

(1908) 06 CAL CK 0006
In the Calcutta High Court

In Re: Purna Chandra Dutt, an articted Clerk

Date of Decision : 18-06-1908

Acts Referred:

Citation : (1908) 06 CAL CK 0006

Judgement

Rampini, C.J.—This is a rule on the examiner appointed to conduct the examination for the admission of attorneys, to show cause why the Petitioner, Purna Chandra Dutt, a candidate at the last examination, should not be granted a certificate that he has duly passed the final examination. This Bench has been constituted under Rule 132 of the Rules of the Original Side. Mr. Norton for the Petitioner has argued that we have powers of supervision over the examination for attorneys under secs. 9 and 10 of the Letters Patent of 1865; that we have inherent powers corresponding to those conferred by the English Solicitors Act (40 and 41 Victoria, Ch. 25) to revise the proceedings of the examiners appointed by the Chief Justice of this Court for the examination of candidates for admission as attorneys; that in this particular case, we ought to exercise these powers, as the questions 1 and 6 of the Equity paper set at the last examination were improper, and that we should, therefore, either alter the marks awarded to the Petitioner by the Examiner in Equity or direct the Examiners to examine the candidate again in the subject of Equity.

2. The Advocate-General for the Examiners contends that we have no such powers. He cites Rule 116 of the Rules of the Original Side of the Court, and urges that unless the Petitioner produces a certificate granted by the Examiners under that rule, we cannot direct that he be enrolled as an attorney. He further urges that Rule 132, in accordance with which this Bench is constituted, does not enable us to deal with any application not provided for, but only with such applications as are provided for in the rules. He does not contend that, if the examiners appointed by the Chief Justice of this Court discharge their duties in an arbitrary, unreasonable or improper manner, there is no remedy, but that the proper course to adopt is to apply under sec. 45 of the Specific Relief Act, which corresponds to the former provisions for the issue of a mandamus, and which procedure has not been followed in this case. He has further called attention to

certain passages in Shortt on Mandamus and Prohibition, according to which a writ of this nature should not, where there is a discretion imposed in any body, be issued to compel that body to exercise that discretion in any particular way, but only to compel the exercise of that discretion " in a manner fair, candid and unprejudiced" and not "arbitrary, capricious or biased, much less warped by resentment or personal dislike." The learned Advocate General has also cited to us previous applications to this Court, made by candidates for the examination, notably the application of William Thomas Graham* in 1870 on which Chief Justice. Couch records as follows :--" The Chief Justice cannot dispense with the compliance by Mr. Graham with the rule of Court, which requires that no person shall be admitted as an attorney except upon production of a certificate of examiners," and the application of Kristo Kishore Dey* in 1900, in which the present Chief Justice declined to interfere.

3. I am inclined to agree with the learned Advocate-General in his view as to our powers and duties in connection with this matter. But it is, I think, unnecessary to express any definite opinion on this point. I am convinced that, on the merits, the Petitioner's case is not one of hardship, that the Examiners have not treated him unfairly, that, as a fact, he has not come up to the standard required by the Examiners, or to that attained by the other candidates for examination to whom the Examiners have granted certificate of passing.

4. I would, therefore, discharge this rule with costs.

Brett, J.

5. I agree.

Woodroffe, J.

6. The Court cannot, by reason of Rule 116 of the Original Side Rules, dispense with the production of the certificate therein mentioned. No appeal is given by those rules from the refusal of the examiners to grant such a certificate as in the case of the certificate as to character referred to in Rule 117, against which an appeal is given by the following Rule. The ordinary remedy of a person who has failed at one examination is to go up for another. The Court has thus delegated to the Board of Examiners a discretion without making any such express reservation as was made by sec. 9 of the English Solicitors Act (40 and 41 Vict., Ch. 25) which provides that any person who has been refused a certificate may object to such refusal on account of the nature and difficulty of the questions or any other ground. The result of the provisions, therefore, which govern this Court is that it will not interfere with the conscientious exercise by the Examiners of the discretion which the Court has confided in them. It does not, however, follow that the Court has no control over those whom it has appointed to test the qualifications of others who seek to become its officers. The Court can compel the examiners, as any other body subject to its jurisdiction, to do its duty. That duty is to exercise the discretion given and to exercise it conscientiously. If, therefore, there is a refusal to exercise that discretion, the Court will direct them

to do so. Or, again, if the discretion is not exercised honestly and conscientiously, the Court will interfere. It is not necessary to consider this question further as the present case is not of either of these kinds. It would be enough to say that there having been, in this case, a conscientious exercise of discretion, the Court will not enquire into the grounds on which it is based. Further, even if a case for interference is made out, the Court will not direct the Examiners to exercise their discretion in a particular way. It will not say to them (to use the language of one of the cases cited) "approve what we approve and say what we say." The Court will not assume their functions but direct their exercise. I think it, however, desirable to deal with the case on the facts, because, the charges made against the fairness of the examination have not been made out and the application, even if sustainable in law, fails in my opinion on those facts. The questions which have been objected to are Nos. 1, 4 and 6 in the Equity paper. The petition submits that the first question "is so vaguely and loosely worded as to make it difficult for the candidates to understand what is wanted by the Examiner." As a matter of fact, the Petitioner understood the question well enough to secure 18 marks out of 20. He next alleges that the Examiners awarded him no marks for question 4, though the answer was correct. As a matter of fact, he did obtain marks, but not as much as he thinks he ought to have got, because his answer was incomplete. The answer gave a special exception enacted by the Settled Land Acts, which have not been extended to this country, where the old rule of Chancery is still in force that the equitable tenant for life is not entitled to the custody of the title-deeds. It was subsequently suggested that this question was not sufficiently explicit to be understood. It was, however, understood by 4 out of the 7 candidates, three of whom obtained full marks for it and the fourth secured 15 marks out of 20. Lastly, the sixth question is complained of as being "unreasonably difficult and unfair." It is the fact that none of the candidates answered it. The first portion of this question might, I think, have been answered from the recognised textbooks. It may be that the second portion sets a somewhat high standard, but that is a matter for the Examiner, and what we should have to look at, if we were to go into the question at all, is the paper as a whole and to see whether the candidates had a fair opportunity of showing their qualifications. Further, it is to be noted that the Petitioner wholly failed to secure marks for the second and third questions against which no exception is taken. Had these been answered, the point now before us would not have arisen, as the applicant would then have qualified in the Equity paper. Lastly, I may point out that the case of the applicant is not otherwise meritorious, for it appears that he secured pass marks only in two of the subjects and only 6 and 5 marks respectively more than pass marks in two of the other subjects. I think, therefore, a certificate was rightly refused. The application fails on all grounds and I, therefore, agree that the rule should be discharged with costs.