

(1970) 10 RAJ CK 0010
In the Rajasthan High Court
Case No : Special Appeal No. 241 of 1970

Mishrilal

APPELLANT

Vs

District Judge, Jodhpur and Others

RESPONDENT

Date of Decision : 28-10-1970

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5)
Legal Practitioners Act, 1879 — Section 36, 36(1), 36(2A), 36(4)
Rajasthan High Court Ordinance, 1949 — Section 18

Citation : AIR 1971 Raj 247 : (1971) RLW 70 : (1970) 3 WLN 550

Hon'ble Judges : L.S. Mehta, J;B.P. Beri, J

Bench : Division Bench

Advocate : J.S. Saluja, as and intervener, Mangharam, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Beri, J.—This is a special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949, directed against the rejection in limine of a civil writ petition by a learned single Judge of this Court In a matter relating to the declaration of the petitioner as a tout u/s 36 of the Legal Practitioners Act, 1879.

2. The petitioner is a citizen of India and claimed to be employed as a clerk to an Advocate at Jodhpur. Mr. O. C. Chatterji, Advocate and 14 others made an application to the District Judge, Jodhpur, that some 8 named persons be declared as touts. The petitioner was not included in that list. The learned District Judge acting u/s 36(2A) of the Legal Practitioners Act, 1879 asked the Civil Judge, Jodhpur, to inquire into the matter and report. During the pendency of this inquiry the allegations against the 8 persons named by Mr. Chatterji received the consideration of the Rajasthan High Court Advocates Association, Jodhpur. The Association appointed a Sub-Committee and it not only found that the 8 persons mentioned by Mr. Chatterji were touts by general repute but two more including the petitioner were also touts. On 18-5-1968 the Advocates Association

passed a resolution including the name of the petitioner as a tout by general repute and sent the same to the District Judge, Jodhpur, who in turn sent the resolution and asked the Civil Judge to make inquiry also in regard to the petitioner. The Civil Judge submitted his report to the District Judge, which was received by him on 3rd November, 1969. The petitioner was not declared as a tout by the Civil Judge but the District Judge issued a notice to the petitioner to show cause why he be not declared as a tout. The petitioner appeared with his counsel and argued his case before the District Judge urging that he was not a tout. The learned District Judge, however, on the basis of the material before him on 26th March, 1970 declared the petitioner to be a tout under the Legal Practitioners Act, 1879 and included his name in the list which was ordered to be hung in his Court and Courts subordinate to it. The petitioner was further excluded "from the precincts of the Courts."

3. Challenging the order of the District Judge, Jodhpur, the petitioner submitted S. B. Civil writ petition No. 1116 of 1970, which a learned Single Judge of this Court rejected summarily on 15-6-1970, It is against his order that the present appeal has been preferred.

4. We have heard the learned counsel for the petitioner, the Advocate for the High Court Advocates Association and Mr. Saluja as intervener.

5. Learned counsel for the petitioner urged that the inquiry Court, namely, the Civil Judge, Jodhpur having exonerated the petitioner from the accusation of his being a tout the District Judge had no jurisdiction in law to re-open the question and to declare the petitioner a tout. He placed reliance on a decision of the Allahabad High Court in Kapoor Chand Jain Vs. Emperor , and a decision of the Lahore High Court in Fakir Chand v. Emperor. AIR 1930 Lah 405.

6. In order to appreciate the contention of the learned counsel it is necessary to notice the material part of Section 36 of the Legal Practitioners Act, which reads :--

"36. Power to frame and publish lists of touts. (1) Every High Court, District Judge, Sessions Judge. District Magistrate and Presidency Magistrate, every revenue officer, not being below the rank of a Collector of a district, and the Chief Justice of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, or to the satisfaction of any subordinate Court as provided in Sub-section (2A) by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

.....

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(2A) Any authority empowered under Sub-section (1) to frame and publish a list

of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in Sub-section (2), shall report to the authority which has ordered the Inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority :

Provided that such authority shall hear any such person who. before his name has been so included, appears before it and desires to be heard.

....."

7. The superior courts mentioned in Sub-section (1) of Section 36. hereinafter called "the Authority", is empowered either to declare a person to be a tout or to send the name to a court subordinate to it for inquiry and report. Upon receipt of the report the Authority "may include the name of any such person in the list of the touts framed and published by that authority." Learned counsel's argument is that once the Authority delegates the inquiry to a subordinate court the Authority becomes powerless to declare any person as a tout unless his name has been reported to it for such purpose by the subordinate court. This interpretation, in our opinion, is incorrect. The legislature has empowered the Authority in the interest of convenience for making the investigation. When the report is submitted by the subordinate court the Authority has power to include the name of any such person in the list of touts as the subordinate court recommends to it or decline to do so. The Authority envisaged by Section 36(1), in our opinion, does not exhaust its power after delegating the enquiry to the subordinate court. The Authority still retains the power to either accept or reject or modify the report submitted to it. The words "that Authority may include the name of any such person" is an empowering clause conferring a power and an obligation to act and thereby attain the purposes which the Legal Practitioners Act aims to serve. The Authority is not merely a conduit pipe to receive the report and declare the result. It has an implied power of accepting, rejecting or modifying the report of the subordinate Court.

We are fortified in this interpretation of ours by the maxim of "*quando lex aliquid alicui concedit conceditur et id sine quo res ipsa esse non potest*" (whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect). Whenever anything is authorised and more so as a matter of duty then although something has not been authorised in express terms then that something will be supplied by necessary intendment. The subordinate Court is not empowered to finalise the list. It is only the Authority which has been empowered to declare persons as touts. If it has a right to declare, as it undoubtedly has, then it has a right to differ from the report submitted by the subordinate Court. The sole purpose of Sub-section (2A) of Section 36 is to

advance the convenience of the Authority to relieve itself, if it so likes, from the burden of recording the evidence. Sometimes it advances the convenience of the person suspected be-cause it is easier to obtain and lead evidence in the locality,

8. At first sight Kapoor Chand Jain Vs. Emperor seems to support the learned counsel wherein the District Magistrate had entrusted the inquiry to a Joint Magistrate under him who exonerated one K from the accusation of his being a tout. The learned Judges observed: "It is, therefore, quite clear that if the enquiry is entrusted to a subordinate Court it is the subordinate Court which must be satisfied that the person is proved to be a tout. If that authority is not satisfied and does not send up his name, the superior authority which itself made no enquiries cannot include the name of a person who has not been so recommended."

The learned Judges have further observed that the District Magistrate did not give to the petitioner any opportunity to appear and show cause when the report of the Joint Magistrate was in his favour. This decision, in our opinion, is distinguishable on the ground that the District Judge, Jodhpur, in our case did issue a notice to the petitioner to show cause and heard the petitioner before declaring him as a tout. This he did on the 10th December. 1969. He heard the counsel for the petitioner, examined the record including the resolution of the Bar Association and came to the conclusion, that he ought to be declared as a tout. The District Magistrate in the Allahabad High Court Kapoor Chand Jain Vs. Emperor had given no such opportunity. In the Allahabad case District Magistrate himself made no inquiry. The word "inquiry" in the circumstances of the case does not necessarily imply the ritual of repeating the recording of evidence but of applying the mind to the evidence already recorded by the subordinate Court. We are in agreement with the view taken by the learned Judges of the Allahabad High Court that the Authority should not make an adverse order against an individual contrary to the report of the subordinate Court without giving him an opportunity. We are, however, not prepared to agree with great respect with the learned Judges if they are interpreted to say that the appointing authority cannot take a contrary decision unless it holds another inquiry without recording evidence.

9. The Lahore case AIR 1930 Lah 405, is wholly distinguishable. There the allegations against the person named was merely that he was an undesirable man and not a tout and does not help to resolve the controversy before us.

10. The learned counsel for the petitioner then urged that even assuming that the learned District Judge had power to modify the recommendations of the Civil Judge the petitioner was misled by the notice served on him. We have gone through the notice. It is addressed to the petitioner and he is told to appear before the District Judge on January 13, 1970 at 10.30 A. M. and to show cause, if any why his name should not be included in the list of touts. This is a clear indication to the petitioner that the District Judge intended to modify the report of the Civil Judge and to Include his name in the list of the touts. The petitioner

appeared not alone but with his counsel and as the order of the District Judge shows that the arguments advanced on his behalf were considered and rejected. No principle of natural justice, in our opinion, is offended either by the language of the notice or otherwise. The grievance of the learned counsel that the petitioner was misled is, therefore, without merit.

11. The learned counsel further submitted that the resolution passed by the Rajasthan High Court Advocates Association on 18th May, 1968, did not fulfil the requirements of the Explanation to Section 36(1). It reads:--

"Explanation -- 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."

The learned counsel's argument based on *Chimanlal Bhogilal Singh and Another Vs. Pandurao Bhailal Desai and Another*, is that the notice issued by the Bar Association for holding the meeting did not specify the name of the person who was sought to be declared as a tout. It is correct that *Chimanlal Bhogilal Singh and Another Vs. Pandurao Bhailal Desai and Another*, supports the contention of the learned counsel. With great respect, we are unable to agree with this decision. The requirements of the Explanation Indicated above are that a resolution of the Bar Association before it becomes evidence of general repute of a person being a tout must be passed (a) by a majority of members present at the meeting, (b) that the meeting must be specially convened for the purpose, and (c) that it must be a meeting of the association of persons entitled to practise as legal practitioners in any Court or revenue office. We have already noticed that the name of the petitioner first came before the Sub-Committee constituted by the Rajasthan High Court Advocates Association to consider the names of 8 persons as touts. This special Sub-Committee recommended to the general body the name of the petitioner as one of the additional names to be declared as a tout. The Secretary of the Bar Association issued a general notice on the 8th May, 1968, inter alia stating that a special general meeting will be held on 18-5-1968 at 9-30 A.M. in the Bar Association. The members were requested to make it a point to attend. The purpose of the meeting, the notice indicates, was to consider the report submitted by the Sub-Committee constituted by the Association in regard to toutism. It was notified that the aforesaid report was available with the Secretary and could be inspected at any time and further a copy of the report was also attached to the notice. The notice indicated that u/s 36 of the Legal Practitioners Act before a resolution could be passed about holding the named persons in the report as touts, such a meeting was necessary. The notice was individually served on every member. In our opinion this is a sufficient compliance with the requirements of the law. It was an exhaustive notice giving every particular regarding the business of the meeting, the time and place of the meeting and the opportunity to the members to

acquaint themselves with the names, if they so cared, because the report was available with the Secretary and was attached to the notice. It was not necessary to specifically name the person who was to be considered for being named as a tout in the notice. When the members of the Bar Association whose learned profession qualifies them to protect the rights of others are notified to attend a meeting on such a subject it is reasonable to presume that they would be alive to their responsibility and would apply their minds before condemning any person to be a tout. The notice, therefore, suffered from no inadequacy.

12. The learned counsel also submitted that the resolution of the Bar Association stood amply rebutted by the evidence led by the petitioner. This is a question of appreciation of evidence and sitting in a special appeal in our extraordinary jurisdiction we see no reason to disturb a finding of fact.

13. Another grievance of the petitioner was that the order passed by the District Judge excluding the petitioner from entering Courts was ultra vires in as much as it offended Article 19(1)(d) of the Constitution of India. In our opinion. Section 36 provides a reasonable restriction in the interest of general public. The intention in excluding touts from the precincts of courts is designed to eliminate from the temples of justice people who exploit the seekers of justice by diverting them to quarters from which they expect monetary gain regardless of merit. The profit motive of a tout has a tendency to add to the financial burden of a citizen in reaching a lawyer and he; thus makes justice more expensive. Ordinarily it is the unwary and the ignorant who are exploited. Touts may undermine the reputation of good lawyers and inflate the reputation of others. Their exclusion from Courts is a step towards public welfare. It is, therefore, saved by the reasonable restrictions envisaged by Article 19 of the Constitution of India itself. Reference in this connections may be, made to In the matter of In Re: Phool Din and Others,

14. The next argument of the learned counsel is that having regard to the location of Courts in the city of Jodhpur where the State Bank of India and other offices abut the, court build-ings, the expression "precincts of the courts" as employed in the order of the District Judge dated 26th March, 1970 is likely to work hardship on the petitioner and expose him to the penal consequences on account of other public offices being located near the Courts. The District Judge in his order has merely employed the language of Sub-section (4) of Section 36 "from the precincts of the courts". The dictionary meaning of the word "precinct" is "a part of a territory (as a city) having definite bounds or functions often established for administrative purposes." The second meaning of the word according to the Webster's Third New International Dictionary, 1966 Edition page 1784 is "an enclosure bounded by walls or other limits of a building or place or by an imaginary line around it." In the circumstances of this case, because within the large enclosure there are so many offices situated, which are not all Courts, it could not have been the intention of the learned District Judge's order to exclude the petitioner from offices other than Courts. A reasonable interpretation

would appear to be that the petitioner is excluded from the Court premises of all Courts subordinate to the District Judge and including his own Court. We agree with the learned counsel for the petitioner that the District Judge could have only excluded the petitioner from his Court the Courts subordinate to it and not for instance from the High Court which is not subordinate to him. There are two decisions which support the learned counsel for the petitioner and we are in agreement with those decisions that the District Judge is only empowered to exclude a person as a tout from his Court and Courts subordinate to it. They are *Bahu Sahib v. District Judge of Madura*. ILR (1903) 26 MP 596 and *Jagat Chandra Ghose v. Emperor* AIR 1023 Cal 484.

15. The net result is that the order of the learned District Judge has merely restrained the petitioner from the premises of the Court of the District Judge. Jodhpur, and all Courts subordinate to it and he is not excluded from proceeding to buildings which do not fall in the aforesaid category. With these observations, we dismiss this appeal and leave the parties to bear their own costs.