

(1984) 09 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 63 of 1978

Sudhangshu Mohan Dutta

APPELLANT

Vs

District Judge, Dibrugarh and Others

RESPONDENT

Date of Decision : 11-09-1984

Acts Referred:

Advocates Act, 1961 — Section 58AG
Constitution of India, 1950 — Article 226
Legal Practitioners Act, 1879 — Section 3, 36

Citation : AIR 1985 Guw 86

Hon'ble Judges : S. Haque, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : B.M. Mahanta, for the Appellant; Govt. Advocate, (for Nos. 1 and 2), D.N. Barua and S.K. Barkataki, (For No. 3), for the Respondent

Judgement

Lahiri, J.—This is an application under Article 226 of the Constitution directed against an order passed by the District Judge, Dibrugarh declaring the petitioner as a tout, in exercise of power under S. 36 of the Legal Practitioners Act, 1879. The petitioner has also questioned the legality and validity of the proceedings connected therewith.

2. The petitioner states that he practiced as a pleader's clerk under several renowned lawyers of Dibrugarh. In 1975 as well he worked under Sri Biman Barua, Advocate as his clerk and the Registered No. of his Card was 39. The petitioner states categorically that it was the prevalent practice to submit the card of the Pleaders clerk to the Secretary of Dibrugarh Bar Association accompanied by renewal fee of Rs. 6/-. The renewal was the matter of course. The competent authority after such renewal used to return the card to the Secretary, Bar Association who kept it for some time before handing over the same to the clerk. The petitioner has consistently stated that he submitted his Card along with due renewal fee to the Secretary, Dibrugarh Bar Association for its renewal for 1976. The petitioner claimed that he was never informed that his prayer for renewal was rejected or that his card not forwarded to the competent

authority for any reasonable cause. But on 1-11-1976, a special resolution was taken by learned members of the Bar Association requesting the District Judge, Dibrugarh, to declare as many as 31 persons as touts u/s 36 of "the Act" as they loitered in the court premises and dealt with the litigant public without any authority or licence. Coming to know about the allegation the petitioner by his representation dated 5-11-76 complained to the District Judge that he had submitted his Card for renewal with renewal fee of Rs. 6/- to the Secretary, Bar Association, but it was withheld by the Secretary. On 8th November, 1976 he wrote a letter to the Secretary, Bar Association stating that he had already submitted the Card with renewal fee for its renewal but unfortunately it was not forwarded, so the Card may be forwarded and regularised. It appears that on receipt of the Resolution of the Bar Association, the District Judge decided to hold an enquiry and referred the matter to the then Assistant District and Sessions Judge, Dibrugarh. Learned Assistant District Judge observed that before holding a person to be a tout some legal evidence was necessary and an enquiry should be made after granting opportunity to the person concerned. Thereafter, it appears, the matter was sent to Mr. R. K. Sarma Sadar Munsiff, Dibrugarh for holding an enquiry. The petitioner appeared in the course of the enquiry, showed cause and on the date of hearing he went to call his Advocate but as he did not return back learned Munsiff forthwith concluded the enquiry passed an order holding that the petitioner was a pleader's clerk under Shri Biman Barua Advocate, but he had no valid Card or licence for the year, 1976. He relied on the resolution of the Bar Association and recommended for declaring the petitioner as tout. Learned Munsiff also recorded that the petitioner had claimed that he had submitted his Card for renewal but the Bar Association omitted to send the same for renewal.

3. Mr. B. Mahanta, learned counsel for the petitioner has submitted that to declare a person tout is to stigmatise a person as such the enquiry officer as well as learned District Judge should have been cautious enough to make the orders recommending or declaring the petitioner a tout. Counsel submits that the plea of the petitioner was well established. It has been submitted that there was no fair enquiry and no opportunity was given by the District Judge before rendering the impugned order.

4. We find that the plea of the petitioner was all along consistent. According to him he was labouring under the impression that his card had been renewed by the Bar Association. He had complied with all the requisites for getting the card renewed. We find that nobody ever made any denial in any form whatsoever regarding the plea taken by the petitioner. As such, when the prevalent practice for renewal was to hand over the card to the Bar Association with renewal fee, it was the duty of the Bar Association to cause it to be renewed or at least to inform the petitioner that the Card could not be renewed. The statements of the petitioner that he had submitted his Card for renewal in accordance with the established procedure and he was labouring under the bona fide impression that his card was renewed as it was merely a routine matter have not been refuted

before us nor did any one state that that was false statement. We are constrained to hold that under such situation when the petitioner had complied with all the formalities to have the card renewed and none informed him that it could not be renewed, it was quite natural for the petitioner to carry the impression that his card had been renewed in usual course. A person so situated thus cannot be penalised for no fault or default committed by him and declared a "tout", within the meaning of the definition set forth in Section 3 of "the Act".

5. Be that as it may neither the enquiry officer nor learned District Judge held that the plea taken by the petitioner was false or incorrect nor did the authorities consider the effect of the plea. As such the impugned enquiry report and the decision are vitiated by non-consideration of material facts and the proceedings are liable to be quashed.

6. Further we find from the record that on the basis of the enquiry report learned Judge declared the petitioner a tout. We are of the opinion that the petitioner was deprived of a fair proceeding before the enquiry officer. The petitioner had asked for time to bring his lawyer. The enquiry officer, however, hurriedly concluded the enquiry when the petitioner did not return back overlooking the fact that it was difficult to get a lawyer to defend the petitioner in the face of the resolution taken by the Bar Association. Further, the enquiry officer should have at least adjourned the proceeding till the next day, in view of the nature of the proceedings. The ex parte report rendered by the enquiry officer was not just, fair and reasonable and learned District Judge acted illegally in relying on the said ex parte enquiry report.

7. Be that as it may, after receipt of "the report" learned District Judge did not grant any opportunity to the petitioner to meet the allegation nor did he furnish the petitioner with a copy of the report. Learned Judge decided the fate of the petitioner without affording him any opportunity whatsoever. When the report was ex parte, it was the bounden duty of learned District Judge to furnish the petitioner with a copy of the report or at least to hear him before rendering the order. As such, the petitioner was deprived of the opportunity to be heard and the proceedings are bad in as much as it was held in breach of the principles of natural justice.

8. For the foregoing reasons we hold that the impugned enquiry report and the impugned order of learned District Judge are illegal, void and without jurisdiction and liable to be quashed, which we do hereby. In the result the petition is accepted, however, we make no order as to costs.