Equivalent Citation: AIR1952Pat309

IN THE HIGH COURT OF PATNA
FULL BENCH

Misc. Judicial Case No. 165 of 1951

Decided On: 25.03.1952

Appellants:**In Re: Babul Chandra Mitra**

Constitution of India – Article 228 and 226

Writ Petition u/s-226 seeking writ against the administrative side of the High Court commanding that the petitioner be enrolled as an advocate.

Three judge bench gave concurrent findings but by separate opinions holding that **High Court in Judicial side cannot pass order against the administrative side of the High Court.**

Writ Petition was dismissed.

[Para 6,9,13,14]

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Appellants:**In Re: Babul Chandra Mitra**

Hon'ble Judges/Coram:
David Ezra Reuben, Vaidynathier Ramaswami and Sinha, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: B.C. Ghosh, Adv.

Adv. General, Amicus Curiae

JUDGMENT

Vaidynathier Ramaswami, J.

1. In this case the petitioner Babul Chandra Mitra has asked for a rule calling upon the High Court on the administrative side to show cause why a writ or direction under Article 228 of the Constitution should not be issued commanding that the petitioner should be enrolled as an Advocate.

2. The application is founded upon the following facts. Babul Chandra Mitra obtained the degree of Bachelor of Law from Patna University in the year 1937. Next year he applied for being enrolled as a Pleader to practise at Mozaffarpore. The application was rejected by the High Court. In 1939 and again in 1943 the applicant asked for reconsideration of his case. But the High Court considered that there was no reason to alter the previous decision and that the enrolment was properly refused. In 1945 the applicant joined the chambers of the late Srinarain Bose, Advocate, and pursued studies for a period of one year. On 9th October 1950 he applied to the High Court for being enrolled as an Advocate and attached to his application three certificates of good conduct. On 8th January 1951 the application was rejected by the High Court without giving notice of the application to the Bar Council. The petitioner contends that in making this order the High Court has acted contrary to law and that the fundamental right of the petitioner to practice a profession has been violated.

3. In this proceeding the validity of the order of the High Court is challenged on the grounds : (1) that the application for enrolment could not lawfully be rejected without making a reference to the Bar Council under Rule 9 of the Bar Council Rules; (2) that in any case the proviso to Section 9(1) of the Bar Councils Act was constitutionally invalid since the High Court was granted power to refuse admission to any person in its unfettered discretion and so violated the guarantee under Article 19(1)(g) of the Constitution.

4. The preliminary question which arises is whether in the present case this Bench has jurisdiction to issue a writ or order to the High Court on its administrative side.

5. In the approach to this question it is necessary to consider the relevant provisions o f the Indian Bar Councils Act and Letters Patent of the Patna High Court.Under Section 8 of the Indian Bar Councils Act no person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the Advocates of the High Court maintained under the Act. Section 8 (2) requires that the High Court shall prepare and maintain a roll of Advocates of the High Court in which shall be entered the names of

..... (b) all persons who have been admitted to beAdvocates o f the High Court under this Act. Under Section 9 the Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be Advocates of the High Court. But there i s an important proviso that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion. Clause (7) o f the Letters Patent is also material in this context : "And we do -hereby authorise and empower the High Court of Judicature at Patna to approve, admit and enrol such and so many Advocates, Vakils and Attorneys, as to the said High Court may seem meet, and such Advocates, Vakils and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court, may by its rules and directions determine, and subject to such rules and directions."

6. The question at issue is whether this Bench has jurisdiction in the present case to issue a writ or direction to the High Court in its performance of functions under the Ear Councils Act or under the Letters Patent. It was argued by Mr. B. C. Ghosh on behalf of the petitioner that Article 226 of the Constitution is couched in wide terms and the High Court has jurisdiction to issue to 'any person or authority' direction or order or writ for the enforcement of any fundamental right. In support of his argument counsel laid much stress upon the phrase 'any person or authority' in the Article. In my opinion the argument proceeds upon a misconception, and there is no warrant for construing Article 226 in the manner suggested by the learned counsel. It cannot surely be right to say that High Court can issue a writ or order directly to itself to quash an order made by itself. It is immaterial whether in making the order, the High Court acts in a judicial or administrative role. Under Article 226 CD the High Court shall have power to 'issue' to any person or authority directions, orders or writs. It is apparent that a writ cannot be issued by the High Court to itself for the process involves rather the absurd position that it calls upon the Judges to show cause to themselves why they should not be directed to quash something they themselves have determined. It is also manifest on principle that a Judge is without jurisdiction to issue a writ or order to another Judge of co-ordinate jurisdiction and power to compel performance of duties. The very nomenclature of the writs --"mandamus, certiorari, prohibition" implies superior power -- the power of a superior authority to compel an official or an inferior tribunal to act in a certain manner. The same reason which prohibits an inferior Court from controlling the conduct of a superior tribunal applies in equally cogent manner to the effort of one Judge to compel the action of another Judge of co-ordinate jurisdiction and power. It is manifest in the present case that this Bench has no jurisdiction to issue any writ or direction or order to the High Court requiring it to enrol the petitioner as advocate or even to reconsider his application for enrolment.

7. This opinion is supported by authorities. In 'REX V. JUSTICES OP THE CENTRAL CRIMINAL COURT' (1925) 2 K B 43, the question arose whether the King's Bench Division of the High Court of Justice had jurisdiction to issue a writ of certiorari for the purpose of removing into that Court an order of the Central Criminal Court with a view to

Central Criminal Court Act of 1834 which empowered the Central Criminal Court to settle the fees and allowances or salaries to be paid to its officers. In consequence of the passing of the Local Government Act, 1888, it became necessary to determine by whom and in what proportion and manner the said salaries and expenses should be paid. The Judges of the Central Criminal Court ordered that the salaries and expenses should be paid by the treasurers of the counties of London, Middlesex, Surrey and Essex in certain proportions. By another order the Central Criminal Court directed that a sum of Â£1,000 due to Herbert Austin, clerk of the Court, as an honorarium for certain services should be paid forthwith by the treasurers of the said counties in the same proportions. Against this order of the Central Criminal Court the London County Council asked for a writ calling upon the Central Criminal Court to show cause why a writ of certiorari should not be issued,

The Attorney-General objected at the hearing that the King's Bench Division had no jurisdiction to issue a writ of certiorari since the Court of Assize was a superior Court. But it was contended on behalf of the London County Council that the Central Criminal Court when acting under Section 20 was not exercising the powers of a Court of Oyer and Terminer, but powers of a purely statutory and administrative character as an inferior Court. The argument was rejected by the King's Bench and it was held that there was no jurisdiction to issue a writ of certiorari to bring up an order of the Central Criminal Court so that it might be quashed. At page 60, Avory, J., states :

> "That proposition, I understand, is not disputed by Sir Leslie Scott, but he says either that the Central Criminal Court is an inferior Court within the meaning of that rule, or, if it is not for all purposes an inferior Court that for the purpose of exercising its jurisdiction under Section 20 of the Act of 1834 it is an inferior Court, which is subject to the overriding jurisdiction of this Court. At first sight one would say that it cannot be correct to assert that any Court can issue a writ of certiorari directed to itself to quash an order made by itself. That, however, is what the proposition advanced in support of this motion comes to. All the Judges of this Court are Judges of the Central Criminal Court, who by Section 2 of the Act of 1834 are to use and exercise all powers and authorities belonging to Justices of oyer and terminer and goal delivery.' The order in question, because it is an order of the Central Criminal Court, must, therefore, be presumed to be made by Judges of this Court. It matters not by which two particular Judges the order is signed, for being an order of the Central Criminal Court it is in effect an order of the Judges of this Court."

8. Reference should also be made to 'SKINNER V. NORTHALLERTON COUNTY COURT JUDGE' (1898) 2 Q B 680, in which a similar question arose. In that case the Queen's Bench Division had. discharged a rule nisi for the issue of a writ of certiorari to bring up an order of the County Court Judge at Northallerton sitting in Bankruptcy, and on appeal, Vaughan Williams, L.J., said :

> "The cases in which a certiorari has gone to bring up the order of an inferior Court exceeding its jurisdiction even where a certiorari has been taken away by statute, do not seem to me to touch the present case, because the basis of the decision in 'In re NEW PAR CONSOLS (No. 2)(1898) 1 Q B 669, was that the Judge of the County Court exercising jurisdiction in a matter in which the statute gave him seisin was not an inferior Court, because in such a matter the statute gave him all the powers of a Judge of the High Court : 'SKINNER

> v. COUNTY COURT JUDGE OF NORTHALLERTON(1898) 2 Q B 680 at p. 686."

A little later on he said :

> "A judge of the High Court in the exercise of his jurisdiction cannot be controlled by writs of prohibition or certiorari, but only by appeal; and if the County Court Judge in the exercise of bankruptcy jurisdiction is, as would seem to be the case from the decision in 'In re NEW PAR CONSOLS (No. 2), placed on an equal footing, he is Judge of law and fact, and his judgments are subject to appeal only, and cannot be reviewed by certiorari."

9. It was contended by Mr. Ghosh in the alternative that a writ or direction may be issued or directed to the Assistant Registrar of the High Court. It was pointed out by the learned counsel that the Assistant Registrar had by his letter dated 8th January 1951, communicated to the petitioner the order that his application has been rejected. It was argued that the Court has jurisdiction to issue a writ to the Assistant Registrar. Learned counsel relied upon 'ASWINI KUMAR GHOSH v. ARABINDO BOSE' 56 Cal W N 145, but the material facts of that' case were wholly different. On principle, it is difficult to hold that a writ of mandamus could be granted against one who is an inferior or ministerial officer bound to obey the orders of the higher authority to compel him to do something which is part of his duties in that capacity. The principle is sustained by authorities.

In 'KING v. BRISTOW'(1795) 6 Term Rep 168, the Court of the King's Bench refused to grant a mandamus to a ministerial officer, such as the treasurer of a county, to obey an order of the Court of Quarter Sessions; holding the proper remedy in case of his refusal to obey such order was by indictment. Lord Kenyon, Ch. J., said :

> "It has been often said by Lord Mansfield that a mandamus was a very beneficial writ and that the best method df preserving it was to be sparing in the use of it. That caution cannot be more properly applied to any case than the present; though there does not appear to me to be any great difficulty in it. This Court has no difficulty upon a proper case laid before them in granting a mandamus to justices to make an order, when they refuse to do their duty. But it would be descending too low to grant a mandamus to inferior officers to obey that order; we might as well issue such a writ to a constable, or other ministerial officer, to compel him to execute a wan-ant directed to him, as to grant this application to the treasurer to obey the order in question."

To a similar effect is 'KING v. JEYES'(1835) 3 AEl 416 in which the Court refused to grant a mandamus to compel the treasurer of a district to pay the expenses of a prosecution for misdemeanor, in obedience to the order of the Court of Assize. Lord Denman, C. J., observed that "the defendant was servant of the magistrate and the Court refused to place itself in the situation of the magistrate to make their officer perform his duties."

10. In view of these considerations I -am of opinion that this application must be dismissed.

11. It is right to add that in the course of argument we suggested to Mr. B. C. Ghosh that the present application may be presented to the High Court on its administrative side under Rule 9 of the Bar Councils Rules for reconsideration of its order. But

learned counsel insisted that the matter should be considered and dealt with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

David Ezra Reuben, J.

12. I agree, but wish to add a few words explaining a matter on which Mr. Basanta Chandra Ghosh has laid some stress. On the 8th January 1951 the Assistant Registrar of the High Court wrote to Mr. Babul Chandra Mitra informing him that his application had been rejected (page 14 of the paper-book). On applying for a copy of the order of the High Court Mr. Mitra was given a copy of a minute dated the 3rd January (1951) signed by the Hon'ble the Chief Justice : "I see no reason to modify the previous decisions." (Page 10 of the paper-book). On a further application being made by him the office of the High Court reported "that there was no previous decision under the Bar Councils Act." (Page 15 of the paper-book). From these facts Mr. Ghosh has argued that there was no order by the High Court rejecting the application of his client and that the Assistant Registrar acted without authority in issuing his letter df the 8th January 1951. It was for this reason that Mr. Ghosh suggested the issue of a direction under Article 226 against the Assistant Registrar.

13. The argument is based on a misconception. The application of Mr. Mitra was circulated to the Full Court, that is to say, to all the Judges, and each Judge recorded in a separate minute his opinion as to the proper order to be passed on the application. What the office in granting a copy has treated as the order of the Court is the minute recorded by the Hon'ble the Chief Justice. This is not necessarily the decision of the Court. According to the practice of the Court, the decision is the opinion of the majority of the Judges as recorded in their minutes, and this is the decision which has been communicated by the Assistant Registrar in his letter of the 8th January 1951. In view of the office note at page 15 of the paper-book some clarification o,f the minute of the Hon'ble the Chief Justice is called for. Several applications were filed by Mr. Mitra, There were three applications first of all for enrolment as a Pleader. They were all rejected by the Court. Then there were two applications for enrolment as an Advocate of the High Court. The first was withdrawn by him in February 1947. The second was the one to which the minute relates. When the second application was circulated to the Full Court references were given to the minutes dealing with the previous applications. It was with reference to these minutes the majority of which were against Mr. Mitra's enrolment that the Hon'ble the Chief Justice observed that he saw "no reason to modify the previous decisions."

Though strictly speaking there was no previous decision under the Bar Councils Act, the previous application for enrolment as an advocate having been withdrawn, what the Hon'ble the Chief Justice meant is clear and his opinion was in agreement with the majority of the Full Court.

Sinha, J.

14. I agree that the application should be dismissed on the ground that this Court cannot issue any of these prerogative writs on the Judges of the High Court on its administrative side as they are not inferior to this Court sitting on the judicial side. Almost all the Judges of this Court had expressed themselves one way or the other when the application of the applicant for enrolment as an Advocate was being circulated to the members of this Court, and the issue of any one of these writs will amount to issuing these writs against our own service; that would be a ridiculous position indeed. Mr. Ghosh having realised this difficulty contended that the writ

asked for be issued against the Assistant Registrar of this Court who should be commanded to withdraw the communication of the decision of this Court made to the petitioner. The Assistant Registrar, acting in discharge of his duties, had only communicated the decision of the Full Court to the petitioner and for obvious reasons no such writ could be issued to the Assistant Registrar.