

(1928) 06 AHC CK 0004
In the Allahabad High Court
In Re: Vakil of Azamgarh

Date of Decision : 25-06-1928

Acts Referred:

Citation : AIR 1928 All 439 : (1929) ILR (All) 76

Judgement

1. In this case what purported on the face of it to be a notice to Madho Prasad Khanna, Vakil of Azamgarh, was issued from this Court purporting to call on him to show cause why he should not be dealt with under the Legal Practitioners Act in that he was guilty of professional misconduct in respect of certain facts which were then set out. The notice was dated 13th June 1928.

2. The reference to the Legal Practitioners Act, while it is an error, is not an error of any material importance. The Court apart from another objection that has been taken, would have had power to deal with Madho Prasad Khanna u/s 8, Letters Patent.

3. Another objection has, however, been taken which goes to the root of the matter. The Bar Councils Act, 38 of 1926, received the assent of the Governor-General on 9th September 1926. By Section 1, Sub-section (3) it was provided that Section 1 and Sections 2, 17, 18 and 19 should come into force at once; while the rest of the Act or any portion thereof should come into force in respect of any High Court upon such date as the Governor-General in Council might by notification in the Gazette of India determine. By the notification published in the Government of India Gazette, Part 1, p. 400, dated 7th April 1928, the Governor-General in Council notified 1st June 1928 as the date on which the rest of the Act. was to come into force for the purposes of the High Court. By that notification, then, Section 8 came into force as and from 1st June 1928, and the roll required by Section 8, Sub-section (2) was prepared and persons entered on that roll whatever may have been their status before, became advocates of the Court by virtue of Section 2, Clause (a). By Section 19, Sub-section (2) of the Act, which actually came into force by virtue of its own provisions at the same time as Section 8, though it is declared by Section 1, Sub-section (2) that it should come into force at once, the provisions of the Letters Patent in so far as

they may conflict with the provisions of the Act were abrogated and the new procedure detailed in Section 10 of Act 38 of 1926 came into force.

4. The result is that as and from 1st June 1928 the procedure by which an advocate can be called upon to answer for misconduct is governed by Section 10 and the following sections. To proceed u/s 10 the High Court is required by Sub-section (2) of that section, if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council or after consultation with the Bar Council to refer it to the Court of a District Judge. Similar powers of reference are given where the Court, instead of acting, on a complaint acts on its own motion. But in either event it is necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted.

5. It appears, therefore, that this Court is not at present at any rate properly seised of the case and had no jurisdiction to proceed with it. We therefore refrain from saying anything further than that the Court is not properly seised of the case and that the notice issued to Madho Prasad Khanna to show cause is, as framed, ultra vires and a nullity. It will be for the High Court to decide whether further action should be taken u/s 10, Bar Councils Act.