
(1930) 04 AHC CK 0038
In the Allahabad High Court

Badri Prasad

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 25-04-1930

Acts Referred:

Legal Practitioners (Amendment) Act — Section 36

Citation : AIR 1930 All 752

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, J.—Lala Badri Prasad is one of the numerous persons who has been declared a tout by an order of the District and Sessions Judge of Agra. The only evidence against Badri Prasad is a resolution of the Bar Association passed at a meeting on 22nd November 1928 declaring him to be a tout. The report received from the Bar Association showed that there were in all 94 members of the Association, but only 67 out of these were actually present on 22nd November 1928 when the resolution was considered. The voting showed that 26 voted in favour of the resolution and 14 against it. The rest obviously remained neutral.

2. Ordinarily a mere resolution of an association of this kind cannot be legal evidence against a person when he is accused of any charge. But the explanation added to Section 36, by the Legal Practitioners Amendment Act(Act 15 of 1926), provides that 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 persons for the purposes of this subsection. The important words to consider are "by a majority of the members present at a meeting". There is no doubt that a majority of votes were cast in favour of the resolution if the neutral votes were to be excluded and therefore the resolution was duly passed by the Association. But the language of the explanation makes it quite clear that every

resolution passed by the Association will not be legal evidence of general reputation against an accused person. It becomes such evidence only if it has been passed by a majority of the members present at the meeting. The expression "majority of the members present" is not the same thing as the expression "majority of the members voting". If there are a large number of members who abstain from voting it is quite clear that they are not prepared to state that there is a general reputation against the person concerned. If it had been intended that a mere resolution passed by a majority of votes would be sufficient there would have been no necessity to add the words "by a majority of the members present at the meeting," as the word passing involves the idea of a majority of votes being cast in favour of the resolution.

3. We are therefore of opinion that there is no legal evidence against the applicant on which he could be declared a tout. We accordingly allow this revision and set aside the order of the District Judge and direct that the name of Badri Prasad be excluded from the list of touts. We make no order as to costs.