

(1953) 01 AHC CK 0012
In the Allahabad High Court
Case No : Writ. Application No. 53 of 1953

Durgeshwar Dayal

APPELLANT

Vs

The Secretary, Bar Council, Allahabad and Another

RESPONDENT

Date of Decision : 08-01-1953

Acts Referred:

Bar Councils Act, 1926 — Section 8
Constitution of India, 1950 — Article 226

Citation : AIR 1953 All 348

Hon'ble Judges : Chaturvedi, J;Agarwala, J

Bench : Division Bench

Advocate : S.K. Verma, for the Appellant;

Judgement

Agarwala, J.—This is an application by Durgeshwar Payal Seth, an advocate, practising in this Court, praying that his name may be ordered to be included in the new roll of advocates which is being prepared without payment of any sum of money. The facts briefly are as follows :

2. The petitioner was called to the Bar on 18-11-1935 and was enrolled as an advocate of the High Court of Judicature at Allahabad on 23-2-1938. The petitioner's name was duly entered on the roll of advocates of the Court u/s 8(2) (b), Bar Councils Act, and the petitioner has been practising in the Court since the date of his enrolment. By an order made by the Governor General of India called the United Provinces High Courts (Amalgamation) Order 1948, the High Court of Judicature at Allahabad and the Chief Court in Oudh were amalgamated and a new Court called the High Court of Judicature at Allahabad was created. The first proviso to Article 8 of the said Amalgamation Order provided :

"Provided that, subject to any rule made or direction, given by the new High Court in the exercise of the powers conferred by this Article, any person who, immediately before the appointed day, is an advocate entitled to practise or an attorney entitled to act in either of the existing High Courts, shall be recognised as an advocate or an attorney entitled to practise or to act, as the case may be,

in the new High Court."

3. There were separate Bar Councils attached to the erstwhile High Court of Judicature at Allahabad and the Chief Court of Oudh. By the amalgamation the anomaly of the existence of two Bar Councils had to be remedied. With that object, the Indian Bar Councils (Uttar Pradesh Amendment) Act of 1950 was enacted. By this Act, the Bar Councils of Allahabad and of Oudh" were abolished and a provision was made for the creation of a new Bar Council for the new amalgamated Court. By a notification dated 24-5-1952 issued under Sub-section (3) of Section 1, Bar Councils Act, 1926, and published in the U. P. Gazette dated 31-5-1952, the provisions of Sections 7 to 16 of the Bar Councils Act were made applicable to the new High Court of Judicature at Allahabad. A fresh list of advocates is being prepared u/s 8, Bar Councils Act. Sub-section (2) of that section directs the High Court to prepare and maintain a roll of advocates of the High Court in which shall be entered the names of

"(a) all persons who were, as advocates, vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which, this section comes into force in respect thereof; and (b) all other persons who have been admitted to be advocates of the High Court under this Act."

Then follows the following proviso :

"Provided that such persona shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Indian Stamp Act, 1899, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in Clause (a), and in other cases such amount as may be prescribed."

4. The Joint Registrar has demanded a sum of Rs. 10 as enrolment fee under the above proviso to be paid to the new Bar Council by all those advocates who were advocates of the Court on 31-5-1902 the date when Sections 7 to 16 were made applicable to the now High Court. The Secretary, Bar Council, has also notified, to the same effect. The question raised in the present application is whether the applicant and other advocates who were advocates before 31-5-1952 and who had already paid enrolment fee to the old Bar Councils are liable to pay a further sum of RS. 10 as enroll-menu fee to the new Bar Council. The question is of importance and we are inclined to decide this case on hearing the other side. But a point of: procedure may be decided at this stage.

5. Besides impleading the Secretary, Bar Council, and the Joint Registrar of this Court, as opposite parties Nos. 2 and 3, the applicant has also impleaded the Hon"ble Judges of the Allahabad High Court as opposite party No. 1. This, in our opinion, is not correct. The prayer of the applicant is that the High Court may be pleased to perform the duty cast upon it by Section 8(2), Bar Councils Act, and it is true that the Joint Registrar of this Court has made the disputed notification on behalf of the Court. If the Judges of the High Court are impleaded as parties, it will be difficult, if not impossible, for any Judge of the High Court to hear the case. It is wholly unnecessary to implead the Judges of the High Court as

opposite parties. It is enough that the Joint Registrar is impleaded. If the applicant is entitled to the relief claimed by him, an order can be made by the Court to that effect and it will be carried out by the officers of the Court and by the Bar Council. We, therefore, direct the applicant to delete the Hon"ble Judges of the High Court from the array of parties.

6. Issue notice. Learned counsel suggests that the case should be listed for hearing on the 19th of this month. Let this be done.