

(1913) 02 CAL CK 0006
In the Calcutta High Court
In Re: Provas Chandra Roy

Date of Decision : 21-02-1913

Acts Referred:

Specific Relief Act, 1877 — Section 45, 46

Citation : (1913) ILR (Cal) 588

Hon'ble Judges : Jenkins, C.J.; Mookerjee, J.; Harington, J

Bench : Full Bench

Judgement

Jenkins, C.J.—I confess I do not understand that decision.

2. The requirements of Section 46 are substantially fulfilled by the letter to the Secretary, which is set out in the petition. It is true there is no further affidavit. The local Government had no power to issue the notification in the Calcutta Gazette, and, it is submitted, if the examiners observe or carry out an illegal order, relief can be obtained against them. Under Rule 15 the whole body of examiners must take into consideration the case of each applicant on each occasion: they cannot consider themselves bound by the notification.

3. My Chakravarti, in reply. It is unnecessary for me to discuss whether the notification of the Government is legal or binding or not, or whether or not it should affect the examiners of subsequent years. The present application should fail, and the appeal be allowed.

Jenkins, C.J.

4. This appeal arises out of an application under Chapter VIII of the Specific Relief Act. Section 45 of that Act enables this Court to order-public servants and others to do certain specific acts, and Section 46 indicates how the application is to be made, and the procedure thereon. The present applicant is one who was examined last year for the pleader-ship examination, and in connection with that examination he was found to have been guilty of grave misconduct. Notwithstanding this, he now seeks to be admitted to this year's examination, and, his claim being disallowed, he has presented a petition u/s 45 of the Act. He has succeeded in obtaining an order in these terms, "that the Board of Examiners

do entertain and consider the application of Provas Chandra Roy, and determine his fitness according to their discretion." From that order, what has been called the "Board of Examiners"---that, I presume means the Examiners,---have appealed; and, at the outset, it is urged that this application must fail, as it is opposed to the terms of the Specific Relief Act, and as the order is at variance with that for which the applicant prayed and with the Rule that issued.

5. By his petition, the applicant prays first for an order that the Board of Examiners acted illegally in not publishing the petitioner's name in the list of successful candidates, that is, the list of the successful candidates at last year's examination: next, that it may be declared that the petitioner has passed the Pledership examination in 1912, that his name should be gazetted as a successful candidate, or, it may be declared that the order of November, 1912, appearing in the Calcutta Gazette of the 27th November, 1912, which was passed by the Board of Examiners of the Pledership and Mukhtearship examinations, or by the local Government, is illegal and ultra vires and, finally, that it may be declared that the Board of Examiners have acted illegally in not entertaining the petitioner's application, and his certificate of character,-and not allowing him to appear at the ensuing examination for 1913. Not one of these prayers is justified by the terms of the Act, and this application must have been drawn up without reference to the relevant sections. They are clear in their terms: Section 45 enables the Court to make an order requiring any specific act to be done or forborne, and nothing else: Section 46 provides that the application must be founded on an affidavit of the person injured, stating his right, his demand of justice and the denial thereof. All this has been completely disregarded, not only in form but in substance. But on these materials the applicant obtained a Rule in these terms: "It is ordered that the Board of Examiners for Pledership and Mukhtearship examinations, being served with this order on or before the eighteenth day of January instant, do on Wednesday the twenty-second day of January instant, at the hour of eleven o'clock in the forenoon, show cause before the Court why they should not publish the name of Provas Chandra Roy in the list of successful candidates of the last year's Pledership examination, or why the said Provas Chandra Roy should not be allowed to appear at the next Pledership examination, he having fulfilled the conditions necessary under the law qualifying him to appear at such examination." At the hearing of the Rule an order was made in the terms I have stated. That order is at variance-with the prayer in the petition, and with the Rule that was granted. But in dealing with an application under Chapter VIII of the Specific Relief Act, the principles applicable to a writ of mandamus should, generally speaking, be followed, and it was laid down by the Privy Council in *The Bank of Bombay v. Suleman Somji* (1) that "one of the principles is that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right, to enforce which he asks for the interference of the Court; that he has claimed to exercise that right and none other, and that his claim has been refused." This is in substantial accord with Section 46 of the Act. When it was put to the learned Counsel who appeared for

the petitioner whether he could point to the prescribed demand of justice, and the denial thereof, it was admitted that it was only by a very liberal reading of certain passages in the petition that any suggestion of that demand and denial could be made. Even if we could, I do not think we should overlook these defects. The present applicant is not a person in whose favour we ought to strain the jurisdiction that has been invoked. It is an inadequate description to say he does not come to the Court with clean hands; he admits his own turpitude and comes here with peculiarly dirty hands, so that I see no reason for making the slightest concession in his favour. In my opinion, it would be wrong to uphold the order that has been made, and I therefore hold that this appeal must be allowed, and the application dismissed with costs in both the Courts.

6. Harington J. I agree.

7. Mookerjee J. I agree.