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**(2008) 02 GAU CK 0096**  
**In the Gauhati High Court**

Ajoy Chakravorty

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 27-02-2008

**Acts Referred:**

Legal Practitioners Act, 1879 — Section 36

**Citation :** (2008) 2 GLT 920

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

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**Judgement**

B.K. Sharma, J.—Both the writ petitions, by and between the same parties, are inter-related and accordingly, have been heard together and are being disposed of by this common judgment and order.

2. In the first writ petition being W.P.(C) No. 5159/1999, the petitioner, a pleader's clerk, is aggrieved by the order, placing his license under suspension. In the second writ petition being W.P.(C) No. 3393/2006, his grievance is in respect of the order declaring him as a "Tout".

3. The petitioner obtained the license to act as a pleader's clerk way-back in 1983. While he was working as such on the basis of the said license, renewed from time to time, he was issued with a notice asking him to appear before the learned Sub-Divisional Judicial Magistrate, Margherita on 22.03.1999 in respect of a complaint lodged by one Prasanta Das. The enquiry was conducted and by order dated 23.09.1999 passed by the SDJM, the license of the petitioner was suspended as the allegation against him was found to be serious in nature. The allegation was that the petitioner forged the documents relating to warrants to the accused Shri Prasanta Das in G.R. Case No. 825/1991 and he deceived said Shri Das an amount of Rs. 4,500/- on false promise.

4. After placing the petitioner's license under suspension, the matter was forwarded to the learned Chief Judicial Magistrate, Tinsukia to take further appropriate action as might be deemed fit and proper. However, apart from

placing the license of the petitioner under suspension, no further action was taken in the matter till the impugned order dated 03.05.2006 (Annexure-"J" to the writ petition) forming the subject matter of the second writ petition i.e. W.P. (C) No. 3393/2006 declaring the petitioner to be a "tout" was passed. It would be pertinent to mention here that in the first writ petition, the order dated 27.09.1999 suspending the license of the petitioner was stayed by this Court, by order dated 13.10.1999 and the said stay order is still operative.

5. The aforesaid impugned order dated 03.05.2006 has been passed on the basis of the resolution dated 21.02.2006 passed by the Margherita Bar Association requesting the learned District & Sessions Judge, Tinsukia to declare the petitioner as "tout" and to debar him from entering into the Court premises. Learned District & Sessions Judge, in turn, requested the learned C.J.M. Tinsukia to take action in the matter in accordance with law.

6. The petitioner was issued with the show cause notice dated 13.03.2006 asking him to show cause as to why he should not be declared as "tout". The show cause notice was issued on the basis of the resolution adopted by the Margherita Bar Association on 21.02.2006. Same was also issued taking note of the fact that the first writ petition being W.P.(C) No. 5159/1999 was dismissed for default.

7. The petitioner by his reply to the show cause notice, denied the allegations made. It was his specific case that the resolution of the Bar Association did not reflect any specific complaint against him or his works. As regards the dismissal of the earlier writ petition, it was pointed out that the same was for default on the part of the learned Counsel for the petitioner engaged by him and that he had preferred appeal before the Apex Court. It will be pertinent to mention here that the writ petition has since been restored pursuant to the order passed by the Apex Court.

8. While it is the case of the petitioner that the impugned order declaring him as "tout", has been passed as per the resolution of the Bar Association and not on the basis of any independent exercise and forming of opinion by the C.J.M., it is the case of the Respondent No. 5 i.e. the President of the Margherita Bar Association that the impugned order has been passed taking the above relevant facts.

9. In the affidavit-in-opposition filed by the Respondent No. 5, it has been contended that there being serious allegation against the petitioner and his license having been renewed after a long gap of 8 years in 1991, the action taken against the petitioner is not to be interfered with.

10. The petitioner has filed his affidavit-in-reply coupled with an additional affidavit bringing on record, the order passed by the Apex Court towards restoration of the first writ petition. The petitioner has also brought on record the application dated 18.09.1999 by which the renewal of the license was prayed for. It is in practice that the licenses are renewed belatedly, but pending such renewal, the persons concerned are allowed to work as pleaders' clerks.

11. I have heard Mr. M.K. Choudhury, learned Sr. counsel assisted by Mr. T.N. Srinivasan and Mr. M. Dutta, learned Counsel for the petitioner as well as Ms R. Chakraborty, learned State Counsel representing the State respondents. I have also heard Mr. C. Baruah, learned Sr. counsel assisted by Ms D. Chutia, learned Counsel representing the Respondent No. 5. I have also gone through the materials available on record.

12. At the first instance, the license of the petitioner was put under suspension. As per Rule 789 of the Rules Regarding Pleaders" and Mukhtears" Licensed Clerks u/s 31A of the Legal Practitioners Act, 1879, Licensed Clerk means a clerk who is employed by a pleader or mukhtear in connection with his legal business and is licensed as such under the said rules. Rule 791 provides that no person employed by a pleader or mukhtear other than a Licensed Clerk shall be allowed access to any of the Courts of the district or to have any dealing with the ministerial officers attached thereto. Rule 796(7) empowers the licensing authority to issue license. As per the said Rule, the license is renewable year-wise.

13. Rule 799 of the Rules empowers the licensing authority to order suspension of the license or removal from the Register containing the names of the license holders and also to cancel the license, if found guilty of any misconduct. Under Rule 806, no person, who acts as clerk of a pleader or a mukhtear without a license granted to him in accordance with rule, shall be deemed to be a "tout".

14. According to the petitioner, the entire action towards passing the impugned order, more particularly, the one dated 03.05.2006 (Annexure- "J" to the writ petition) by which the petitioner has been declared as "tout" is the outcome of the malafide and colourable exercise of power by the Respondent No. 5, i.e. the President of the Bar Association. Further stand of the petitioner is that the impugned order could not have been passed by the learned C.J.M. being not vested with power and jurisdiction. According to the petitioner, it is the District & Sessions Judge, who is empowered to declare the pleaders" clerk as "tout". In this connection, the petitioner has referred to Section 36 of the Legal Practitioners" Act, 1879, which mentions about the Judicial Officers empowered to frame and publish lists of persons proved to their or his satisfaction or to the satisfaction of any subordinate Court by evidence of general repute or otherwise, habitually to act as "tout" and made from time to time the holder and amend such lists.

15. As regards the allegation of over-enthusiasm on the part of the Respondent No. 5, the petitioner has placed reliance on the notice issued by him (Annexure-1 to the writ petition) notifying that the petitioner being a "tout", nobody should make any deal with him. Significantly, the heading of the notice, although was signed by the Respondent No. 5 was as "Chief Judicial Magistrate". The said notice was followed by another notice (Annexure-"M" to the writ petition) issued by the Lawyers" Association. According to the petitioner, such action on the part of the Respondent No. 5 was beyond his jurisdiction, as in the event of declaring

anybody as "tout", it is the licensing authority, who is to issue such notice.

16. The show cause notice referred to above was issued to the petitioner on twofold grounds, namely, the Bar Association by its resolution adopted on 23.02.2006 desired that the learned District & Sessions Judge should declare the petitioner as "tout" and secondly, the first writ petition was dismissed for default.

17. As regards the dismissal of the writ petition, the same has already been restored to file as per the order of the Apex Court. That position was not before the authority, who had issued show cause notice and passed the impugned order dated 03.05.2006.

18. There is nothing to indicate that either the show cause notice or the impugned order dated 03.05.2006 was issued and passed pursuant to any enquiry conducted by the authority itself. The learned C.J.M., Tinsukia issued the show cause notice primarily guided by the resolution adopted by the Bar Association without making any independent enquiry into the matter.

19. In the show cause reply submitted by the petitioner, various contentions were raised urging the learned C. J.M. to take different view of the matter. In this connection, the relevant part of the impugned order dated 03.05.2006 is quoted below:

Having regard to the resolution dtd. 21.02.2006 passed by Margherita Bar Association and in the light of relevant legal provisions Sri Ajoy Chakravorty is declared tout and he is debarred from entering into the premises of Margherita Judicial Court. The S.D.J.M. Margherita is directed not to allow the said Sri Ajoy Chakravorty to enter into the premises of Judicial Court building. A notice declaring Sri Ajoy Chakravorty tout shall be displayed in the notice board of S.D.J.M. Court, Margherita.

20. From the above, it will be seen that the impugned order dated 03.05.2006 has been passed solely on the basis of the resolution dated 26.03.2006 adopted by the Bar Association. Such action on the part of the learned C.J.M. is contrary to the provisions of Rule 799 of the aforementioned Rules. In the event of passing any order suspending the license or removing the name of the pleaders' clerk from the relevant register and/or cancellation of his license, the formation of opinion that the person concerned was guilty of any misconduct such as to render him unfit for the exercise of his duties is required. In the instant case, there is no formation of such opinion relating to misconduct on the part of the petitioner. The impugned order has been passed solely on the basis of the resolution adopted by the Bar Association.

21. The resolution in fact was adopted on 15.03.2006 and was forwarded by the Bar Association to the learned District & Sessions Judge, Tinsukia by its letter dated 21.02.2006. The resolution reads as follows:

Extract of the resolution No. 2 is quoted below: "This meeting of Margherita Bar Association held on 15.02.2006 at 12.30P.M. at the premises of Margherita Bar

Association unanimously resolves to request the Hon''ble District & Sessions Judge, Tinsukia to declare Sri Ajoy Chakravorty (The self styled Pleader's Clerk) as tout and to debar him from entering into Court Campus of Margherita Judicial Court in view of the fact that he has already been declared tout by the Margherita Bar for his indulgence in toutism and exploitation of litigant public through misguidings, false promise and cheatings and he was also found guilty of forging of Courts documents on enquiry by the then J.M.F.C. cum C.J. (J.O.) Margherita. Sri P.K. Khanikar and in view of the fact that the Hon''ble High Court also dismissed his case instituted against the action taken by Hon''ble S.D.J.M. Margherita suspending his license.

22. By the aforesaid resolution adopted by the Bar Association, a request was made to the learned District & Sessions Judge, Tinsukia to declare the petitioner as "tout". In the resolution, there is no specific allegation of misconduct on the part of the petitioner. The writ petition in question has also been restored by setting aside the order of dismissal.

23. The learned C.J.M. also without application of his independent mind, passed the impugned order solely on the basis of the aforesaid resolution adopted by the Bar Association. It is true that the license of the petitioner was placed under suspension by order dated 23.09.1999, challenged in the first writ petition. The impugned order dated 03.05.2006 (Annexure- "J" to the writ petition) was passed at a time when the said order was under stay of this Court. It is, however, true that the said writ petition was dismissed for default. That aspect of the matter need not detain us in view of the fact that the writ petition has been restored to file as per the order passed by the Apex Court.

24. Although the license of the petitioner was placed under suspension, but the name of the petitioner as pleaders' clerk has not been removed from the register in question. His license has also not been cancelled. Truly speaking, since the pleaders' clerk license is required to be renewed on year to year basis as per Rule 796(7) of the aforesaid Rules, the impugned order dated 23.09.1999 has spent its force on expiry of the term of the license.

25. For the aforesaid reasons, the impugned order dated 03.05.2006 (Annexure- "J" to the writ petition) stands interfered with and the same is set aside and quashed. The petitioner may now apply to the appropriate authority for renewal of his license. In the event of making any application for renewal of the license, the licensing authority shall consider the same in accordance with rules. Since the license, in the event of granting, is renewable on year to year basis, the conduct of the petitioner can always be judged by the licensing authority based on which renewal of his license will depend. Needless to say that the licensing authority shall consider the case of the petitioner dispassionately and in accordance with law. Writ petitions are disposed of in the above manner leaving the parties to bear their own costs.