

(1942) 03 MAD CK 0046
In the Madras High Court

In Re: The enrolment of C. Krishnaswami Chittoor Krishnaswami

Date of Decision : 04-03-1942

Acts Referred:

Citation : (1942) 55 LW 327 : (1942) 1 MLJ 599

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioner who is an advocate of the Rangoon High Court applies for enrolment as an advocate of

this Court. He is an Indian and was born in Madras, but hitherto he has only practised in Burma, As the result of the invasion of Burma by "the

Japanese he has returned to the land of his birth and wishes to practise his profession here. The petitioner holds the degree of bachelor of arts and

the degree of bachelor of laws of the University of Rangoon and it was on these qualification's that he was enrolled as an advocate of the Rangoon

High Court some seventeen years ago.

2. When the Indian Bar Councils Act, 1926, came into force Burma was a Province of British India and remained part of British India until the

Government of India Act, 1935, came into operation on the 1st April, 1937. Until the separation took place the Rangoon High Court was a High

Court within the meaning of the Bar Councils Act, but as the result of the separation the Act no longer applies to it. Section 8 (1) states that no

person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained

under the Act. Sub-section (2) says that the High Court shall prepare and maintain a roll of advocates 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 the section came into force; and (b) all other persons who have been admitted to be advocates of the High Court under the Act. There is a proviso to this section to the effect that such persons shall have paid in respect of enrolment the stamp fee 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. The rules, of the Bar Council of Madras prescribe a fee of Rs. 50 "in other cases". Article 30 of the Indian Stamp Act requires a person on enrolment as an advocate of an Indian High Court to pay a stamp fee of Rs. 500. On enrolment in the Rangoon High Court the petitioner paid the Rs. 500 and he has now paid the Rs. 50 required by the rules of the Madras Bar Council. He asks to be enrolled as an advocate of this Court as the result of a resolution of the Madras Bar Council passed under the proviso to Rule 16, recommending exemption from strict compliance with its rules. He maintains that if he is enrolled no further stamp fee is necessary.

3. Rule 1 (i) of the Madras Bar Council Rules provides that a person who has taken the degree of bachelor of laws of any of the Universities established by law in British India or taken a degree in law of any other university which the Bar Council may by general or special order accept as equivalent to that degree, be admitted as an advocate of this Court. R. 3 requires a person applying for admission under Rule 1 (i) to have studied as a pupil in the chambers of an advocate practising in the Madras High Court or in one of the district centres specified and requires him also to have passed the examination prescribed by Rule 22; or to have practised as a pleader in the Court of a District or a Subordinate Judge in the Presidency or in one of certain specified Courts outside the Presidency for a period of not less than five years immediately preceding the date of Ms application; or to have practised as a pleader for not less than ten years in any other Court; or to have presided as a Judge of a Civil Court in the Presidency for a period of not less than five years immediately preceding the date of his application.

4. Rule 1 (ii) states that an advocate entered on the roll of advocates of a High Court established by Letters Patent other than the High Court of

Madras may be enrolled as an advocate provided that there is reciprocity in this respect between the High Court in which the applicant has been

enrolled and this Court. The petitioner cannot claim admission under Rule 1 (ii) because the Rangoon High Court has never reciprocated with this

Court or in fact with any other Court in British India.

5. Having obtained the law degree of the Rangoon University at a time when that University was a University established by law in British India the

petitioner can claim admission under Rule 1 (i), but in that case Rule 3 comes into operation and naturally having practised as an advocate in the

Rangoon High Court for seventeen years he does not wish to study as a pupil in the chambers, of an advocate of this Court for a period of twelve

months. Consequently the petitioner has to rely on the proviso to Rule 16. That proviso is to the effect that the Bar Council may in special cases,

for reasons to be recorded by it recommend to the High Court for exemption a candidate not complying with all or any of the requirements of the

rules and that on such exemption being granted, he shall be deemed to have complied with the rules. The Madras Bar Council has considered the

petitioner's case and has recommended to this Court that he be enrolled without the necessity of complying with the requirements of its rules. We

agree with the Bar Council that this is a fit case for granting an exemption and we direct that the petitioner be enrolled as an advocate of this Court.

6. There remains to be considered the question whether the petitioner is required to pay the stamp fee referred to in Article 30 of the Indian Stamp

Act. That Article exempts an advocate who has already paid the required fee on enrolment in a High Court from payment of it when, he is enrolled

in another High Court. The term "High Court" of course must be deemed to be a High Court established in British India. The Rangoon High Court

can no longer be regarded as an Indian High Court, but it had that status when the petitioner was enrolled, and as he paid the fee required by the

Indian Stamp Act on that occasion we consider that he comes within the exemption contained in the Article. Consequently the petitioner will be

enrolled without the payment of any further fee.