

(1980) 04 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 58 of 1979

Mohan Lal

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 22-04-1980

Acts Referred:

Himachal Pradesh Document Writers Licensing Rules, 1971 — Rule 4, 7, 9
Penal Code, 1860 (IPC) — Section 182

Citation : (1980) 9 ILR HP 91

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Kamlesh Sharma, for the Appellant; A.K. Chopra, General, for the Respondent

Final Decision : Allowed

Judgement

V.D. Misra, C.J.—The Petitioner is a matriculate. He wants to practise as a Document Writer in the District of Sirmur. For that he needs a licence under the Himachal Pradesh Document Writers Licensing Rules, 1971 (referred to as the Rules). Unless a document is written by a licensed document writer, it will not be accepted by the Registering Officer of documents. The Rules require a person to pass an examination before he can be granted the licence. The Petitioner deposited the requisite fee and the testimonials with the Licensing Authority, that is, the Registrar of Registration, District Sirmur. The application was accepted and entered in the register maintained for that purpose. 25th May, 1978, was notified as the date of the special examination for issuing fresh licences. The Petitioner was allowed to appear. But his result was with-held. On 24th October, 1978, the Petitioner received a Memo, dated 17th October, 1978, from the Inspector General of Registration, Himachal Pradesh (Respondent No. 2) informing the Petitioner that his result has not been declared because he was not eligible to be a candidate for the examination and that his name was wrongly sent by the Registrar of Registration (Respondent No. 3). The Petitioner challenges the decision of the Respondents declaring the Petitioner disqualified to

take the examination.

2. Rule 4 lays down the disqualifications of a person to become a document writer. One of the disqualifications is the conviction of an offence involving moral turpitude. The relevant part of this rule reads:

4. No person shall be eligible for being licensed as a document-writer or, if licensed, to continue as a document writer, if such person

(f) has been convicted of any offence involving moral turpitude;

A person desirous of taking the examination is required to submit an application giving informations required under Rule 7. One of the informations required from an applicant is:

"Whether the applicant was ever convicted of any offence involving moral turpitude?" The application submitted by a candidate is scrutinized by the Licencing Authority (Rule 9). In case the applicant is found ineligible for obtaining a licence under Rule 4 the Licencing Authority may reject the application. The rules require that names of the applicants, whose applications have been accepted, be entered in the register maintained by the Licencing Authority. These applicants are entitled to sit in the examination the syllabus of which is prescribed under Rule 9. The result of the examination is to be notified in the official gazette and in one of the daily newspapers having wide publicity in the State. After the publication of the result, the Inspector General of Registration is required to prepare a merit list in respect of each registration district containing the names of candidates of that district.

3. How the Petitioner had once been convicted under the Opium Act. This conviction is of 1961. He was found in possession of opium. He was sentenced to imprisonment for one month and a fine of Rs. 200/-. This fact he has mentioned in his application. The Petitioner states in his affidavit that he had met Respondent No. 3 and explained to him the circumstances in which he was convicted. It is further stated that Respondent No. 3 after verifying the facts from the police station Nahan, asked the Petitioner to submit a certificate of his moral character from the President of Municipal Committee, Nahan, District Sirmur. The Petitioner, therefore, obtained a certificate of good moral character on 28th November, 1977, from the President, and submitted it to Respondent No. 3.

4. Counter affidavit has been filed by Respondent No. 2 on behalf of all the Respondents. It is not specifically denied that the Petitioner had explained the circumstances to Respondent No. 3. Respondent No. 3 has not cared to file his affidavit. Only he could contradict this specific allegation. Whenever a Petitioner alleges a fact within the knowledge of a particular Respondent it is the duty of this Respondent to file an affidavit in reply either denying or accepting or giving his own version of that fact. In case the Respondent chooses to remain silent, it has to be presumed that the Petitioner's allegations are correct.

5. In the instant case it may be noticed that not only Respondent No. 3 has not cared to deny the Petitioner's allegations, but it is also admitted that the Petitioner did submit a certificate of good moral character issued by the President. Respondent No. 2 admits that he had directed Respondent No. 3 to verify the character and antecedents of the Petitioner. Respondent No. 3 whose duty was to scrutinize the application and had a discretion to reject it, found that the applicant was not disqualified from taking the examination. The name of the applicant was, therefore, brought on the requisite register and he was allowed to sit in the examination.

6. It is true that in the return Respondents deny that Respondent No. 3 had satisfied himself about the eligibility of the Petitioner to sit in the examination and to obtain a licence to practice as a document-writer. But then how can Respondent No. 2 deny that Respondent No. 3 did not satisfy himself about the eligibility of the Petitioner. The satisfaction was that of Respondent No. 3 and only he could say about his satisfaction. It may be recalled that Respondent No. 2 dare not deny that the name of the Petitioner was entered on the requisite register maintained by Respondent No. 2. However, it is stated that the entries made in this register are signed by one Vijay Sehgal, General Assistant to the Deputy Commissioner, Sirmur (Respondent No. 3). It is further stated by the Respondent No. 2 that Vijay Sehgal, who had signed for and on behalf of Respondent No. 3, had no authority to do so. Again, though admittedly Vijay Sehgal was not the Licensing Authority yet the circumstances under which he came to sign the register for and on behalf of the Licensing Authority could only be explained by the latter or Vijay Sehgal. Their affidavits have not been placed on record. There is thus no reason to hold that the name of the Petitioner was not brought on the register by Respondent No. 3.

7. The Respondents having decided that the conviction of the Petitioner under the Opium Act in 1961 was not a disqualification in terms of Clause (f) of Rule 4 and having allowed him to take the examination, cannot now turn round and disqualify him on the same ground. The Petitioner, to say the least, was entitled to an opportunity of being heard before the decision was changed. Admittedly no such opportunity was granted to the Petitioner. In these circumstances the decision of Respondents to declare the Petitioner disqualified has to be struck down.

8. Miss Kamlesh Sharma also contends that the Petitioner has not been convicted of an offence involving moral turpitude. It is further contended that in any event the Petitioner's conviction in 1961 cannot eclipse his career for ever. In this connection the instructions issued by the Government, in Ministry of Finance Notification No. F-2/II/56-Est. B, dated 1-12-1956, are referred to. These are to the effect that if the conduct of a convict remains satisfactory for a reasonable period, his conviction will not be bar for his re-employment. The contention of the Respondents is that the case of the Petitioner is not one of re-employment and so these instructions are irrelevant.

9. What is an offence involving moral turpitude? Indeed, what is moral turpitude? It is a base or depraved act not conforming to right conduct or its principles. But what is a right conduct and what are its principles? It is not possible to lay down any hard and fast rules about it. Ideas of morality keep on changing from time to time and from place to place. These also depend on the society in which one finds for the time being. What is a done thing in one place may be the most objectionable in another place. A few examples maybe noticed. Patting the bottoms of girls in a European country is appreciated but it amounts to an offence in England. Till the other day homosexuality was a serious offence in the United Kingdom but it is not to any more. Nearer home, there is nothing wrong for a woman to have more than one husband in the District of Kinnaur, but it is not only highly immoral but is a serious offence in the other parts of the State of Himachal Pradesh. A Hindu male could have more than one wife before 1950. Indeed, it was considered respectable. Now it is an offence. It is looked down upon.

10. Take the case of drinking liquor. Drinking in public was the fashion of the day. Tea-totallers were laughed at and even called uncivilized. The upper crust of the society went to the extent of laying down that "Work is the ruin of drinking classes." Since then many ups and downs have been witnessed. Prohibitions have readily been enforced and more readily scrapped. No one knows what does the society want. Same is the case with regard to "obscenity". The society changes and so do its values. We call yesterday uncivilized. We can be sure that tomorrow will call today uncivilized and foolish. The principles of the society of the day find a reflection in the offences codified and sometimes created, by its laws. But all of them do not relate to morality. There are offences which do not involve moral turpitude. It is for this reason that the disqualification results only when conviction is for an "offence involving moral turpitude." The old idea was to punish an offender. The present day trend is to reform an offender and give him a chance to become a useful citizen. More often than not it is the society which is considered responsible for forcing a person to commit an offence in these circumstances it can be said that if a conduct shocks the public conscience or is injurious to the society at large or is considered highly derogatory to public standards then it involves moral turpitude. The punishment provided for an offence may also be a useful guide. Where an offence can be punished with fine only, it may be held that it does not involve moral turpitude. However, it will depend on the circumstances of each case.

11. Corpus Juris Secundum, Vol. 58, page 1201 has this to say:

"Moral turpitude" has been defined as meaning an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man, and this definition has been given by a great many authorities and approved by all that have considered the question. The term has also been defined as meaning anything done contrary to justice, honesty,

principle, or good morals; everything done contrary to justice, honesty, modesty, or good morals; anything done knowingly contrary to justice, honesty, or good morals. "Moral turpitude" has also been defined to mean baseness, depravity, or wickedness; base or shameful character; a base or shameful act.

Considerable difficulty has been experienced in application of the term "moral turpitude" to the facts of each case. One of the reasons for this is that the term does not refer to legal standards, but rather has reference largely to moral character and state of mind; to those changing moral standards of conduct which society has set up for itself through the centuries. Since standards of morals differ from time to time and at different places, and the concept of moral turpitude depends to some extent on the state of public morals, and is to be determined by the state of public morals and the common sense of the community, and since "moral turpitude" is a term which conforms to, and is consonant with, the state of public morals, it never can remain stationary, but it may vary according to the community or the times. It follows therefore that moral turpitude is adaptive, and is a somewhat loose expression, the meaning of which must be left to the process of judicial inclusion and exclusion as the cases are reached and as the standards of society change".

12. I will now refer to the cases cited before me. In *Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others*, giving false information to a public servant in terms of Section 182(b) Indian Penal Code was held to fall within the mischief of "moral turpitude". In *Mangali Vs. Chhakki Lal and Others*, carrying a small quantity of Bhang under medical advice from a district in which prohibition was not in force to a district in which prohibition was in force was found in order.

13. In *Balubhai Amidas Khristi v. State of Gujarat and Ors.* 1978 (II) S.L.R. 815, the Gujarat High Court was called upon to decide a question whether gambling involves a moral turpitude. It was observed that the expression "moral turpitude" is rather vague and it may have different meaning in different contexts such as of different social groups. It was further observed that generally the term means to be conduct contrary to justice, honesty, modesty or goodmorals and contrary to what a man owes to a fellowman or to society in general.

14. The Punjab and Haryana High Court in *Mehar Singh v. The State of Haryana and Ors.* 1971 P.L.R. 528 and in *Malha Ram v. The Deputy Commissioner* 1973 P.L.R. 116, held that possession of 6 grams or one tola of charas does not involve moral turpitude.

15. To possess opium without licence is no doubt an offence. But in our country people are known to use opium for various purposes. Many a rickshaw-puller and labourer consume opium to enable them to earn their livelihood. Some workers give it to their children so that they are not disturbed in their work. True, it is unhealthy and injurious to one's health. But so is drinking, smoking and chewing tobacco. A person taking opium does not harm the society like a drunkard. There

is nothing to show that the society frowns upon a person using opium. In these circumstances I am not prepared to hold that mere possession of opium amounts to "moral turpitude".

16. The Petition is, therefore, allowed and the impugned order holding the Petitioner ineligible to take the examination in question is set aside. The Respondents are directed to declare the result of the Petitioner and thereafter proceed according to law. The parties are directed to bear their own costs.