when performance of it is idle or impossible."

18. In -- 'Montreal Street Rly. Co. v. Norman-din', AIR 1917 PC 142 (D), the Privy Council observed:

> "When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

19. In -- 'the Queen v. Justices of Leicestershire', (1885) 15 QB 88 (E) notice of an appeal was required to be served on the respondent, but it could not be served because of his death. It has held that the appeal could still be heard because the performance, of the condition imposed by law had by the act of God become impossible of performance,

20. On the same principle a Bench of this Court held -- 'In the matter of refugee Advocates', AIR 1949 All 511 (F) that the requirement regarding the recommendation of the District Judge in proviso 7 to R. 1, made under Section 9, Bar Councils-Act could be waived when it was not possible to get the recommendation of the District Judge.

21. The enrolment of the applicants will not cause any real injustice to any body. On the other hand, injustice or inconvenience to them will be caused if their applications are not considered so long as a Bar Council does not come into existence. We are, therefore, of opinion that when the Bar Council is not in existence, the rules requiring reference to the Bar Council may be dispensed with in considering the applicants' applications for enrolment.

22. If we were to assume that Sections 3 to 16, Bar Councils Act do not apply to the new High Court, then the case for the applicants becomes stronger, because in that case the power of the High Court for enrolment of Advocates under para 8 of the Amalgamation Order read with paras 7 and 8 Letters

patent is unfettered by any rules made Under the Bar council Act and their applications Can be considered by the High Court without reference to the Bar Council at all.

23. In either view of the matter and in the special circumstances of this case, the applications for enrolment may be considerd by this Court without reference to the Bar Council

24. We, therefore, allow this application and direct that the appelicants' applications for enrolment as Advoates be considered by the Court on their merits.