
(1932) 03 BOM CK 0004

In the Bombay High Court

Case No : Civil Revision Application No. 123 of 1930

Maganbhai Nathabhai

APPELLANT

Vs

Dinkarrao N. Desai

RESPONDENT

Date of Decision : 04-03-1932

Acts Referred:

Government of India Act, 1915 — Section 107
Legal Practitioners Act, 1879 — Section 36

Citation : AIR 1932 Bom 596 : (1932) 34 BOMLR 1281 : (1932) ILR (Bom) 577 : 140 Ind. Cas. 553

Hon'ble Judges : Rangnekar, J

Bench : Single Bench

Judgement

Rangnekar, J.—This is an application by one Maganlal Nathabhai who was declared to be a tout by the District Judge of Broach u/s 36 of the Legal Practitioners Act, 1879. He questions the correctness and the validity of the order made against him. On a preliminary objection raised as to whether an application would lie or not, I have held that this Court can entertain the application under its general power of superintendence over all Courts subject to its appellate jurisdiction under s 107 of the Government of India Act. The record is now before me and the application is fully argued on the merits,

2. Mr. Mody for the applicant has urged the following points : (1) That there was no meeting as such of the Bar Association as required by Section 36 ; (2) that in any event the meeting was not specially convened for the purpose of passing a resolution declaring the applicant to be a tout as required by Section 36(1) read with the Explanation thereto; (3) that the resolution is the only evidence against the applicant, and it does not comply with the provisions of the section; and (4) that no proper notice required by that section was given to his client

3. The proceedings were initiated against the applicant by a letter written by one Dahyabhai Antoldas, a pleader of Broach, to the secretaries of the Broach District Bar Association. In that letter (he pleader requested that a meeting of the

managing committee of the Association should be called to consider a proposal forwarded by him with his letter. The material portion of the proposal runs as follows :-

1. (a) This Association authorises the President to take steps to get Magan Natha and such others who work like him declared touts,

* * * (d) This Association authorises the President to request the District Judge to cancel the name of Magan Natha from the list of the pleaders' clerks.

4. Whether a meeting of the managing committee was held or not and whether the managing committee resolved to call a meeting of the Bar Association or not is not clear on the record. But the next material document is the circular dated April 15, 1929, issued by the Secretaries of the Association, and the relevant portion of that circular is as follows:

A general meeting of the Broach District Bar Association will be held in the Bar Library on Monday April 22, 1929, at 3 p. m. when the following matters will be placed before the meeting for general discussion ; and resolutions regarding these matters will be passed at the meeting.

There are seven items mentioned in the circular, which, according to it, consisted of the proposals received from the members and were to be considered at the meeting, such as election of the members of the managing committee, system of receiving process fees and subsistence allowance, appointment of members of the Bar as commissioners and receivers request to the authorities to post more efficient officers in the Broach District, application to the High Court to direct Sub-Divisional Magistrates to hear complaints in Taluka towns, and an application to the Government of Bombay to appoint Resident Magistrates instead of Sub-Divisional Magistrates. Item 2 runs thus:-

Letter dated April 7, 1919, received from Mr. Dahyahhai Antoldas Vakil regarding necessary steps to be taken by the Bar Association against certain persons working as touts in the Court premises will be put before the meeting for general discussion and passing resolutions.

5. It is not clear on the record whether along with the circular any letters were Bent. But it seems to me that if the letters referring to the various items had been circulated, there would have been some mention of it in the circular. This circular was received by only fifteen members who have signed against their names, and it is not disputed that it was not received by eleven members against whose names there are no signatures.

6. The meeting could not be held on the day appointed, and therefore another circular was issued on April 23, 1929. That circular runs as follows :-

The general meeting of the members of the Broach District Bar Association will be held in the Bar Library on Thursday April 26, 1929, at 3 p. m. to consider the proposals embodied in circular dated April 15, 1329, and to pass resolutions

regarding those proposals.

Then there is a note that " Every member is requested to put his signature on this circular after reading it." This circular seems to have been received by all the members except three. Neither the first circular accompanied it nor the letter of Dahyabhai Antoldas was sent with it.

7. On April 25, 1929, a meeting was held, and the following resolution was passed;-

It be brought to the notice of the District Judge that Magan Natha is acting as a clerk of more than one pleader and is otherwise reputed to be a tout and a person undesirable to be allowed to enter the precincts of the Courts at Broach. This Association also firmly believes that he is in the habit of canvassing and fomenting litigation. It is therefore desirable in the opinion of this Association that early measures should be taken to strike off his name from the list of pleaders clerks and he may be prohibited from entering the Court's precincts and handling Court's records.

Thereafter the President wrote to the District Judge requesting him to take action in the matter of the applicant, a notice was issued to the applicant, and he put in a written statement. Relying upon the resolution the learned District Judge declared the applicant to be a tout.

8. Section 36(1) of the Legal Practitioners Act provides (omitting unnecessary words) that the District Judge may frame and publish a list of persons proved to his satisfaction, by evidence of general repute or otherwise, habitually to act as touts. The Explanation to the Sub-section is important. It runs as follows:-

The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this Sub-section.

It is clear from Sub-section (1) that the jurisdiction to declare a person to be a tout depends upon evidence of general repute or other evidence showing that he is habitually acting as a tout. Now this fact is ordinarily difficult of proof. The statute, therefore, modifies the ordinary rules of evidence and lays down that evidence of general repute is all that matters and is sufficient for the District Judge to act upon. Now the explanation shows that there are at least three important conditions which have to be fulfilled before the District Judge can act upon the resolution. (1) That there must be a meeting of an association of persons entitled to practice as legal practitioners in the Court, (2) a resolution declaring a person to be a tout must be passed by a majority of the legal practitioners present at the meeting, and (3) that the meeting must be specially convened for that purpose. It is only when these conditions are fulfilled that the District Judge is entitled to admit the resolution as evidence of the general

repute of the person concerned and to act upon it under the section.

9. Now proceedings u/s 36(2A) are in my opinion proceedings of a quasi criminal nature. No authority is necessary for that proposition, and I, therefore, do not refer to the rulings, relied upon by Mr. Mody on this point. An order declaring a person to be a tout is one which very seriously affects his character and living. It is all the more incumbent upon the District Judge to satisfy himself that the conditions laid down by the section for the admissibility of a resolution of this nature are duly fulfilled and satisfied.

10. It is difficult, in my opinion, to hold on the facts in this case that the resolution which was accepted by the learned Judge as evidence of general reputation was passed at a meeting specially convened for the purpose of declaring the applicant to be a tout, and that really puts an end to this matter. In this view, it is not necessary for me to express any opinion on the question whether the meeting in question was properly convened or whether the resolution actually passed can be said to be a resolution "declaring a person to be a tout" within the meaning of the Explanation to Section 36(1) of the Act, though I am not prepared to deny that there is considerable force in Mr. Mody's argument in this respect. In my opinion, the Explanation requires that the meeting should have been properly convened and that the object for which it was called duly notified to all the members of the Bar Association. It also requires that the resolution should expressly declare the person implicated to be a tout.

11. The Government Pleader who is supported by Mr. Thakor says that the only grievance made by the applicant was that all the pleaders were not parties to this resolution, and that the applicant did not raise the question which he has now raised through his advocate. One answer to this is that the applicant can never be in a position to attack the validity of the proceedings until at any rate the proceedings are made available to him. It is only when the resolution is admitted as evidence of general reputation that he is called upon to answer it. Up to that moment, it is for the Court or for those who initiate the proceedings to satisfy the Court that the conditions laid down in the Explanation to Section 36(1) were duly observed.

12. In this view, therefore, the rule must be made absolute and the order made against the applicant set aside. There will be no order as to costs.