Kumari Saroj Rawat vs Secretary, Bar Council High Court And ... on 30 April, 1954

Equivalent citations: 1954CRILJ1498, AIR 1954 ALLAHABAD 735

JUDGMENT

B. Mukerji, J.

1. This is a petition by Kumari Saroj Rawat under Article 228 of the Constitution of India praying that a writ of mandamus be issued to opposite parties 1 and 2 "to act according to law and place the application of the applicant before the Court for appropriate orders" or in the alternative "to issue a writ of mandamus to opposite party No. 3 directing it to issue a notification under Section 1(3) of the Indian Bar Councils Act 1926 applying the provisions of the Act of 1926 to this Court." So far as the first prayer is concerned we need say nothing since the petition has been placed before us and we are going to make appropriate orders on that petition. In order to see whether or not we would issue a writ of mandamus to opposite-party No. 3, namely, the Government of Uttar Pradesh, it is necessary to state a few facts.

2. The petitioner alleges that she passed the LL. B. Examination from the University of Lucknow in the year 1952 and that thereafter she completed one year's training "in chambers" in accordance with Rule 1 of the rules framed under Section 9 of the Indian Bar Councils Act of 1926. She further states that she applied to this Court for enrolment as an advocate on 18-9-1953, and paid the requisite stamp duty of Rs. 750/- along with her application. She further alleges that on 18-9-1953, she sent a money order for a sum of Rs. 100/- to the Bar Council at Allahabad and that the said sum was received by the Secretary of the Bar Council on 21-9-1953 - this sum she sent in accordance with the rules which had been framed under the Bar Councils Act. The applicant has contended that she was unable to secure enrolment as an advocate because by our judgment dated October 22,1953, we had held the Bar Councils (U.P. Amendment) Act of 1950 ultra vires the State Legislature. It was contended on her behalf that because of this decision the Bar Councils constituted under the U. P. Amendment Act could not function and could not exercise any of the powers which were conferred on them and, therefore, they could not bring her name on to the rolls of advocates entitled to practise within the Jurisdiction of this Court.

3. On behalf of the State Government it was stated by the learned Advocate-General that the State Government was unable to issue the notifications contemplated under Section 1(2) and Section 1(3) of the Bar Councils Act (Act 38 of 1926) De-cause according to the reading by the State Government of our judgment we had held that the old Bar Councils at Allahabad and Lucknow existed and that no more Bar Councils could come into existence in those areas.

4. In the case' of - D.D. Seth v. Secretary Bar Council, Allahabad we had held that the Uttar Pradesh amendment of the Indian Bar Councils Act of 1926 by the State Act of 1950 was ultra vires the State Legislature. In that judgment we had given our reasons for coming to that conclusion and we do not consider it necessary to reiterate those reasons over again. Counsel for the petitioner has really not argued before us the question of the vires of the State Amendment Act of 1950; the position which the petitioner's counsel took was one in which he accepted that the State Amendment Act of 1950 was ultra vires the State Legislature. What he really contended was that there was nothing in our decision In the 'case of D. D. Seth (A)' which precluded the State Government from making the notifications contemplated under Section 1 of the Bar Councils Act of 1926.

This submission by learned Counsel for the petitioner appears to us to be right. What we said in cur earlier judgment on this question was that it was not possible to have two Bar Councils for the same High Court. We further expressed the opinion that there was no provision, as indeed there was none, by which a Ear Council could be dissolved. We did not say that it was not competent therefore, for the State Government to make a notification, if it so desired, under the provisions of either Section 1(2) or Section 1(3) of the Bar Councils Act.

We had held that the amalgamated Court of Allahabad and Oudh was a new High Court and was not covered by the High Court to which reference has been made in Section 1(2) of the Bar Councils Act, 1926. If the amalgamated High Court was a new High Court, as indeed it was under the Amalgamation Order of 1948, then it was not one of the High Courts which had been specifically named in Section 1(2) of the Bar Councils Act and, therefore, if the Bar Councils Act was to be made applicable to this new High Court then a notification in respect thereof had to be issued by the State Government 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 were to apply to this new High Court then the requisite notification had to be issued by the State Government and so long as these notifications did not issue, the provisions of the Bar Councils Act of 1926 could not apply to the new High Court because the attempt of the State Government to make the provisions applicable in an amended form to the new High Court was found by us to be an attempt which was beyond the legislative competence of the State Government.

5. In regard to our issuing a writ of mandamus to the State Government directing it to make the requisite notifications we are of the opinion that we cannot do so for the obvious reason that the State Government has a discretion in the matter and that it is not obligatory on the State Government to make the requisite notifications. We have already pointed out earlier that the learned Advocate-General stated before us that the State Government was willing to make the notifications, but it refrained from doing so because it was of the view that on account of our decision referred to earlier these notifications could not any further be made by it in relation to this Court. We have already stated that there is, in our judgment, no such disability in the way of the State Government.

6. In the result this application must fail and is hereby dismissed. We make no orders as to the costs of this application for in our opinion the costs of the petition must be borne by the parties. We further note that Mr. Gopal Behari argued this matter amicus curiae supporting the view which we

had expressed in the case of Sri D.D. Seth and others.