

(1974) 01 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 1169 of 1970

Ramakanta Samanta and Others

APPELLANT

Vs

The State Bar Council and Others

RESPONDENT

Date of Decision : 02-01-1974

Acts Referred:

Advocates Act, 1961 — Section 24(3)

Citation : AIR 1975 Ori 78

Hon'ble Judges : B.K. Ray, J;B.K. Patra, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; B.M. Patnaik, R.K. Mohapatra and K.N. Jena, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—The petitioners are Advocates enrolled under the Advocates Act, 1961 (hereinafter referred to as the Act) and are members of the Athgarh Bar Association. Opposite party No. 2 Shri Achyutananda Das was enrolled as an Advocate by the Orissa State Bar Council (Opp. party No. 1) in 1969. In this application under Articles 226 and 227 of the Constitution, the petitioners pray for the issue of a writ of mandamus or certiorari quashing the enrolment of opposite party No. 2 on the ground that he did not possess the necessary qualification for enrolment.

2. Opposite party No. 2 is not a graduate in law. It is also not disputed that he had not passed the Mukhtarship examination. But admittedly he was practising as a Mukhtar in the ex-State of Athgarh since the year 1945 and his name had been borne in the list of Mukhtars practising in that ex-State area till Athgarh was merged in the State of Orissa in 1948. Under the Orissa Merged States" (Laws) Act, 1950, certain enactments mentioned in the Schedule of the Act were brought into force in the merged areas and one such enactment is the Legal Practitioners Act, 1879 with certain modifications. One of the modifications is insertion of a new section (Section 42) which so far as is material runs thus:

"Section 42. Savings:-- Until other provisions are made by or under this Act-

* * * * * (3) all persons who have passed the Mukhtarship examination held under the authority of the High Court of Patna or Calcutta or the Mukhtarship examination conducted by a Board constituted in any of the merged States and were practising as Mukhtars as also all persons who were in the list of Mukhtars in any of the merged States on the 31st. December, 1947 or 1948, as the case may be, and are found fit to continue to practise as such by the High Court of Orissa for such period or periods as it considers necessary, subject to such terms and conditions as may be imposed in that behalf by the said High Court, shall be deemed to be Mukhtars for the purposes of this Act."

3. In pursuance of the power vested in High Court u/s 42 (3) of the Legal Practitioners Act referred to above, the High Court on 17-12-1949 issued to opposite party No. 2 the certificate at Annexure 2 which may be reproduced.

"No. 13, O. H. C. L. No. 5529 dated 17-12-49.

This certificate is granted to Shri Achutananda Das who was admitted as a Mukhtar by the High Court of Judicature, Orissa on the 17th day of December, 1949 and authorises him to practise as such up to the 31st day of December, 1954 in the Courts and offices following, viz:--

In all Civil and Criminal courts in the entire State's area only subordinate to the High Court of Orissa.

* * * * *

4. Annexure-3 dated 24th September, 1964 is the certificate issued by the District Judge, Cuttack to the effect that Shri Achyutananda Das (opp. Party No. 2) son of late Somanath Das of Matikota, P. S. Athgarh, District Cuttack got his first licence to practise as a Mukhtar on 17-12-1949 and renewed the same till the end of the year 1954.

5. The petitioners in para. 9 of this writ petition allege that during the period 1949-54 opposite party No. 2 made serious attempts to pass the Mukhtarship examination conducted by the Committee of Legal Education, but he was not successful. Opposite party No. 2 denied these allegations and stated that he never made any such attempts. The fact, however, remains that opposite party No. 2 had not passed the Mukhtarship examination. But there is no dispute that under orders of the High court, he continued to practise as a Mukhtar in the ex-State area of Athgarh from the date of its merger in 1948 till the end of the year 1954 and thereafter he discontinued his practice.

6. The Indian Parliament passed the Advocates Act in the year 1961 (Act XXV of 1961) with a view to consolidate and amend the law relating to legal profession and to provide for the constitution of State Bar Councils and an All India Bar. The Act was assented to by the President of India on the 19th May, 1961. Sub-section (3) of Section 1 of the Act provides that the Act would come into force on

such date as the Central Government may, by notification in the official gazette, appoint and different dates may be appointed for different provisions of the Act. The Central Government by notification issued u/s 1(3) from time to time has fixed different dates for bringing into force the different provisions of the Act which are mentioned below.

Provisions Date of coming into force Chapters I, II and VII 16-8-1961 Chapter III and Section 50(2)

Chapter III and Section 50(2)

1-12-1961

Section 50(1)

15-12-1961

Sections 51 and 52

24-1-1962

Section 46

29-3-1962

Section 32 and Chap. VI except Section 46, sub-ss. (1) and (2) of Section 50. Ss. 51 and 52

4-1-1963

Chapter V

1-9-1963

Chapter IV (Save S. 32)

1-6-1969.

Chapter III which deals with admission and enrolment of Advocates and consists of Sections 16 to 28 came into force on 1-12-1961.

7. Section 24 which, prescribes qualifications to be admitted as an Advocate on a State Roll reads-

"24. (1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:--

(a) he is a citizen of India; Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law-

(i) before the appointed day, from any University in the territory of India; or

(ii) before the 15th day of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the appointed day, from any University in the territory of India or elsewhere, if the degree is recognised for the purpose of this Act by the Bar Council of India; or he is a barrister;

(d) he has undergone a course of training in law and passed an examination after such training both of which shall be prescribed by the State Bar Council:

Provided that this clause shall not apply to-

(i) a barrister who has received practical training in England or a person who has obtained a degree in law from any University in India before the appointed day;

(ii) any person who has for at least two years held a judicial office in the territory of India or is a member of the Central Legal Service;

(iii) any person who has for at least two years held a judicial office in any area which was comprised before the 15th day of August, 1947 within India as defined in the Government of India Act, 1935, or has been an advocate of any High Court in any such area;

(iv) any person who has practised before any High Court and who has discontinued practice by reason of his taking up employment under the Government, a local authority or any other person; and

(v) any other class of persons who by reason of their legal training or experience are declared by the Bar Council of India to be exempt from the provisions of this clause;

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid an enrolment fee of two hundred and fifty rupees to the State Bar Council,

(2) Notwithstanding anything contained in Sub-section (1), a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an advocate of a High court immediately before the appointed day under any law then in force, may be admitted as an advocate on a State roll if he--

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day; and

(b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of Sub-section

(1).

Explanation.-- For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India, on the date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination.

By the Advocates (Amendment) Act, 1964 (Act 21 of 19-64), Sub-sections (3) and (4) were added to Section 24. Sub-section (3) which is material for our purpose, runs thus:

"Section 24(3).-- Notwithstanding anything contained in Sub-section (1), a person who--

(a) has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law as an advocate of a High Court (including a High Court of a former Part B State) or of a court of Judicial Commissioner in any Union territory; or

(b) before the 15th day of August, 1947, has been an Advocate of any High Court in any area which was comprised within India as defined in the Government of India Act, 1935; or

(c) before the 1st day of April, 1937, has been an Advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an Advocate under any rule made by the Bar Council of India in this behalf; may be admitted as an Advocate on a State roll if he-

(i) makes an application for such enrolment in accordance with conditions of this Act; and

(ii) fulfils the conditions specified in Clauses (a), (b), (e) and (f) of Sub-section (1)."

8. After Act 21 of 1964 came into force, opposite party No. 2 submitted on 20-8-1964 the application Annex-ure-4 to the Orissa State Bar Council for being enrolled as an Advocate. It is not disputed that he has fulfilled the conditions specified in Clauses (a), (b), (e) and (f) of Sub-section (1). His claim for enrolment was based on the assertion made by him in his application that he had practised as a Mukhtar for more than three years, that is, from 1945 to 1954. On receipt of the application, the Secretary of the State Bar council made endorsement therein that he is entitled prima facie to enrolment in case he has practised for three years prior to 31-3-1964 and directed that notice should be issued to opposite party No. 2 to appear for enrolment. But immediately afterwards, eleven members of the Athgarh Bar including the petitioners herein passed a resolution (Annexure-5) to the effect that opposite party No. 2 who is an unpassed Mukhtar was not entitled to be enrolled as an Advocate. Obviously a

copy of this resolution was sent to the Bar council, the enrolment committee of which by its order dated 2-11-1964 (Annexure-6) called upon opposite party No. 2 to produce relevant papers to show that he was a qualified Mukhtar and to produce a certificate from the committee of Legal Education showing that he had passed the examination. On receipt of the order, opposite party No. 2 submitted the reply (Annexure-7) asserting that he had practised as a Mukhtar at Athgarh for about 9 years prior to 1955 and that consequently he was entitled under Sub-section (3) of Section 24 of the Act to be enrolled as an Advocate. The matter remained undecided for about 4 years and early in 1969, the State Bar Council enrolled opposite party No. 2 as an Advocate.

9. Thereafter the members of the Athgarh Bar Association wrote to the Bar Council, Orissa (Annexure-9) that opposite party No. 2 had never passed Mukhtarship examination and had been conditionally allowed to practise for a few years as an unpassed Mukhtar, that he did not qualify himself within the stipulated period and was therefore debarred from practice since 1954 and that consequently he was not entitled to be enrolled as an Advocate which should be cancelled. They also submitted an application u/s 26(1) and Section 48A of the Act to the Bar Council of India inter alia stating that opposite party No. 2 had no qualification for enrolment and that by fraudulently suppressing relevant facts, he got himself enrolled and that his enrolment should therefore be set aside. This revision petition was heard by the Indian Bar council which by its order dated 15-3-70 rejected it (Annexure 14), holding that as opposite party No. 2 had practised as a Mukhtar for the requisite period of three years he is entitled to be enrolled as an Advocate u/s 24(3)(a) of the Act. It is thereafter that the present writ application has been filed.

10. The three opposite parties have filed three separate counter affidavits in which it is asserted that opposite party No. 2 having practised as a Mukhtar for about 9 years, he is entitled for enrolment under Sub-section (3) of Section 24 of the Act. All of them questioned the competence of the petitioners to maintain the present petition.

11. The entire controversy raised in this petition depends for its solution on the interpretation of the expression "has, for at least three years, before the 31st day of March, 1964, been a Mukhtar". Mr. R C. Ram, learned Advocate appearing for the petitioners contends that the true meaning of this expression is that a person to be eligible for enrolment under Sub-section (3) of Section 24 should have practised as a Mukhtar for a period of at least three years immediately preceding 31st of March, 1964 and that as opposite party No. 2 had admittedly not practised as a Mukhtar after December, 1954, he is not entitled to be enrolled as an Advocate. It is on the other hand submitted on behalf of opp. parties that it is not necessary that the period of three years should end with 31st of March, 1964 and that it is sufficient if at any time before 31st March, 1964 a person had practised as a Mukhtar for three years and that the petitioner having practised as a Mukhtar for about 9 years between the years 1945 and

1954 answers that qualification.

12. We may, in this context, refer to some of the provisions of the Act where the expression "immediately before" occurs. Section 16(4):--

"An Advocate of the Supreme Court who was a senior Advocate of that Court immediately before the appointed day shall, for the purposes of this section be deemed to be a senior Advocate:"

Section 17(1)(a):--

"(1) Every State Bar council shall prepare and maintain a roll of Advocates in which shall be entered the names and addresses of--

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926, immediately before the appointed day and who, within the prescribed time, ex-press an intention in the prescribed manner to practise within the jurisdiction of the Bar council;

(b) XX XX XX"

Section 17(3)(c):--

"(c) notwithstanding anything contained in Clause (a), the seniority of a vakil, pleader or an attorney who was enrolled as an Advocate immediately before the appointed day, or who is enrolled as an Advocate after that day, shall be determined in accordance with the date of his entry in the register of vakils, pleaders or attorneys, as the case may be;"

Section 20(1):--

"The Bar Council of India shall prepare and maintain a common roll of Advocates which shall comprise the entries made in all State rolls and shall include the names of all Advocates entitled as of right to practise in the Supreme Court immediately before the appointed day whose names are not entered in any State roll."

Section 20(3)(b):--

"xx xx xx (b) the seniority of any person who was a senior Advocate of the Supreme Court. Immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the first part of the common roll, be determined in accordance with such principles as the Bar Council of India may specify in this behalf;"

Section 20(3)(c);--

"xx xx xx (c) the seniority of any person who was an advocate (but not a senior Advocate) of the Supreme Court immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the second part of the common roll, be determined in accordance with the date of his

enrolment as an Advocate of the Supreme Court."

Section 24(2):--

"(2) Notwithstanding anything contained in Sub-section (1), a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an Advocate of a High Court immediately before the appointed day under any law then in force, may be admitted as an Advocate on a State roll, if he-

xx xx xx"

13. We may also notice Section 55 which saves the rights of persons who do not elect to be enrolled under the Act to continue to practise in Courts in which they were previously practising and it runs thus:

"55. Notwithstanding anything contained in this Act,"-

(a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or any other law who does not elect to be or is not qualified to be enrolled as an advocate under this Act;

(b) every attorney practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law who does not elect to be, or is not qualified to be, enrolled as an Advocate under this Act;

(c) every Mukhtar and revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act 1879, or any other law; shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed." It is thus clear that the expression "immediately before" was very much in the mind of the legislature when it passed the Act and wherever it was intended that a certain thing should have been done immediately before a particular date, the legislature said so in express words. The expressions "before" and "immediately before" convey two different meanings and the very fact that the word "immediately" does not occur in Clause (a) of Sub-section (3) of Section 24 of the Act lends support to the contention that the legislature did not intend it to be so. Where the legislature used two different languages in two different sections of any Act -- nay in Section 24 itself (Sub-sections (2) and (3)). It is quite obvious that the legislature intended that there should be a distinction and it would amount to wiping out that distinction if Clause (a) of Sub-section (3) would be interpreted

to mean that in order to be entitled to enrolment a person should have been Mukhtar for at least three years immediately before the 31st March, 1964.

14. It is next argued that the expression "has been" in Clause (a) of Sub-section (3) of Section 24 of the Act shows that it refers to a present state of affairs and consequently a person to be entitled to be enrolled as an Advocate must have been a Mukhtar on the appointed day, namely, "31st day of March, 1964."

15. Similar expressions occur in the Constitution and some other statutes. Clause (2) of Article 233 of the Constitution lays down that a person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court." In *Rameshwar Dayal v. State of Punjab*, AIR 1961 SC 816, the Supreme Court held that Clause (2) of Article 233 provides qualification for persons not holding any service. The required qualification is that he should be an advocate or pleader of seven years" standing. But that clause does not say how that seven years" standing has to be reckoned. In *State of Assam v. Horizon Union*, AIR 1967 SC 442, the Supreme Court had occasion to consider a similar provision. Clause (aa) added to Section 7A(3) of the Industrial Disputes Act, 1947 by the Industrial Disputes (Amendment) Act, 1964 (Act 36 of 1964) provided that a person shall not be qualified to be a presiding officer of a Tribunal, unless he has, for a period of not less than three years, been a District Judge or an Additional District Judge. The Supreme Court held that the requirement of this provision was satisfied in a case where the person held the post for the requisite period even though he had not actually worked in that post for that period. In that case, Shri Dutta was a member of the Assam State Judicial Service and was in due course promoted as a temporary Additional District and Sessions Judge and then as Registrar of High Court of Assam and retired from service on 30th June, 1959. He was appointed as Presiding Officer of the Industrial Tribunal of Assam on 7th December, 1965. There is no controversy that during the time he was in active service he was an Additional District Judge for a period of not less than three years. As he had retired from service in 1957, he was not admittedly holding the post of either a District Judge or an Additional District Judge in 1965 when he was appointed as Presiding Officer of the Industrial Tribunal. Although to be eligible to be appointed as a Presiding Officer of the Industrial Tribunal, the law required that he has, for a period of not less than three years, been a District Judge or an Additional District Judge, his appointment was upheld by the Supreme Court. Obviously the Supreme court did not construe the expression "has been" to mean that by the time Shri Dutta was appointed as the Presiding officer he should have been either a District Judge or an Additional District Judge. A similar interpretation was given to this expression by a Bench of the Allahabad High Court in *Mubarak Mazdoor Vs. K.K. Banerji*, . The learned Judges were construing the meaning of that expression occurring in the Second proviso to Section 86(3) of the Representation of the People Act, 1951 and they held that the phrase "a person who has been a Judge" means a person who has, at some time, held

office as a Judge, but it does not necessarily mean that the person must be holding office as a Judge at the time of his appointment as a member of the tribunal. This interpretation given by the Division Bench was approved by a Full Bench of the Allahabad High Court in Beharji Dass, Civil and Sessions Judge, Sultanpur and Others Vs. Chandra Mohan, Civil and Sessions Judge, Fatehpur and Others, . Their Lordships in that connection referred to Clause (2) of Article 217 of the Constitution which states that a person shall not be qualified for appointment as a Judge of a High Court unless he has, for at least ten years, held a judicial office in the territory of India. Their Lordships stated-

"It is well known that in several cases persons have been appointed as High Court Judges some time after their retirement as District Judges. Such appointments have never been challenged. The position under Article 233(2) is similar to that under Article 217(2)(a) of the Constitution."

16. Having regard to what has been stated above, we are satisfied that to acquire the qualification prescribed in Clause (a) of Sub-section (3) of Section 24 of the Act, it is not necessary that the person should have been a Mukhtar for three years immediately before the 31st day of March, 1964. It is sufficient if at any time before that date he had been such a Mukhtar for a period of not less than three years.

17. It was then argued on behalf of the petitioners that what Clause (a) of Sub-section (3) of Section 24 requires is that the person seeking enrolment should have been a Mukhtar meaning thereby that he should have acquired the qualification of a Mukhtar and that as the petitioner had not passed Mukhtarship examination, although he was allowed to practise as a Mukhtar, his case would not fall within the ambit of Clause (a) of Sub-section (3). There appears to be no merit in this contention. If we accept the contention of the petitioners that the expression "Mukhtar" means a person who has passed the Mukhtarship examination, then he continues to be a Mukhtar for all time to come after he acquires such qualification, and then there would be no meaning in insisting upon a minimum standing of three years as Mukhtar. It, therefore, appears to us that the expression "has for at least three years been a Mukhtar" means a person who has practised as a Mukhtar for three years either on the strength of the qualification acquired by him after passing Mukhtarship examination or on the strength of the enabling provision contained in the Sub-section (3) of Section 42 of the Legal Practitioners Act in which case on being found fit by the High Court to continue to practise as a Mukhtar, the latter would be deemed to be a Mukhtar for all purposes of the Legal Practitioners Act.

18. On the aforesaid analysis, we are satisfied that opposite party No. 2 had been rightly enrolled as an Advocate by the State Bar Council and that the present writ petition is devoid of any merit.

19. In view of the finding above, it is unnecessary for us to advert to the other objection raised on behalf of opposite parties that the petitioners have no right to

the relief claimed by them. It is submitted that enrolment of Opposite Party No. 2 not having affected the petitioners in any way, the writ petition is only an attempt to use the machinery of this court to vent their private grudge against Opposite Party No. 2 and consequently it is an attempt to abuse the process of this court and that therefore the court should refuse to entertain the application.

20. Article 226 of the Constitution does not, in terms, describe the class of persons entitled to apply thereunder, but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of the jurisdiction of High Court under Article 226 and that legal right must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. It is not shown what legal right the petitioners have which they want to enforce through Court. It has not been shown in the application in what manner the enrolment of Opposite Party No. 2 affects the rights, if any, of the petitioners. On this ground also, the petition is liable to be dismissed.

21. In the result, the writ application is dismissed with costs. Hearing fee Rs. 150/- (Rupees one hundred and fifty only).

B.K. Ray, J.

22. I agree.