
(1919) 04 AHC CK 0003
In the Allahabad High Court

Tejpal	Vs	APPELLANT
Jhagru and Another		RESPONDENT

Date of Decision : 25-04-1919

Acts Referred:

Government of India Act, 1915 — Section 101

Citation : AIR 1919 All 257 : 51 Ind. Cas. 65

Hon'ble Judges : George Knox, J

Bench : Single Bench

Judgement

1. A preliminary objection was raised when this second appeal was called on for hearing. It was to the effect that this Court as at present constituted is not competent to hear this or any appeal. The Court consists to-day of an Acting Chief Justice and five Judges, of whom two are Barristers, two are members of the Covenanted Civil Service and one is a person who has held judicial office not inferior to that of Principal Sudder Ameen for a period of not less than five years. As not less than one-third of the above-mentioned Judges are Barristers, and not less than one-third are members of the Covenanted Civil Service, this constitution is in accord with the provisions contained in the Indian High Courts Act, 1861 and the directions of the Letters Patent issued by Her late Imperial Majesty under date the seventeenth day of March in the year of our Lord one thousand eight hundred and sixty-six.

2. The Indian High Courts Act, 1861, was repealed by the Government of India Act, 1915, and from the first day of January 1916 under the provisions of Section 101 of this last Act each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint: provided that the maximum number of Judges shall be twenty.

3. It was also enacted that a Judge of a High Court must be

(a) a duly qualified Barrister,

(b) a duly qualified member of the Indian Civil Service, or

(c) a person having held judicial office not inferior to that of a Subordinate Judge for a period of not less than five years: Provided that not less than one third of the Judges including the Chief Justice must be such Barristers and that not less than one-third must be members of the Indian Civil Service. It is not necessary for the purposes of this objection to set out the qualifications or the provisions relating to Pleaders, as this objection does not challenge the constitution of the Court on this ground.

4. There are not and never have been any Additional Judges appointed to this Court.

5. In 1908 while the Court consisted of a Chief Justice and five puisne Judges His Majesty appointed the late S. Karamat Hussain to be a puisne Judge of the Court, there by raising the strength of the Court to a Chief Justice and six puisne Judges, and on the retirement of the late S. Karamat Hussain. His Majesty in 1912 was pleased to appoint Mr. Justice Rafique to be a puisne Judge of the Court. On the basis of these appointments it is contended that His Majesty has thought fit that this High Court shall consist of a Chief Justice and six puisne Judges. Further that owing to the retirement of Sir Henry Richards the Court consists to-day only of an Acting Chief Justice and five puisne Judges and of the seven Judges necessary to constitute the Court less than one-third, to wit only two, are duly qualified Barristers.

6. Accepting the contention of the learned Advocate, it will be seen that save as to the number of Judges the constitution of the Court is in harmony with the provisions of the Government of India Act, 1915.

7. So far as the number of Judges is concerned, the contention now raised is in spirit and principle exactly the same as was raised in *Lal Singh v. Ghansham Singh* 9 A. 625 (F.B.) A.W.N. (1887) 154 ; 5 Ind. Dec. (N.S.) 854. It was fully considered by a Full Bench of this Court and overruled. By this decision I am bound and I may add that I fully concur with what was laid down in that case by Sir John Edge. I overrule the objection and hold that the Court has jurisdiction to hear this appeal.