
(1984) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 2 of 1984

Bhadreswar Tanti

APPELLANT

Vs

S.N. Choudhury and Another

RESPONDENT

Date of Decision : 02-01-1984

Acts Referred:

Advocates Act, 1961 — Section 17, 20, 30
Constitution of India, 1950 — Article 165, 177(2), 217(2)
General Clauses Act, 1897 — Section 13

Citation : AIR 1985 Guw 32

Hon'ble Judges : T.S. Misra, C.J;K.N. Saikia, J

Bench : Division Bench

Advocate : D.C. Mahanta and A. Mannan, for the Appellant;

Final Decision : Dismissed

Judgement

T. S. Misra, C.J.—Shri Bhadreswar Tanti a practising advocate of this Court and a member of the Gauhati High Court Bar Association has filed the instant petition challenging the appointment of Shri S. N. Choudhury as Additional Advocate General, Assam, and has prayed for a writ in the nature of Quo Warranto on the grounds, inter alia, that respondent 1 is a junior advocate of the Supreme Court and has not practised before this Court and that he has not practised in any other High Court for a period of ten years. It has also been contended that in addition to the Advocate General, respondent 2 has appointed respondent 1 as the Additional Advocate General in complete disregard of the provisions of Article 165 of the Constitution, which according to the petitioner does not empower respondent 2 to appoint more than one Advocate General. Further it has been averred in the petition that while appointing respondent 1 as Additional Advocate General, the State Government has overlooked the provisions of Clause (2) of Article 177 of the Constitution. It has also been stated that Additional Advocate General is not entitled to pre-audience in the Court.

2. We have heard the learned counsel for the petitioner and have given our

anxious consideration to the pleas raised in the petition. In our view the petition lacks merits and deserves to be rejected.

3. Article 165 of the Constitution provides that the Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State. Article 177 empowers the Advocate General to speak in and otherwise to take part in the proceedings of the Legislative Assembly of the State. It shall be the duty of the Advocate General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. The Advocate-General holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. Sub-Clause (2) of Article 217 of the Constitution provides that a person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and--

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

4. The explanation appended to Article 217 lays down that for the purpose of Clause (2) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post under the Union or a State, requiring special knowledge of law after he became an advocate.

5. It is not in dispute that respondent 1 is a citizen of India. It has been conceded before us today by the learned counsel for the petitioner that respondent 1 has been an advocate of a High Court for more than ten years. The contention of the petitioner, however, as set out in the petition, is that respondent 1 is a junior advocate of the Supreme Court and has not practised before this Court nor has he practised in any other High Court for a period of ten years; hence he is not qualified to be appointed Additional Advocate General, Assam. We see no merits in this contention. As pointed out hereinabove, any person who is qualified to be appointed a Judge of a High Court may be appointed Advocate-General for the State. The minimum qualification for appointment as a Judge of a High Court is ten years' practice at the bar in the case of an Advocate. The respondent 1 admittedly had been in practice for more than ten years. It is immaterial whether respondent 1 actively practised before this Court or before any other High Court or before the Supreme Court during the said period. The essential requisite is that respondent 1 should have been on the roll of Advocates for more than ten years when he was appointed as Additional Advocate General. Similar contention was raised in the case of Prof. Prof. Chandra Prakash Agarwal Vs. Chaturbuj Das Parikh and Others, Repelling

that contention -the Supreme Court observed that the expression "an advocate of a High Court" must mean an advocate whose name has been enrolled as an advocate of a High Court, no matter whether he practised in the High Court itself or in Courts subordinate to it or both.

6. Section 8, Bar Councils Act, provides that 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.

7. Section 51, Advocates Act, provides that on and from the appointed day references in any enactment to an advocate enrolled by a High Court in any form of words shall be construed as references to an advocate enrolled under this Act. Section 20, Advocates Act, provides for a common roll of advocates. It requires the Bar Council of India to prepare and maintain a common roll of advocates which shall include the names of the advocates entitled as of right to practise in the Supreme Court, immediately before the appointed day whose names are not entered in any State roll. Similarly, Section 17 requires every State Bar Council to prepare and maintain a roll of advocates in which shall be entered the names and addresses of all persons who were entered as advocates on the roll of any High Court, under the Indian Bar Councils Act, 1926. Section 19 requires every State Bar Council to send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, and additions to, any such roll, as soon as the same have been made. Section 22 provides that a certificate of enrolment in the prescribed form shall be issued by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it and by the Bar Council of India to every person whose name is entered in the common roll. Sub-Articles (4) of Section 23 provides that the Advocate General of any State shall have preaudience over all other advocates and the right of pre-audience among Advocate-General inter se shall be determined by their respective seniority. Section 29 lays down that there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates. Section 30 provides that every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends --

(i) in all courts including the Supreme Court,

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

8. A conjoint reading of the provisions of the Advocates Act makes it quite plain that a person whose name is entered on the roll of advocates is entitled to practise the profession of law in all the courts including the Supreme Court. Indisputably, the name of respondent 1 is on the roll of advocates. It has been on that roll for more than ten years. He is therefore entitled to practise in all the

courts including the Supreme Court. The petitioner admits that respondent 1 is a junior advocate of the Supreme Court. It is not the case of the petitioner that respondent 1 has not been practising "as an advocate for the last more than ten years; rather the admitted case is that he has been in active practice for more than ten years. Whether he practises in the Supreme Court or in any other High Court or in any subordinate Court would, therefore, be not of any relevance while considering his qualifications for appointment as Additional Advocate-General. In our view, he possesses all the requisite qualifications for being appointed Additional Advocate-General.

9. The other contention that the State Government could not appoint an Additional Advocate-General is also meritless. The Governor of a State has, under the Constitution, to appoint an Advocate General That power includes the power to appoint an Additional Advocate-General as well. Article 367 of the Constitution provides that unless the context otherwise requires, the General Clauses Act, 1897, shall apply for the interpretation of the Constitution. There is nothing repugnant in the subject or context which would exclude the applicability of the General Clauses Act. The provisions of General Clauses Act shall therefore be pressed into service while interpreting Article 165. Now on the language of Section 13, General Clauses Act, the provision in the singular for appointment of Advocate-General must include the plural. The Governor has, therefore, the power to appoint an Additional Advocate General also. In the view we have taken we find support from a decision of the Kerala High Court in *M. K. Padmanabhan v. State of Kerala* 1978 LIC 1336.

10. The validity of the appointment of respondent 1 as Additional Advocate-General is not questionable on the ground that he may have a right of pre-audience. In fact, the contention that the Advocate-General or the Additional Advocate-General will have preaudience is totally irrelevant for the purpose of the present petition.

11. No other point was urged or pressed.

12. For the reasons in the foregoing the petition fails and is accordingly rejected.