

(1934) 05 AHC CK 0001
In the Allahabad High Court
Case No : F.A. No. 455 of 1931

Rani Bhagwan Kunwar

APPELLANT

Vs

Rani Gulab Kunwar

RESPONDENT

Date of Decision : 07-05-1934

Acts Referred:

Government of India Act, 1915 — Section 101

Citation : (1934) 05 AHC CK 0001

Hon'ble Judges : Mukherji, J;Bennet, J

Bench : Division Bench

Advocate : Mohd. Ismail, for the Appellant; Baleshwari Prasad and M.L. Chaturvedi for Respondent, for the Respondent

Judgement

Mukerji and Bennet, JJ.—When this appeal came up for hearing, Mr. Baleshwari Prasad, one of the Learned Counsel for the Respondent, raised the objection that this High Court was not today properly constituted, and, therefore, the appeal could not be heard by us. The basis of his argument is that Mr. Justice Young has gone away and has been appointed the Chief Justice of the Lahore High Court, and therefore, this High Court is short by one barrister Judge His further argument is that u/s 101 of the Government of India Act at least one-third of the Judges of the High Court should be barristers and, as that rule has not been complied with, the High Court is not properly constituted.

2. Of the two arguments the first is a question of fact. We have not got any evidence before us that Mr. Justice Young is not yet a member of this Court. He went away on leave. Till he takes over charge in the Lahore High Court, he continues to be a member of this Court. We are asked to take judicial notice of the fact that Mr. Justice Young has taken over the charge of the Lahore High Court, but no judicial notice can be taken of a fact like this.

3. The second argument is, in our. opinion not sound. Section 101 Clause (4) no doubt provides that at least one-third of the Judges of the High Court shall be barristers. But this does not mean that if on account of certain reasons a vacancy

occurs the other Judges of the High Court shall be deemed incompetent to carry on the work of the High Court till the vacancy has been filled up. For reasons which may occur without any previous intimation, for example, if a barrister Judge or a Civilian Judge happens to die suddenly, there is bound to be a vacancy and, if the argument of Mr. Baleshwari Prasad be good, the other Judges cannot work legally till the vacancy has been filled up. Now it will take some time to the Local Government to secure a suitable appointment. of the argument of Mr. Baleshwari Prasad had been sound we should have expected some provision in the Government of India Act which should have said that the High Court should not function till the appointment had been made.

4. An occurrence like the one which has been made the basis of this argument must be happening very often, having regard to the fact that we have seven High Courts in India. If the argument were at all sound, some provision against that argument would have been provided for by the Legislature. We may mention here that a similar objection, though not exactly in these terms, was raised before this High Court in the year 1887. The objection there related to the number of Judges. At that time the number of the Judges, who were functioning, was short by one and the argument was raised that the High Court was not properly constituted. A Full Bench of this Court decided otherwise—vide *Lal Singh v. Ghansham Singh* (1887) 9 Al. (F.B.).

In our opinion, the objection has no force and is hereby overruled.