REFERENCE UNDER THE LEGAL PRACTITIONERS ACT.

Before Mukerji A. C. J., Lort-Williams and S. K. Ghose JJ.

1935

Dec. 19, 1936

Jan. 10.

In re RAMESH CHANDRA SEN GUPTA.*

Legal Practitioner—Pleader or mukhteâr *engaging in business without prior leave of High Court—Civil Rules and Orders of High Court—Rules 951, 953 (rr. 27, 29, Ch. XI, July 1934), if* ultra vires*—Legal Practitioners Act (XVIII of 1879), ss.* 6(a) & (b), *13.*

Rule 951 (corresponding to r. 27, Chap. XI, July, 1934) of the General (Civil) Rules and Circular Orders of the High Court (New Ed., Vol. I, 1935) requiring practising pleaders and *mukhteârs* to obtain leave of the High Court prior to engaging in any occupation, trade or business is not *ultra vires.*

But the provision of r. 953 (corresponding to r. 29, Chap. XI, July, 1934) of the said Rules, rendering any such pleader or *mukhteâr* liable to fine for wilful violation of the said r. 951 is *ultra vires.*

NOTICE issued by the District Judge of Bakarganj on a pleader, Ramesh Chandra Sen Gupta, to show cause why he should not be dealt with under r. 29, Chap. XI, July, 1934, of the General Rules and Circular Orders of the High Court, Vol. I (corresponding to new r. 953), for breach of r. 27, Chap. XI, July, 1934 (corresponding to new r. 951).

The material facts and the arguments of the case appear in the judgment.

H. D. Bose, Nagendra Nath Ghosh, Suresh Chandra Talukdar and *Bama Prasanna Sen Gupta* for Ramesh Chandra Sen Gupta.

The Senior Government Pleader, Sarat Chandra Basak, for the Crown.

Cur. adv. vult.

*Notice issued by the District Judge of Bakarganj.

1936

In re *Ramesh Chandra Sen Gupta.*

MUKERJI A. C. J. Babu Ramesh Chandra Sen Gupta, a pleader practising at Patuakhali in the district of Bakarganj, was, on September 22, 1929, elected a Director of the Patuakhali Loan Office, Limited, a company incorporated under the Indian Companies Act and has been acting as such Director from the date of his election. On February 3, 1935, he was also appointed Assistant Secretary of the said company and in that capacity he receives an allowance of Rs. 25 per month. Since 1929 he has been a member of the Committee of Management of the Patuakhali Urban Co-operative Bank, Ltd., and also its Secretary, and in April, 1935, he has, in addition, been appointed its Insurance Director; but as regards any of these appointments no question arises now. It is his connection with the Patuakhali Loan Office, Limited, as a Director and also as its Assistant Secretary, that has given rise to the present matter.

The appointments in the Loan Office aforesaid having come to the notice of this Court, the following letter was eventually addressed by the Registrar of the Appellate Side of this Court to the District Judge of Bakarganj on August 20, 1935:—

Sir,

With reference to the correspondence ending with your letter No. 3694-C., dated August 6, 1935, Babu Ramesh Chandra Sen Gupta, pleader, Patuakhali, has been acting as a Director of the Patuakhali Loan Office, Limited, since September 22, 1929, and as Assistant Secretary of the said concern since February 3, 1935. I am directed to say that it appears that he has infringed the old r. 27, chap. XI (Revised), Vol. 1, of the Court's General Rules and Circular Orders, Civil, in not bringing duly to the notice of the Court the fact of his acceptance of the first appointment, and has also infringed the new r. 27, *ibid*, in not informing the Court of his intention to accept the second appointment before he accepted it. I am, therefore, to request that you will be so good as to call upon him to show cause why he should not be dealt with under the new r. 29, *ibid*, read with the note thereto, and a fine imposed on him thereunder as a condition precedent to his being allowed to practise as a pleader.

Pursuant to a notice issued on him as required by the letter aforesaid, the pleader has appeared in this Court and has shown cause. As the letter speaks of old and new rules, it is necessary to see what they are.

In 1884, certain rules were enacted and they were since then embodied in the Court's General Rules and Circular Orders, Vol. I, Chap. XI, where they appeared as the following:—

31. Any person who shall hold any appointment under Government or shall carry on any trade or other business, at the time of his application for admission as a pleader or *mukhteâr*, shall state the fact in his application for admission; and the High Court may refuse to admit such person, or may pass such orders thereon as it thinks proper.

32. Any person who, having been admitted as a pleader or *mukhteâr*, shall accept any appointment under Government, or shall enter into any trade or other business, shall give notice thereof to the High Court, who may thereupon suspend such pleader or *mukhteâr* from practice or pass such orders as the said Court may think fit.

* * * * * *

34. Any wilful violation of any of the above rules shall subject a pleader or *mukhteâr* to suspension or dismissal.

By February, 1934, the rules of Chap. XI had undergone some alterations and additions; but, for our present purposes, it would be sufficient to state that rr. 31, 32 and 34 appeared as rr. 26, 27 and 29, respectively. The rules as they stood then are the old rules referred to in the letter. In July, 1934, the rules were again revised and the form they then took will appear from the following rules 950, 951 and 953, as they have been published in the New Edition of the Court's General Rules and Circular Orders, Civil, and which correspond respectively to rr. 26, 27 and 29. These revised rules are the new rules referred to in the letter. They run as follows:—

950. Any person who shall hold any appointment or be engaged in any occupation, trade or business, at the time of his application for admission as a pleader or *mukhteâr*, shall state the fact in his application for admission; and the High Court may refuse to admit such person or may pass such other orders on it as it thinks proper.

951. Pleaders and *mukhteârs* shall not, while practising as such, be debarred thereby from holding any appointment or engaging themselves in any occupation, trade or business, but a person who having been admitted as a pleader or *mukhteâr* intends to accept an engagement or engage himself in an occupation, trade or business, shall, prior to accepting such appointment or so engaging himself, by letter addressed to the Registrar, inform the High Court, through the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, of his intention and shall state whether or not he prays for leave to suspend practice as a

1936

In re *Ramesh Chandra Sen Gupta.*

Mukerji A. C. J.

pleader or *mukhteár*, and the High Court may either grant such leave or may, if such appointment, occupation, trade or business shall appear to be derogatory to a practising member of the legal profession or likely to interfere with the discharge of his professional duties as a pleader or *mukhteár*, require him to suspend practice while holding such appointment or so engaged, or may make such other order or orders as may seem fit.

Note. The intimation provided for by this rule shall be given by *mukhteárs*, if any, practising in the Court of the Presidency Magistrate through the Chief Presidency Magistrate, Calcutta.

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953. Any wilful violation of rr. 950 and 951 shall render the pleader or *mukhteár* concerned liable to a fine, which shall not in any case be less than Rs. 50 and may also render him liable, in addition, to suspension or dismissal.

Note. This rule shall also apply to such infringements of rr. 950 and 951 as they stood prior to the publication of these rules in the local Official Gazette, as may have been or may hereafter be brought to the notice of the Court.

Put quite shortly, the charge against the pleader is that he has infringed old r. 27 by not bringing to the notice of the Court the fact of his acceptance of office as Director since September 22, 1929, and that he has also infringed new r. 27 by not informing the Court of his intention to accept the office of Assistant Secretary before he accepted it on February 3, 1935.

The first contention urged on behalf of the pleader is that r. 951 (new r. 27 of July, 1934) and its predecessors, namely, r. 32 of 1884 as well as old r. 27 of February, 1934, are all *ultra vires*. The argument in this connection is that, under s. 6 of the Legal Practitioners Act (XVIII of 1879), the High Court is competent to frame rules relating to the qualifications, admission and certificates of pleaders [cl. (*a*)], the fee to be paid for their examination and admission [cl. (*c*)], and their suspension and dismissal [cl. (*d*)]; that, after a pleader has been admitted, the renewal of his certificate is governed by s. 7 of the Act; and that, while holding a certificate, his suspension or dismissal is regulated by ss. 12 and 13 of the Act and in no other manner. In other words, it is argued that, though the High Court can lay down tests or requirements to be fulfilled by a person to entitle him to be admitted as a

1936

In re *Ramesh Chandra Sen Gupta.*

Mukerji A. C. J.

pleader, yet, once these tests or requirements are fulfilled, there can be no rules framed by the High Court suspending or dismissing him from practice, while the certificate issued to him is in force, but the question of renewal of his certificate and the question whether he should be dismissed or suspended are questions which have to be dealt with under ss. 12 and 13 of the Act and that no rules can be framed by the High Court of the nature of the rules in question. It has been complained that the rules, such as they are, lay down a restriction which is wholly unwarranted and contemplate an enquiry of an inquisitorial character, which is to be deprecated. The contention, in our opinion, is not well-founded. In the first place, it overlooks the words "proper" and "to be" appearing in cl. (*a*) of s. 6 : The former word implies that, apart from educational and other qualifications that may be insisted on, there may be other conditions laid down in order to entitle a person to be admitted as a pleader; and the latter expression denotes that his continuance as a pleader may be made dependent on such conditions. A pleader, in conducting the litigation for which his services are requisitioned, has to do some administrative work arising out of the litigation in the offices of the Court and appears as advocate in the Court as well; in other words, he combines in his own person the two duties which are performed in England by attorneys and barristers. *In the Matter of the Petition of Khoda Bux Khan* (1). And it is only in the fitness of things that the Court should be in a position to control his activities in such a way as would ensure the proper discharge of his duties as pleader. Nextly, to give effect to the contention would land us in this absurdity that even if a person fulfils all the requirements on the day that he is admitted, he may make himself thoroughly ineligible the next day, and yet will continue with impunity to practise as a pleader until the question of renewal

(1) (1888) I. L. R. 15 Cal. 638.

1936

In re *Ramesh Chandra Sen Gupta.*

Mukerji A. C. J.

of his certificate arises, which will ordinarily arise only at the expiry of each year and not oftener. Moreover, though cl. (*f*) of s. 13 of the Act need not be read *ejusdem generis* with the other clauses of the section [*Le Mesurier* v. *Wajid Hossain* (1); *Shankar Ganesh Dabir* v. *Secretary of State for India* (2)], and cases of moral turpitude unconnected with the discharge by a legal practitioner of his professional duty may come within the expression "any "other reasonable cause", yet, in the absence of definite rules to that effect, engagement in trade or business or other occupation, however derogatory to the dignity of the profession or detrimental to the due discharge of the duties of a legal practitioner, would hardly come within the expression. Rules restricting the liberties of pleaders in this respect are dictated by public policy and are, in one form or another, in force in some of the other provinces as well. As far as I have been able to ascertain there are such rules in Madras, Patna, North-Western Provinces, Punjab and the North-Western Frontier Provinces. And in the Madras Full Bench decision in the case of *Muni Reddi* v. *Venkata Row* (3), some of the rules there in force are referred to. The new r. 951 was framed with the object of softening the rigour of such rules as were in existence before, and it professes not to preclude pleaders and *mukhteârs* while practising as such from holding any appointment or engaging themselves in any occupation, trade or business unless such appointment, occupation, trade or business should appear to be derogatory to a practising member of the legal profession or is likely to interfere with the due discharge of his professional duties. The provision in the rule as regards previous notice to the Court is a provision evidently made for the benefit of the practitioner himself, so that he may not be in a state of uncertainty as to what the consequences of his proposed action may be. I am clearly of opinion that the rule was

(1) (1902) I. L. R. 29 Cal. 890.
(2) (1922) I. L. R. 49 Cal. 845; L. R. 49 I. A. 319.
(3) (1912) I. L. R. 37 Mad. 238, 257-58.

entirely within the competence of the High Court to make.

It has been contended next that r. 953, corresponding to old and new r. 29, in so far as it provides a penalty in shape of a fine, is *ultra vires*. It is obvious that this provision was also intended to operate for the benefit of the delinquent practitioner, who under rr. 32 and 34 of 1884 was liable to suspension or dismissal. Though that is so yet what we have to consider is whether such a provision is permissible. Section 6 of the Act enables the High Court to make rules consistent with the Act as to the suspension and dismissal of the pleader [cl. (*d*)], and says nothing about imposing a penalty in the shape of a fine. "Fine" it is really not, though the word itself is used in the rule. It is, as stated in the notice, the imposition of a condition precedent, namely, the payment of a sum of money,—the fulfilment of which is demanded by the rule to enable the pleader to resume his practice. It is also to be noted that there is no provision in the Act or anywhere else under which the amount may be realised, unless it is voluntarily paid by the pleader himself. Even then, the question is whether it is competent to the High Court to impose a condition of this description by framing a rule under its powers under s. 6 of the Act. It has been argued on behalf of the Government that when s. 6 gives the High Court power to "make rules consistent with the Act as to "the following matters (namely) * * the sus-"pension and dismissal", *etc.*, it authorizes the High Court to make a rule which has only this effect that unless a certain condition, namely as to the payment, is complied with, the pleader remains suspended. This is a very ingenious argument and is perhaps the only way in which the provision can be sought to be justified. But the difficulty in accepting this argument is, in my opinion, overwhelming. In the first place, call it by whatever name, it is to all

1936

In re *Ramesh Chandra Sen Gupta.*

Mukerji A. C. J.

intents and purposes a penalty for a breach of a rule and nothing else, and the intention is that on this payment the breach is to be condoned; and regarded in that light, it means to create an offence and provides for a penalty, which are unknown to the Act itself. Nextly, regarded as a condition, it is, in my opinion, a most unjustifiable and unreasonable one; because, although the holding of an appointment or the engaging in an occupation, trade or business may be derogatory to the dignity of the profession or detrimental to the due discharge of professional duties and so may be justly punished with suspension or dismissal, it is imposible to think of mere omission to give previous notice of the fact that an employment would be accepted or an occupation, trade or business would be engaged in,—however unexceptionable they may be in their character,—would attract the operation of such a condition. Thirdly, the enforcement of the rule would, in my opinion, be impossible, in view of the provisions of the Act. I am of opinion that, as regards a pleader who holds a licence to practise as such, no order of suspension or dismissal can be made except by the Court itself and as a result of a judicial proceeding contemplated and provided for by the Act itself. If it is a case of first enrolment or of renewal of certificate, the position is different, the administrative machinery of the Court being competent to deal with it in respect of cases covered by the Act or the Rules. Possibly also, in cases where the pleader himself applies for suspension, the matter need not come before the Court as a judicial matter. But in cases of the present description, I do not see how an order of suspension or dismissal can be made otherwise than under cl. (*f*) of s. 13 of the Act and unless it be held that non-compliance with rules framed by the Court in this respect is a misconduct and is a reasonable cause within the meaning of that clause. As observed by Hill J. in the Full Bench decision of this Court in

the case of *Le Mesurier* v. *Wajid Hossain* (1) there is no other machinery provided for the dismissal and suspension of pleaders and *mukhteârs* than that which is prescribed by the Act. And it is perfectly clear that no imposition of a condition of the present nature, and nothing else than suspension or dismissal, would be permissible under the Act itself. It follows, therefore, that such action as has to be taken cannot be taken as an administrative measure.

In my judgment, therefore, for the breaches specified in the notice issued on the pleader, the only proceedings that may be taken against him are proceedings under s. 13, cl. (*f*) of the Act. The view I take receives support from the decision of the Full Bench in the case of *Muni Reddi* v. *Venkata Row* (2) in which it was held that a pleader, who engages himself in a trade but does not intimate the same to the Court, as required by a rule framed by the Madras High Court, is guilty of misconduct within the meaning of s. 13 of the Act.

We, therefore, come to the question of the merits of the case, in order to have to consider whether any such proceedings should be taken. On the notice, as issued, such proceedings obviously cannot be taken. So far as the facts are concerned, it seems to me that old r. 27 was violated because the pleader did not give the required notice on accepting office as Director to the Patuakhali Loan Office, Limited, on September 22, 1929. The word "business" is quite a comprehensive word and it should be noted that the rule does not speak of a business carried on for the benefit of the pleader himself. It is also clear, to my mind, that new r. 27 was violated because no previous intimation to the Court was given by him as regards his appointment as Assistant Secretary to the said Loan Office, which he took up on February 3, 1935. So far as the former

(1) (1902) I. L. R. 29 Cal. 890. (2) (1912) I. L. R. 37 Mad. 238.

1936

In re *Ramesh Chandra Sen Gupta.*

Mukerji A. C. J.

appointment is concerned, however, it does appear that there was a genuine doubt in the mind of the pleader as to whether by being a Director he had entered into a business within the meaning of the rule. And as regards the second appointment it is sufficiently clear, upon the papers before us, that this new rule was not sufficiently known to the public at the relevant date and that the pleader, on coming to know of it, communicated with the Court as early as possible. I am unable to hold, therefore, that there was any such wilful violation of the rules as would merit action under the Act.

I am also of opinion that the pleader's connection with the Loan Office, such as it is, is neither derogatory to the dignity of a practising lawyer nor likely to interfere with his duties as such to any appreciable extent, and so no further action need be taken in respect of the matter.

The notice issued on the pleader is discharged.

LORT-WILLIAMS J. I agree.

S. K. GHOSE J. I am in agreement with the judgment of Mukerji J. and I may add a few words with regard to the question whether r. 953, corresponding to the old and new r. 29, in so far as it prescribes a fine, is *ultra vires*. I have no doubt that the High Court has the power to make a rule requiring a person, who has been admitted as a pleader or *mukhteâr*, to notify the High Court of his intention to accept an engagement or engage himself in an occupation, trade, or business. Such a rule is perfectly consistent with the Legal Practitioners Act and comes under cl. (*a*) of s. 6.

The argument, that once a certificate has been issued under s. 7, the Court cannot do anything until the expiration of the period of the certificate, does not impress me at all. It is for the Court to judge whether a person is a "proper person to be"

1936

In re *Ramesh Chandra Sen Gupta.*

S. K. Ghose J.

a pleader, *etc.*, and this refers not merely to the time of admission, but also to the period of continuance as pleader, *i.e.*, the period of the certificate; otherwise "suspension and dismissal" would be meaningless. This is consistent with the decision of the Full Bench in *Le Mesurier* v. *Wajid Hossain* (1), and, so far as I know, it is in accordance with rules made by other High Courts in India. If then the Court has the power to make a rule requiring a person, who has already been admitted as pleader, to give notice of his intention to engage in some other occupation, the Court surely has the power to enforce such a rule by providing a penalty. Otherwise a person wilfully omitting to give notice would be in no worse position than one giving notice. Section 13 provides for suspension and dismissal and consistently therewith the Court may make rules under cl. (*d*) of s. 6. Such rules would have the force of law and be enforced in a judicial proceeding. Omission to give notice may itself make the pleader liable under s. 13, as pointed out by Sankaran Nair J. in *Muni Reddi* v. *Venkata Row* (2). It is here that the provision as to fine in the new r. 953 has troubled me. Apart from the fines prescribed by way of penalties under Chap. VII, s. 16 of the Act specifically empowers the Court to impose a fine for infringement of rules and such fine may be recovered as if it had been imposed in the exercise of the High Court's Ordinary Original Criminal Jurisdiction. This section relates only to *mukhteârs* on the Appellate Side of the High Court. But in the case of pleaders, the provision as to fine is absent. No doubt under the Legal Practitioners Act the Court acts in many matters in an administrative or disciplinary capacity as was pointed out by Dawson Miller C. J. in the case of In re *Miss Sudhansu Bala Hazra* (3). In the connected case In re *Sudhansu Bala Hazra* (4), it was pointed out that proceedings relating to the admission of pleaders are administrative

(1) (1902) I. L. R. 29 Cal. 890.

(2) (1912) I. L. R. 37 Mad. 238, 265.

(3) (1922) I. L. R. 1 Pat. 590.

(4) (1921) I. L. R. 1 Pat. 104.

1936

In re *Ramesh Chandra Sen Gupta.*

S. K. Ghose J.

and not judicial. In the rules on the Appellate Side of this Court [*vide* r. 6(*d*)], the Judge in the English Department is empowered to pass orders on applications and routine references connected with the admission and enrolment of pleaders and *mukhteârs*. But the imposition of a fine cannot be administrative and the fine prescribed by r. 953, cannot be realised as a fine imposed by the Court in a judicial proceeding. By that rule it was apparently intended that the fine would be imposed by the Court acting administratively and further that it should provide an alternative to the more rigorous penalty of suspension or dismissal. There is, however, no process by which the fine can be realised, except as a voluntary payment. The Registrar, in his letter dated August 20, 1933, speaks of it as a condition precedent to the pleader being allowed to practise. But it seems to me that an alternative to suspension and dismissal by way of penalty is not provided for in the Act and would not be consistent with its provisions. In fact, r. 953 as it stands speaks of the fine as a liability in addition to the liability to suspension or dismissal. Both liabilities would have to be enforced by the same authority, *viz.*, by the Court in a judicial proceeding. Since the fine cannot be imposed as a judicial fine it seems to me that the provision relating to it is *ultra vires*.

Notice discharged.

A. K. D.