

(1936) 01 CAL CK 0021
In the Calcutta High Court

In Re: Ramesh Chandra Sen Gupta, a pleader

Date of Decision : 10-01-1936

Acts Referred:

Legal Practitioners Act, 1879 — Section 6

Citation : AIR 1936 Cal 205

Hon'ble Judges : Mukerji, Acting C.J.;S.K. Ghose, J;Lort-Williams, J

Bench : Full Bench

Judgement

Mukerji, Ag. C. J.

1. Babu Ramesh Chandra Sen Gupta, a Pleader practising at Patuakhali in the District of Bakarganj was on 22nd September 1929 elected a Director of the Patuakhali Loan Office Limited, a Company incorporated under the Indian Companies Act, and has been acting as such Director from the date of his election. On 3rd February 1935 he was also appointed Assistant Secretary of the said Company and in that capacity he receives an allowance of Rs. 25 per month. Since 1929 he has been a member of the Committee of Management of the Patuakhali Urban Co-operative Bank Ltd., and also its Secretary; and in April 1935 he has, in addition, been appointed its Insurance Director; but as regards any of these appointments no question arises now. It is his connection with the Patuakhali Loan Office Limited as a Director, and also as its Assistant Secretary, that has given rise to the present matter. The appointments in the Loan Office aforesaid having come to the notice of this Court, the following letter was eventually addressed by the Registrar of the Appellate Side of this Court to the District Judge of Bakarganj on 20th August 1935:

Sir,

With reference to the correspondence ending with your Letter No. 3694-c, dated 6th August 1935, Babu Ramesh Chandra Sen Gupta, Pleader, Patuakhali, has been acting as a Director of the Patuakhali Loan Office Ltd., since 22nd September 1929, and as Assistant Secretary of the said concern since 3rd February 1935, I am directed to say that it appears that he has infringed the old Rule 27, Chap. 11, (revised), Vol. 1 of the Court's General Rules and Circular

Orders, Civil, in not bringing duly to the notice of the Court the fact of his acceptance of the first appointment, and has also infringed the new Rule 27, *ibid* in not informing the Court of his intention to accept the second appointment before he accepted it. I am, therefore, to request that you will be so good as to call upon him to show cause why he should not be dealt with under the new Rule 29, *ibid* read with the note thereto, and a fine imposed on him thereunder as a condition precedent to his being allowed to practise as a pleader.

2. Pursuant to a notice issued on him as required by the letter aforesaid the Pleader had appeared in this Court and has shown cause. As the letter speaks of old and new rules, it is necessary to see what they are. In 1884 certain rules were enacted and they were since then embodied in the Court's General Rules and Circular Orders, Vol. 1, Ch. 11, where they appeared as the following:

31. Any person who shall hold any appointment under Government or shall carry on any trade or other business, at the time of his application for admission as a Pleader or Muktear, shall state the fact in his application for admission; and the High Court may refuse to admit such person, or may pass such orders thereon as it thinks proper.

32. Any person who, having been admitted as a pleader or Muktear, shall accept any appointment under Government, or shall enter into any trade or other business, shall give notice thereof to the High Court who may thereupon suspend such Pleader or Mukhtear from practice or pass such orders as the said Court may think fit. * * * *

34. Any wilful violation of any of the above Rules shall subject a Pleader or Muktear to suspension or dismissal.

3. By February 1934 the Rules of Ch. 11 had undergone some alterations and additions; but for our present purposes, it would be sufficient to state that Rules 31, 32 and 34 appeared as Rules 26, 27 and 29 respectively. The Rules as they stood then are the old rules referred to in the latter. In July 1934 the Rules were again revised and the form they then took will appear from the following Rules 950, 951 and 953 as they have been published in the New Edition of the Courts General Rules and Circular Orders, Civil, and which correspond respectively to Rules 26, 27 and 29. These revised rules are the new rules referred to in the letter. They run as follows:

950. Any person who shall hold any appointment or be engaged in any occupation, trade or business, at the time of his application for admission as a Pleader or Muktear, shall state the fact in his application for admission; and the High Court may refuse to admit such person or may pass such other orders on it as it thinks proper. 951. Pleaders and Muktears shall not, while practising as such, be debarred thereby from holding any appointment or engaging themselves in any occupation trade or business, but a person who having been admitted as a pleader or Muktear intends to accept an engagement or engage himself in an occupation, trade or business, shall, prior to accepting such

appointment or so engaging himself, by letter addressed to the Registrar, inform the High Court through the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, of his intention and shall state whether or not he prays for leave to suspend practice as a Pleader or Muktear, and the High Court may either grant such leave or may, if such appointment, occupation, trade or business shall appear to be derogatory to a practising member of the legal profession or likely to interfere with the discharge of his professional duties as a Pleader or Muktear require him to suspend practice while holding such appointment or so engaged, or may make such other order or orders as may seem fit.

Note.--The intimation provided for by this rule shall be given by Muktears if any, practising in the Court of the Presidency Magistrate through the Chief Presidency Magistrate, Calcutta.

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953. Any wilful violation of Rules 950 and 951 shall render the Pleader or Mukhtear concerned liable to a fine which shall not in any case be less than Rs. 50 and may also render him liable, in addition, to suspension or dismissal.

Note.--This Rule shall also apply to such infringements of Rules 950 and 951 as they stood prior to the publication of these Rules in the local Official Gazette, as may have been or may thereafter be brought to the notice of the Court.

4. Put quite shortly, the charge against the pleader is that he has infringed old Rule 27 by not bringing to the notice of the Court the fact of his acceptance of office as Director since 22nd September 1929, and that he had also infringed new Rule 27 by not informing the Court of his intention to accept the office of Assistant Secretary before he accepted it on 3rd February 1935. The first contention urged on behalf of the pleader is that Rule 951=new Rule 27 of July 1934 and its predecessors, namely Rule 32 of 1884 as well as old Rule 27 of February 1934 are all ultra vires. The argument in this connexion is that u/s 6, Legal Practitioners Act (18 of 1879) the High Court is competent to frame rules relating to the qualifications, admission and certificates of Pleaders Clause (a), the fee to be paid for their examination and admission Clause (c), and their suspension and dismissal Clause (d): that after a pleader has been admitted the renewal of his certificate is governed by Section 7 of the Act; and that while holding a certificate his suspension or dismissal is regulated by Sub-section 12 and 13 of the Act and in no other manner. In other words, it is argued that though the High Court can lay down tests or requirements to be fulfilled by a person to entitle him to be admitted as a pleader, yet once these tests or requirements are fulfilled there can be no rules framed by the High Court suspending or dismissing him from practice while the certificate issued to him is in force, but the question of renewal of his certificate and the question whether he should be dismissed or suspended are questions which have to be dealt with under Sub-section 12 and 13 of the Act and that no rules can be framed by the

High Court of the nature of the Rules in question. It has been complained that the Rules, such as they are, lay down a restriction which is wholly unwarranted and contemplate an enquiry of an inquisitorial character which is to be deprecated. The contention in our opinion is not well founded. In the first place, it overlooks the words "proper" and "to be" appearing in Clause (a), Section 6. The former word implies that apart from educational and other qualifications that may be insisted on, there may be other conditions laid down in order to entitle a person to be admitted as a pleader; and the latter expression denotes that his continuance as a pleader may be made dependent on such conditions. A Pleader in conducting the litigation for which his services are requisitioned, has to do some administrative work arising out of the litigation in the offices of the Court and appears as advocate in the Court as well; in other words, he combines in his own person the two duties which are performed in England by Attorneys and Barristers: 15 Cal 638 In the matter of Khoda Bux Khan (1888) 15 Cal 638 And it is only in the fitness of things that the Court should be in a position to control his activities in such a way as would ensure the proper discharge of his duties as Pleader. Nextly, to give effect to the contention would land us in this absurdity, that even if a person fulfils all the requirements on the day that he is admitted, he may make himself thoroughly ineligible the next day and will continue with impunity to practise as a Pleader until the question of renewal of his certificate arises, which will ordinarily arise only at the expiry of each year and not oftener.

5. Moreover though Clause (f), Section 13 of the Act need not be read ejusdemgeneris with the other clauses of the section: *Le Mesurier v. Wajid Hossein* (1902) 29 Cal 890 *Sanker Ganesh v. Secretary of State* 1922 P C 351 and cases of moral turpitude unconnected with the discharge by a legal practitioner of his professional duty may come within the expression "any other reasonable cause," yet in the absence of definite rules to that effect, engagement in trade or business or other occupation, however derogatory to the dignity of the profession or detrimental to the discharge of the duties of a legal practitioner, would hardly come within the expression.

6. Rules restricting the liberties of Pleaders in this respect are dictated by public policy and are in one form or another, in force in some of the other provinces as well. As far as I have been able to ascertain there are such rules in Madras, Patna, N. W. Provinces, Punjab and the N. W. Frontier Provinces. And in the Madras Full Bench decision in *Muni Reddi v. Venkata Row* 1914 Mad 512 at pp. 257-258 some of the rules there in force are referred to. The new Rule 951 was framed with the object of softening the rigour of such rules as were in existence before, and it professes not to preclude Pleaders and Mukhtears while practising as such from holding any appointment or engaging themselves in any occupation, trade or business, unless such appointment, occupation, trade or business should appear to be derogatory to a practising member of the legal profession or is likely to interfere with the due discharge of his professional duties. The provision in the rule as regards previous notice to the Court is a provision evidently made for the benefit of the practitioner himself, so that he

may not be in a state of uncertainty as to what the consequences of his proposed action may be. I am clearly of opinion that the rule was entirely within the competence of the High Court to make. It has been contended next that Rule 953, corresponding to old and new Rule 29, in so far as it provides a penalty in the shape of a fine is ultra vires. It is obvious that this provision was also intended to operate for the benefit of the delinquent practitioner who under Rules 32 and 34 of 1884, was liable to suspension or dismissal. Though that is so, yet what we have to consider is whether such a provision is permissible. Section 6 of the Act enables the High Court to make rules consistent with the Act as to the suspension and dismissal of the Pleader (Clause (d)), and say nothing about imposing a penalty in the shape of a fine. "Fine" it is really not, though the word itself is used in the rule. It is, as stated in the notice, the imposition of a condition precedent, namely the payment of a sum of money, the fulfilment of which is demanded by the rule to enable the Pleader to resume his practice. It is also to be noted that there is no provision in the Act or anywhere else under which the amount may be realised, unless it is voluntarily paid by the Pleader himself. Even then, the question is whether it is competent to the High Court to impose a condition of this description by framing a rule under its powers u/s 6 of the Act. It has been argued on behalf of the Government that when Section 6 gives the High Court power to "make rules consistent with the Act as to the following matters (namely) "the suspension and dismissal" etc. it authorises the High Court to make a rule which has only this effect: that unless a certain condition namely as to the payment is complied with, the pleader remains suspended. This is a very ingenious argument and is perhaps the only way in which the provision can be sought to be justified. But the difficulty in accepting this argument is, in my opinion, overwhelming.

7. In the first place, call it by whatever name, it is to all intents and purposes a penalty for a breach of a rule and nothing else, and the intention is that on this payment the breach is to be condoned; and regarded in that light, it means to create an offence in the shape of a misconduct and provides for a penalty, which are unknown to the Act itself. Next, regarded as a condition, it is in my opinion, an unjustifiable and unreasonable one; because although the holding of an appointment or the engaging in an occupation, trade or business may be derogatory to the dignity of the profession or detrimental to the due discharge of professional duties and so may be justly punished with suspension or dismissal, it is impossible to think of mere omission to give previous notice of the fact that an employment would be accepted or an occupation, trade or business would be engaged in, however unexceptionable they may be in their character, would attract the operation of such a condition. Thirdly the enforcement of the rule would, in my opinion be impossible, in view of the provisions of the Act. I am of opinion that as regards a Pleader who holds a license to practise as such, no order of suspension or dismissal can be made except by the Court itself and except as a result of a judicial proceeding contemplated and provided for by the Act itself.

8. If it is a case of first enrolment or of renewal of certificate, the position is different, the administrative machinery of the Court being competent to deal with it in respect of any such cases as covered by the Act or the Rules. Possibly also in cases where the pleader himself applies for suspension the matter need not come before the Court as a judicial matter. But in cases of the present description, I do not see how an order of suspension or dismissal can be made otherwise than under Clause (f), Section 13 of the Act, and unless it be held that non-compliance with Rules framed by the Court in this respect is a misconduct and is a reasonable cause within the meaning of that clause. As observed by Hill, J., in the Full Bench decision of this Court in *Le Mesurier v. Wajid Hossein*, (1902) 29 Cal 890 there is no other machinery provided for the dismissal and suspension of pleaders and mukhtears than that which is prescribed by the Act. And it is perfectly clear that no imposition of a condition of the present nature, and nothing else than suspension or dismissal would be permissible under the Act itself. It follows, therefore, that such action as has to be taken cannot be taken as an administrative measure. In my judgment, therefore, for the breaches specified in the notice issued on the pleader, the only proceedings that may be taken against him are proceedings u/s 13, Clause (f) of the Act. The view I take receives support from the decision of the Full Bench in *Muni Reddi v. Venkata Row* 1914 Mad 512 in which it was held that a pleader who engages himself in a trade but does not intimate the same to the Court as required by a Rule framed by the Madras High Court is guilty of misconduct within the meaning of Section 13 of the Act.

9. We therefore come to the question of the merits of the case in order to have to consider whether any such proceedings should be taken. On the notice as issued such proceedings obviously cannot be taken. So far as the facts are concerned, it seems to me that old Rule 27 was violated because the pleader did not give the required notice on accepting office as Director to the Patuakhali Loan Office Limited on 22nd September 1929. The word "business" is quite a comprehensive word and it should be noted that the Rule does not speak of a business carried on for the benefit of the pleader himself. It is also clear, to my mind, that new Rule 27 was violated because no previous intimation to the Court was given by him as regards his appointment as Assistant Secretary to the said Loan Office which he took up on 3rd February 1935. So far as the former appointment is concerned, however, it does appear that there was a genuine doubt in the mind of the pleader as to whether by being a Director, he had entered into a business within the meaning of the Rule. And as regards the second appointment, it is clear upon the papers before us that this new Rule was not sufficiently known to the public at the relevant date and that the pleader, on coming to know of it, communicated with the Court as early as possible. I am unable to hold, therefore, that there was any such wilful violation of the Rules as would merit action under the Act. I am also of opinion that the pleader's connexion with the Loan Office, such as it is, is neither derogatory to the dignity of a practising lawyer nor likely to interfere with his duties as such to any

appreciable extent, and so no further action need be taken in respect of the matter. The notice issued on the pleader is discharged.

Lort-Williams, J.

10. I agree.

S.K. Ghose, J.

11. I am in agreement with the judgment of Mukherji, J., and I may add a few words with regard to the question whether Rule 953 corresponding to the old and new Rule 29, in so far as it prescribes a fine, is ultra vires. I have no doubt that the High Court has the power to make a Rule requiring a person, who has been admitted as a pleader or mukhtear, to notify the High Court of his intention to accept an engagement or engage himself in an occupation, trade, or business. Such a Rule is perfectly consistent with the Legal Practitioners' Act and comes under Clause (a), Section 6. The argument, that once a certificate has been issued u/s 7 the Court cannot do anything until the expiration of the period of the certificate does not impress me at all. It is for the Court to Judge whether a person is a "proper person to be " a pleader, &c., and this refers not merely to the time of admission, but also to the period of continuance as pleader i.e. the period of the certificate; otherwise "suspension and dismissal " would be meaningless. This is consistent with the decision of the Full Bench in *Le Mesurier v. Wajid Hossein*, (1902) 29 Cal 890 and so far as I know, it is in accordance with the rules made by other High Courts in India. If then the Court has the power to make a rule requiring a person, who has already been admitted as pleader, to give notice of his intention to engage in some other occupation, the Court surely has the power to enforce such a rule by providing a penalty. Otherwise a person wilfully omitting to give notice would be in no worse position than one giving notice. Section 13 provides for suspension and dismissal, and consistently therewith the Court may make rules under Clause (d), Section 6. Such rules would have the force of law and be enforced in a judicial proceeding. Omission to give notice may itself make the pleader liable u/s 13, as pointed out by Sankaran Nair, J., in *Muni Reddi v. Venkata Row* 1914 Mad 512 p 265

12. It is here that the provision as to fine in the new Rule 953 has troubled me. Apart from the fines prescribed by way of penalties under Chap. 7, Section 16 of the Act specifically empowers the Court to impose a fine for infringement of rules, and such fine may be recovered as if it had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction. This section relates only to mukhtears on the appellate side of the High Court. But in the case of pleaders, the provision as to fine is absent. No doubt under the Legal Practitioners' Act the Court acts in many matters in an administrative or disciplinary capacity as was pointed out by Dawson Miller, C. J., in *In Re: Miss Sudhansu Bala Hazra* 1922 Pat 603. In the connected case, 1 Pat 104 In the matter of *Miss Sudhansu Bala Hazra* 1922 Pat 269 p 138 it was pointed out that proceedings relating to the admission of pleaders are administrative and not

judicial. In the rules on the appellate side of this Court, vide Rule 6 (d), the Judge in the English Department is empowered to pass orders on applications and routine, references connected with the admission and enrolment of pleaders and muktears. But the imposition of a fine cannot be administrative and the fine prescribed by Rule 953 cannot be realised as a fine imposed by the Court in a judicial proceeding. By that rule it was apparently intended that the fine would be imposed by the Court acting administratively, and further that it should provide an alternative to the more rigorous penalty of suspension or dismissal. There is however no process by which the fine can be realised, except as a voluntary payment. The Registrar in his letter dated 20th August 1933 speaks of it as a condition precedent to the pleader being allowed to practise. But it seems to me that an alternative to suspension and dismissal by way of penalty is not provided for in the Act and would not be consistent with its provisions. In fact Rule 953, as it stands, speaks of the fine as a liability in addition to the liability to suspension or dismissal. Both liabilities would have to be enforced by the same authority, viz. by the Court in a judicial proceeding. Since the fine cannot be imposed as a judicial fine it seems to me that the provision relating to it is ultra vires.