

(1952) 01 AHC CK 0015
In the Allahabad High Court
Case No : Civil Miscellaneous No. 44 of 1949
In Re: Phool Din and Others

Date of Decision : 03-01-1952

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(6)
General Clauses Act, 1897 — Section 13(2)
Legal Practitioners Act, 1879 — Section 13, 22, 3, 36, 36(1)

Citation : AIR 1952 All 491

Hon'ble Judges : Harish Chandra, J; Bind Basni Prasad, J

Bench : Division Bench

Advocate : Kanhaiya Lal Misra, for the Appellant; J.C. Mukerji, for No. 3, S.M. Salman, for Nos. 1, 6, 7, 8, 9, 10 and 11, Lalta Prasad, for No. 4, S.N. Misra, for No. 12 and Bishambhar Dayal, for No. 13, for the Respondent

Final Decision : Disposed Of

Judgement

Bind Basni Prasad, J.—This is a proceeding u/s 36, Legal Practitioners Act, 1879.

2. On 13th December 1948, the Honorary Secretary of the Advocates' Association of this Court forwarded to the Registrar a resolution passed by it at a meeting held on 1st December 1948, especially convened for the purpose of considering the question of toutism. The resolution runs as follows:

"That the Advocates' Association hereby declares that the following persons habitually act as touts and by their general repute are touts.

(List of names who bring the cases from stations, Dharamshalas, sarais and other places).

1.

Phool Din Tamoll

Nakhas Kohna, Allahabad.

2.

Mahadeo Prasad,
Bhat Yahiapur, Allahabad.

3.

Bam Khelawan, Brahman
Badshahimandi, near the house of Sheoamar Lal, Vakil, Allahabad.

4.

Jai Ghand s/o Maha-deo Prasad
Yahiapar, Allahabad.

5.

Zaheer Husain
Baran tale Garhi (Dondi-xpur), Allahabad.

6.

Chanda Bhatyara
Sarai Khuldibad, Ekkawala, Allahabad.

7.

Jhamman Bhatyara
Sarai Khuldabad, Ekkawala, Allahabad

8.

Nawab Bhatyara
Sarai Khuldabad, Ekkawala, Allahabad.

9.

Abdul Bahman s/o, Mian Jan
Sarai Khuldabad, Allahabad.

10.

Abdul Bahman
Sarai Khuldabad, Allahabad.

11.

Dullu s/o Khuda Bux
Sarai Garhi

12.

Puttu Lal

Residing in the compound of Mr. P. N. Shukla, George Town, Allahabad, (since left his original place of residence present address not known).

13.

Nanak Chand, Brah-man

1. Canning Road, Allahabad

14.

Arjun Deo

1. Canning Road, Allahabad."

3. It was further resolved at that meeting that a copy of the resolution should be sent to the Hon"ble the Chief Justice for such action as he may be pleased to take in accordance with the provisions of the Legal Practitioners Act.

4. It has come in evidence that the total membership in that association in the month of December 1948, was 134. Seventy two members were present at the meeting. As regards the first 13 persons named above the resolution was unanimous, but as regards the 14th person, viz., Arjun Deo, there was a division. Sis members were in favour of exclusion of Arjun Deo's name from the list and 23 against. The rest were presumably neutral. From the evidence of Bankey Lal Shukla, Assistant Librarian in the Advocates' Association, it appears that a notice of the meeting was circulated to the members resident in Allahabad. To such members as were not in the station a copy of the notice was sent by post under a postal certificate. The postal certificate has been produced.

5. On 11th January 1949, the Secretary of the Bar Library, High Court, forwarded to the Hon"ble the Chief Justice a resolution passed by it at a meeting held on 14th December 1948. The resolution ran as follows:

"The resolution of the Advocate"s Association, dated 1st December 1948, was considered and passed."

Mohammad Ibrahim, Librarian of the Bar Library, produced the minutes of the meeting of the Bar Library and proved them. It appears from those minutes that the meeting held on 14th December 1949, was convened especially for the purpose of considering the question of toutism and in particular the resolution, dated 1st December 1948, passed by the Advocates' Association on the subject. Muhammad Ibrahim states that the notice of the meeting was sent round to the members. In December 1948, there were 34 members. The number of the members who were present at the meeting of 14th December 1948, was 17. There were, however, about 9 members who were not regularly attending the High Court and to them no notice was sent.

6. It may be noted that there is a third association of lawyers practising in the

High Court known as the Bar Association. From the letter, dated 24th October 1950, received from the Secretary of the Bar Association it appears that there were 48 members of that association in December 1948.

7. On the receipt of the letters from the Secretaries of the Advocates' Association and the Bar Library notices were issued to the 14 persons mentioned in the resolution of Advocates' Association. On 19th September 1950, it appeared from the report of the process server that Mahadeo Bhat opposite party No. 2, was dead. Proceedings against him were, therefore, dropped. Notices were not served against opposite parties Nos. 5 and 14, Zaheer Husain and Arjun Deo. By the order dated 19th September 1950. It was directed that the proceedings against them be separated. In spite of further efforts, notices have not been served upon them so far. We are, therefore, concerned at present with the cases of opposite parties Nos. 1, 3, 4 & 6 to 13 and this judgment deals only with the case against them.

8. Phool Din, Chanda Bhatyara, Jhamman Bhatyara, Nawab Bhatyara, Abdul Rahman, son of Mian Jan, Abdul Rahman and Dallu, opposite parties Nos. 1 and 6 to 11, ply ekka on hire. Chanda, Jhamman and Abdul Rahman state that in addition they carry on the business of making biris. Ram Khelawan, opposite party No. 3, states that he is a Panda by profession. Jai Chand, opposite party No. 4, states that he was a student in a school upto the year 1945 and after that he has been in search of employment. He has not mentioned in his written statement any particular avocation in which he is engaged at present. Puttu Lal, opposite party No. 12, in an application filed by him stated that he has been serving as a peon to lawyers. According to that application he has served no less than 12 lawyers in a period of about 20 years. Nanak Chand, opposite party No. 13, in an affidavit filed by him stated that in connection with his own case he came in contact with lawyers and law Courts at Meerut and he started to work as a clerk of the late Shri Kishan Lal Nehru there. Shri Kishan Lal Nehru died in 1943 and then he returned to his village. In 1944 he came to Allahabad for filing a second appeal on behalf of his minor son. He goes on to say :

"That since I had been in the line for a considerable time and had a long experience of District Courts and High Court work I was approached by several advocates through their clerks to have me in their offices but I refused their offers flatly with the result that some of them got very much annoyed with me."

He then started a restaurant "to provide cheap and clean food to the litigant public" at 1, Canning Road, Allahabad which is close to the High Court building. Subsequently he closed the restaurant there and has started one at the South Road.

9. All the 11 persons with whom we are concerned deny that they are touts, assail the resolutions passed by the Advocates' Association and the Bar Library on various grounds and raise certain legal objections. It would be proper first to deal with the legal objections.

10. Shri S.N. Misra, on behalf of Puttu Lal, opposite party No. 12, argued that touting is a profession like that of a broker and by virtue of Article 19(2)(g) of the Constitution every citizen is at liberty to practice that profession. Relying upon Article 13 he further contended that the provisions of Section 36, Legal Practitioners Act, have become void inasmuch as they are inconsistent with the provisions of Article 19(1)(g). This article provides :

"19 (1) All citizens shall have the right.....

(g) to practise any profession, or to carry on any occupation, trade or business."

Along with this must be read Clause (6) of Article 19 which provides :

"(6) Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent that State from making any law relating to:

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

The question is whether the words "any profession" in Article 19(i)(g) mean any profession which a citizen may choose to adopt. Are they so wide as to include a profession which the society abhors and makes it penal for one to engage in it ? It is necessary first to see what is that which the Legal Practitioners Act provides in this respect.

11. The word "tout" is defined in Section 3, Legal Practitioners Act as follows :

""Tout" means a person-

(a) who procures in consideration of any remuneration moving from any legal Practitioner the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-offices, or railway stations landing stages, lodging places or other places of public resort."

12. Two essential ingredients for a person to be a tout are necessary : (1) he must be engaged in the procurement of a legal practitioner's employment, and (2) in consideration of some remuneration moving from the legal practitioners. If any of these elements is absent, he is not a tout. A person is not a tout if he

gives gratuitous advice to a litigant to engage a particular lawyer, or gratuitously procures the employment of a lawyer. It is only when he charges a remuneration from a lawyer for this purpose that he falls in the definition of a tout.

13. Section 3(e) of that Act provides that a pleader or Mukhtar may be dismissed or suspended if he accepts an employment in any legal business through a person who has been proclaimed as a tout u/s 36. The same is provided in Section 22(d) as regards Revenue agents. Clause (6) of Section 36 provides that if a person acts as a tout whilst his name is included in any list of touts framed and published under Sub-section (1) of that section he shall be punishable with imprisonment which may extend to three months; or with fine which may extend to Rs. 500, or with both. It is clear from these provisions that the Legal Practitioners Act prohibits alike a lawyer from accepting an employment through a tout and a citizen from engaging himself in the so called profession of toutism. It is penal for a lawyer to accept an employment through a tout and for a citizen to act as a tout,

14. Article 19(1)(g) does not give an unfettered right to practise "any profession" which a citizen may choose to adopt irrespective of the fact that engagement in such a profession is prohibited by law. It is subject to the provisions of Clause (6) of Article 19, which provides for imposition "in the interests of the general public reasonable restrictions" on that right. It will be noted that the restrictions contemplated are those upon the very right conferred by Article 19(1)(g) and not those in the exercise of any particular profession adopted by a citizen. The question, therefore, is whether the aforesaid provisions of the Legal Practitioners Act are "reasonable restrictions in the interests of general public" within the meaning of Article 19(6). We have no hesitation in answering this question in the affirmative.

15. Legal profession is one of the honourable professions. Every litigant should be at liberty to find out for himself as to which lawyer will render him the best service. If he engages a lawyer through a tout, the tout is likely to take him to a lawyer who gives him the largest remuneration. A tout would not be concerned with affording the best service to a litigant. The litigant may thus be deprived of the best service. The system of toutism is bound to corrupt the legal profession. A most talented lawyer may not be able to get work, because he does not stoop down to accept an engagement through a tout; but a lawyer who has no scruples to accept employment through a tout may have large work, because he gives a large share of his remuneration to the tout. The administration of justice itself may be affected by permitting toutism, as the Courts may not have the advantage of the services of the best lawyers before them. We have no doubt in our mind that it is not in public interest to permit toutism. The provisions in the Legal Practitioners Act in respect of touts are saved by Clause (6) of Article 19.

16. There is no comparison between the profession of a broker and that of a tout. A broker is an intermediary between a seller and a purchaser. The purchaser sees the commodity he buys or gives the particulars of the kind of

commodity he proposes to buy. There is little likelihood of his deception. In the very nature of things such is not the position in regard to employment of a lawyer by a litigant. The institution of brokers has long been recognized by the society. The society has not shown its abhorrence of it by prohibiting it. On the other hand, toutism is prohibited by the Legal Practitioners Act. The society abhors it. Laws are reflections of the public opinion. The provisions relating to touts in the law show the abhorrence of the society towards this profession. Touts and lawyers who accept engagements through touts are looked down upon by the society.

17. It has been argued also that restrictions contemplated by Clause (6) of Article 19 cannot mean total prohibition. As already stated, the restrictions contemplated by this clause do not mean the restrictions upon the practice of any particular profession, but the restriction upon the very right to engage oneself in "any profession". It is, therefore, permissible under Clause (6) to prohibit a profession altogether if it is necessary to do so in public interest. The profession must not be opposed to public interest. We cannot interpret the words "any profession" in Article 19(1)(g), as any profession which a citizen may choose to adopt regardless of its effect upon public interest. To do so, may be allowing even the profession of burglary. No one can be bold enough to say that the right to practise "any profession" includes even the right to engage oneself in the profession of burglary. We see no force in the constitutional point raised.

18. The evidence in the present case as regards the fact that these 11 persons are by general repute touts consists of the resolutions of the Advocates' Association and the Bar Library referred to above.

19. Shri Lalita Prasad appearing for Jai Chand, opposite party 4, contended that those resolutions are not admissible in evidence under the Explanation to Section 36(1), Legal Practitioners Act, because there are three associations in this Court "of persons entitled to practise as legal practitioners" and the resolution has not been passed by all the three. The question is whether the fact that the Bar Association has not passed any such resolution destroys the evidentiary value of the resolution passed by the Advocates' Association and the Bar Library. From Sub-section (1) of Section 36, Legal Practitioners Act it will be seen that it is the "evidence of general repute or otherwise" which has to be taken into consideration by the Court in determining whether or not a person habitually acts as a tout. The explanation to this subsection provides :

"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 purpose of this sub-section."

Shri Lalita Prasad argues that according to Section 13, General Clauses Act, 1897, the word "association" appearing in the Explanation must be read as

"associations." Section 13(2), General Clause Act provides :

"In all Central Acts and Regulations, unless there is anything repugnant in the subject or context Words in the singular shall include the plural, and vice versa."

The word "include" is important. It is not correct so say that for all words in the singular appearing in any Central Acts the plural shall be substituted. A word in the singular may be interpreted in the singular number as well as in the plural number. We are of opinion that if the resolutions passed by the Advocates' Association and the Bar Library fulfil the conditions required by the Explanation to Section 36(1) they are admissible in evidence even though such a resolution may not have been passed by the third association, viz., the Bar Association.

20. There is a difference between the admissibility of evidence and the weight to be attached to such evidence. As observed in *Ghafoor Khan v. Emperor*, 26 ALL 790, it is the Court before which such a resolution is placed which has to decide as to what weight is to be attached to such a resolution. The total number of members, belonging to the association, the number of those who attended the meeting and the figures of the voting for and against the resolution are matters that affect the weight that should be given to it.

21. In the present case the Advocates' Association has the largest membership and it was that association which passed the resolution and was subsequently adopted by the Bar Library. The meeting of the Advocates' Association was attended by 72 out of 134 members. The meeting in the Bar Library was attended by 17 out of 34 members. The resolution was unanimous in regard to these 11 persons both in the Advocates' Association and in the Bar Library. These resolutions, therefore, carry weight if they were passed in accordance with the requirements of the Explanation to Section 36(1).

22. So far as the meeting of the Advocates' Association 13 concerned no objection is taken to its validity, but as regards the meeting of the Bar Library objection is taken on the ground that a notice was not sent to about 9 members who were not present in the station at that time. We are of opinion that this is a valid objection. The Explanation to Section 36(1), Legal Practitioners Act requires the following three conditions to be fulfilled :

(1) that there must be a meeting of an association of persons entitled to practise as legal practitioners in the Court :

(2) that a resolution declaring a person to be a tout must be passed by a majority of the legal practitioners present at the meeting ; and

(3) that the meeting must be especially convened for that purpose.

If some of the members of the association are not given notice of such a meeting it cannot be said that the requirements of the Explanation have been fulfilled. In order that the resolution may be admissible in evidence under the Explanation it is necessary that notice of such a meeting should go to all the members of the

association passing the resolution : vide *Maganbhai Nathabhai v. Dinkarrao N. Desai*, 56 Bom, 577. The meeting at which the Bar Library passed the resolution was, therefore, not properly convened as its notice was not given to all its members. The resolution is therefore, inadmissible in evidence under the Explanation to Section 36(1).

23. It appears also that the notice of the meeting was destroyed by Shri L.M. Roy the Secretary after the meeting was held. It has been argued that on account of the non-production of the original notice of the meeting the resolution passed by it is not admissible in evidence according to the Explanation. We do not agree with this. Secondary evidence of that notice was given by Muhammad Ibrahim and no questions were put to him in cross-examination on that point. The original proceedings of the meeting produced show that the meeting was especially convened for the purpose of considering the question of toutism. The question for consideration by us is whether or not there was any notice. We are satisfied that there was a notice, but it was destroyed by Shri L.M. Roy. We are also of opinion that the meeting was held especially for the purpose of considering the question of toutism because that was the only business transacted at that meeting.

24. Shri S.M. Salman appearing for opposite parties 1 and 6 to 11 contended that the resolution passed by the Advocates' Association does not show that the touts are connected with any legal practitioners of this Court or get remuneration from them. We are unable to appreciate his argument. The law does not require that the resolution should specify the names of the lawyers to whom the touts declared by the resolution go. When by the resolution it was declared that the person mentioned therein were touts it implied, having regard to the definition of the word "tout" given in the Legal Practitioners' Act, that they received remuneration from lawyers to whom they took the work.

It was also argued by him that the resolution of the Bar Library is invalid as it did not pass any resolution independently but merely adopted the resolution of the Advocates' Association. We see no invalidity in the resolution of the Bar Library on this account. Instead of repeating the names of the persons in their own resolution the Bar Library adopted the resolution passed by the Advocates' Association. This disposes of the law points raised before us on behalf of the opposite parties.

25. We now proceed to consider the case on facts.

26. For the prosecution, the oral evidence is formal consisting of the depositions of Bankey Lal Shukla, Assistant Librarian, Advocates' Association and Muhammad Ibrahim, Librarian of the Bar Library. They prove the resolution passed by these two bodies. Of the opposite parties Nanak Chand and Puttu Lal entered the witness box. The rest did not. Bam Khelawan, opposite party 3, although he did not enter the witness box him-self, produced eight witnesses to prove that he does not act as a tout but earns his living by acting as a Panda. No

witness was examined by any other person appearing as opposite party.

27. We propose to take up first the case of Ram Khelawan who has produced oral evidence. (After discussing the evidence the judgment proceeded.) Except Raghunath Singh, the Railway Guard, the remaining seven witnesses belong to another mohalla and they can have hardly an occasion to watch the activities of Ram Khelawan. Moreover, if a person does toutism he, does so rather secretly and not publicly. The lawyers are in the best position to know as who are touts and when they passed a resolution declaring Ram Khelawan as a tout that carries greater weight than the evidence of these persons most of whom belong to another mohalla and who are hardly in a position to say whether or not Ram Khelawan acted as a tout also.

28. Ram Khelawan has produced copy of the judgment and decree in Suit No. 469 of 1936 passed by the Munsif, Allahabad. It only shows that he has been working as a Panda. This does not mean that he does not indulge in touting also. As toutism is prohibited, so those who act as touts do so along with some other activity so that in the case of their being called upon to show cause as to why they should not be declared as touts they may be able to put forward as a shield their other activities. Hence the fact that the opposite parties ply ekka on hire or work as a Panda or as a peon of lawyers or run a restaurant can be no ground for holding that they do not carry on touting also. They indulge in touting as a supplementary source of income.

29. We are of opinion that the weight of the evidence afforded by the resolution passed by the Advocates' Association is not displaced by the evidence which Ram Khelawan has produced. (After discussing the cases of Nanak Chand and Puttu Lal, the judgment proceeded:)

30. The other persons appearing as opposite parties, produced no evidence in rebuttal of the resolution passed by the Advocate's Association. This resolution carries weight, as it was passed by an association of lawyers entitled to practise in this Court having the largest membership and because it was unanimous so far as these eleven persons are concerned. This action of the association towards the eradication of toutism is praiseworthy. In Kundan Lal Vs. Emperor, , this Court approved of the lower Court's decision in acting upon a resolution of lawyers declaring a person to be a tout, where no evidence in rebuttal was called.

31. We are satisfied that the resolution passed by the Advocates' Association was correct so far as the eleven persons whose cases we have considered are concerned.

32. Accordingly acting u/s 36, Legal Practitioners Act, 1879, we declare that it has been proved to our satisfaction that the opposite parties Phool Din, Tamoli, Ram Khelawan, Brahman, Jai Chand, Chanda Bhatiyara, Jhamman Bhatiyara, Nawab Bhatiyara, Abdul Rah-man son of Mian Jan, Abdul Rahman, Dullu, son of Khuda Bux, Puttu Lal and Nanak Chand habitually act as touts and direct that a list containing their names be framed and published in the manner prescribed in

Sub-section (3) of that section.

33. The proceedings against Mahadeo Prasad who is dead abate.

34. The case against Zaheer Husain and Arjun Deo, opposite parties 5 and 14 shall be separately registered and efforts shall be made again to find out their correct addresses and to serve notices upon them afresh.