
(1971) 07 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3896 of 1969

Ajai Singh Chirangi Lal

APPELLANT

Vs

District Magistrate, Pilibhit

RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Legal Practitioners Act, 1879 — Section 36(2)

Citation : AIR 1972 All 190 : (1971) 41 AWR 731

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : K.C. Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—Ajai Singh has filed this petition under Article 226 of the Constitution against the order of the respondent, District Magistrate, Pilibhit, dated September, 27, 1969, declaring the petitioner to be a tout and banning his entry in the compound of the collectorate.

2. It may be stated at the outset that no counter-affidavit has been, filed by the respondent. Therefore, the facts stated in the petition shall have to be accepted as correct

3. The petitioner at the material time was a clerk of an Advocate practising at Pilibhit. He has been working as a clerk with legal practitioners since 1964. On September 6, 1968 certain members of the Collectorate Bar Association, Pilibhit, passed a resolution recommending to the District Magistrate Pilibhit to declare the petitioner and one other person as touts. The District Magistrate on the receipt of a copy of the resolution issued a notice u/s 36 of the Legal Practitioners Act on January 10, 1969 requiring the petitioner to show cause within ten days as to why his name should not be included in the list of touts. This notice was served on the petitioner on February 19, 1969. The petitioner submitted a written statement on March 22, 1969, in which he requested the

District Magistrate. Pilibhit, to grant him personal hearing. He also requested the District Magistrate to permit him to cross-examine the witnesses and to produce evidence in defence. The District Magistrate transferred the proceedings to the Sub-divisional Magistrate Pilibhit for enquiry. The Sub-divisional Magistrate conducted the enquiry and sent a report to the District Magistrate to the effect that the petitioner be declared a tout,

4. The petitioner's contention is that the District Magistrate did not grant him a personal hearing, nor did he permit him to cross-examine the witnesses and nor, indeed, did he give him an opportunity to produce evidence in defence. Similar allegations have been made by the petitioner against the Sub-Divisional Magistrate. According to the petitioner, the Sub-Divisional Magistrate, conducted the enquiry behind his back. The evidence of the witnesses was never recorded in his presence. In fact the petitioner alleged that he was not aware of the enquiry conducted by the Sub-Divisional Magistrate so that he had no chance to appear before him and to demand a personal hearing or to produce evidence in defence.

5. Another contention raised by the petitioner is that the resolution passed by the Collectorate Bar Association itself was invalid because it was not passed by a majority of the members of the Association, nor was it passed at a specially convened meeting for that purpose.

6. In order to appreciate the contentions of the petitioner, it is necessary to reproduce the material portions of Section 36 of the Legal Practitioners Act.

"36. (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue Officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto) may frame and publish lists of persons proved to their or his satisfaction, (or to the satisfaction of any subordinate Court as provided in Sub-section (2-A) by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(Explanation :-- The passing of a resolution declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue office, shall be evidence of the general repute of such person for the purposes of this sub-section).

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(2-A) Any authority empowered "under Sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such person; and the subordinate Court shall thereupon hold

an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in Sub-section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority.

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard."

7. A perusal of the foregoing provisions shows very clearly that a District Magistrate is empowered to declare a person to be a tout, but he cannot do so, unless such a person is given an opportunity of showing cause against such a declaration. Under Sub-section (2-A) the District Magistrate can authorise a court subordinate to him to conduct an enquiry in respect of the person suspected to be a tout and such a subordinate authority has to hold an enquiry into the conduct of such person. The subordinate authority is required to afford an opportunity of showing cause to such person in accordance with Subsection (2) of Section 36. The subordinate authority is further required to grant a personal hearing to such a person, if he appears before it and desires to be heard in person.

8. This petition came up for admission before a Division Bench of this Court on October 25, 1969 when an order was passed that the petitioner should file a supplementary affidavit showing that he had no knowledge of the proceedings initially held before the Sub-Divisional Magistrate in respect of his conduct. He was also required to file an affidavit showing how many members had voted against him and how many in his favour. The petitioner has filed a supplementary affidavit in which it has been stated that he applied to the District Magistrate, Pilibhit for the inspection of the records on October 27, 1969 so as to enable him to file a supplementary affidavit as directed by this Court. It has been averred that no such inspection was allowed to him. From an earlier supplementary affidavit it appears that the petitioner wanted to show the contents of the report submitted by the Sub-Divisional Magistrate, and for that purpose he made an application to the District Magistrate for inspection of the file on 4-10-1969. The inspection was allowed but the report of the Sub-Divisional Magistrate, Pilibhit was taken out of the record and was not allowed to be inspected. When the impugned order was based upon the report of the Sub-Divisional Magistrate, it was necessary that the report of the Sub-Divisional Magistrate should have been shown to the petitioner and he should have afforded an opportunity to rebut the report and to produce evidence in defence. It is clear that the enquiry by the Sub-Divisional Magistrate was conducted behind the back of the petitioner, who was allowed no opportunity to be present at the enquiry. The enquiry report itself was withheld from the petitioner and the District Magistrate passed the order in contravention of the provisions contained in Sub-section (2) of Section 36. The impugned order is, therefore, manifestly and palpably contrary to the express

legal provisions and against the principles of natural justice.

9. The petition is entitled to succeed on this ground. It is, therefore, not necessary to deal with the other contention of the petitioner that the resolution of the Collectorate Bar Association was invalid. It may be stated here that the resolution of the Collectorate Bar Association was merely a piece of evidence about the general repute of the petitioner but by itself it was not conclusive, so that the petitioner could not be declared a tout on the basis of that resolution alone. That resolution merely set the law into motion and the law required an enquiry to be conducted in accordance with Sub-sections (2) and (2-A) of Section 36 of the Act.

10. For the reasons stated above, this petition succeeds and is allowed. The order of the respondent, the District Magistrate, Pilibhit, dated September 27, 1969 is quashed so far as it relates to the petitioner. The petitioner is entitled to his costs.