

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
and Mr. Justice King*

1933  
December, 1

SHIVA NARAIN JAJA (APPLICANT) *v.* JUDGES OF THE  
HIGH COURT OF JUDICATURE AT ALLAHABAD  
(OPPOSITE PARTIES)\*

*Appeal to Privy Council—Suspension of advocate—Letters Patent, clauses 8 and 30—Bar Councils Act (XXXVIII of 1926), sections 10 to 13—Jurisdiction—High Court, in suspending an advocate, exercises original jurisdiction and acts judicially, not administratively—Leave to appeal—Fit case—Civil Procedure Code, section 109(c)—General Rules (civil courts), chapter XXI, rule 1—Fees certificate filed by advocate.*

The High Court has jurisdiction to grant leave to appeal to His Majesty in Council, from an order of the High Court suspending an advocate from practice for a certain period, if the case is a fit and proper case for such leave; the granting of the leave may be deemed to fall under section 109(c) of the Civil Procedure Code or under clause 30 of the Letters Patent.

When special power has been conferred upon the High Court under sections 10 to 12 of the Bar Councils Act to get an inquiry made into the alleged misconduct of an advocate and, on receipt of the finding, to fix a date for the hearing of the case and to hear the parties concerned and then pass such final orders in the case as it thinks fit and make an order as to the payment of the costs of the inquiry and of the hearing in the High Court, and, if necessary, later on to review its order, the High Court in such a proceeding is acting judicially and not merely in an administrative capacity. The entire proceeding is of a judicial nature and the order passed in such a proceeding is an order passed in the exercise of original jurisdiction of the High Court, conferred upon it by the Bar Councils Act, modifying or amending to some extent the powers conferred upon it by the Letters Patent, which, by clause 35 thereof, are subject to the legislative powers of the Governor-General in Council. Such jurisdiction, therefore, comes within the scope of clause 30 of the Letters Patent, though it may not necessarily be classified as civil, criminal, admiralty, testamentary or matrimonial jurisdiction. It is noteworthy that in clause 30 the expression "original jurisdiction" is used and not "original civil, criminal, admiralty, testamentary or matrimonial jurisdiction".

Even apart from the Bar Councils Act, the correct view is that an exercise by the High Court of the power to remove or suspend an advocate from practice, conferred by clause 8 of

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\*Application No. 46 of 1933, for leave to appeal to His Majesty in Council.

the Letters Patent, is an exercise of original jurisdiction by the High Court; but the matter has been made quite clear after the passing of the Bar Councils Act.

Under rule 1 of chapter XXI of the General Rules for civil courts counsel's fee can not be taxed in the costs unless it has been actually paid, and the mere giving of a promissory note would not amount to an actual payment of the fee; and counsel should not certify any fee not actually received in cash and for which only a promissory note has been given.

Where an advocate, who had been suspended from practice on the ground of breach of the rule, raised the question of the correct interpretation of the rule, as well as certain other points, in his application for leave to appeal to His Majesty in Council, it was *held* that it was a fit and proper case in which the leave should be granted.

Messrs. *P. M. L. Verma* and *S. K. Mukerji*, for the applicant.

Mr. *Muhammad Ismail* (Government Advocate), for the opposite parties.

SULAIMAN, C.J., and KING, J.:—This is an application for leave to appeal to His Majesty in Council from an order of a Bench of this Court suspending the applicant, who is an enrolled advocate, for a period of three months. A preliminary objection is taken by the Government Advocate that no leave to appeal to His Majesty in Council can be given by this Court. It is urged that the suspension of the advocate is in the exercise of the power specially conferred upon this Court by clause 8 of the Letters Patent and by the Bar Councils Act of 1926 and that when exercising such power the High Court is not exercising any jurisdiction, much less civil jurisdiction. It is, therefore, contended that clause 30 of the Letters Patent would not at all apply and there would be no appeal to the Privy Council. It is further contended that the case not being a civil case to which sections 109 and 110 of the Civil Procedure Code can apply, no leave can be granted under those sections.

Reliance is placed on the view which has been expressed in some of the other High Courts in India.

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In *G. S. D. v. Government Pleader, High Court, Bombay* (1) it was laid down that a vakil of the Bombay High Court who had been suspended in the exercise of the disciplinary jurisdiction under the Letters Patent could not be given leave to appeal to His Majesty in Council, as the order was not in the nature of a final judgment, decree or order within the meaning of the Letters Patent. Three cases previously decided by this Court were distinguished.

In the case of *Bir Kishore Roy v. King-Emperor* (2) it was clearly held that the right of appeal to His Majesty in Council is confined to appeals from judgments, decrees or orders passed in the exercise of one or other of the classes of jurisdiction conferred by clauses 9 to 27 of the Letters Patent of the Patna High Court and does not extend to the administrative or disciplinary powers conferred on the Court by the earlier clauses or by statute. The learned CHIEF JUSTICE based his judgment on the view that the words "order made on appeal or otherwise as aforesaid" clearly refer to judgments, decrees or orders passed in the exercise of original jurisdiction, not being criminal jurisdiction, which were classified in clauses 9 to 27 of the Letters Patent and included civil, criminal, admiralty, testamentary, intestate and matrimonial jurisdiction, appellate and original, and did not include administrative or disciplinary powers conferred on the court by clause 8 and other earlier clauses.

This case was followed by a Full Bench of the Madras High Court in *In the matter of E. Raghava Reddi* (3).

The Patna High Court in *In re Sudhansu Bala Hazra* (4) followed the same ruling in declining to grant leave to appeal from an order refusing to enrol a lady practitioner.

On the other hand, there are several cases of this Court in which it was considered that this Court has

(1) (1907) I.L.R., 32 Bom., 106.

(2) (1919) 4 Pat.L.J., 423.

(3) A.I.R., 1922 Mad., 440.

(4) (1922) I.L.R., 1 Pat., 590.

jurisdiction to grant leave to appeal to His Majesty in Council, leave was granted and no objection was raised before their Lordships of the Privy Council.

In *In the matter of Parbati Charan Chatterji* (1) leave to appeal to His Majesty in Council was granted by this Court and the appeal was entertained by their Lordships of the Privy Council without any objection having been raised by the opposite party. We have seen the paper book and verified the fact that the appeal had been granted by this Court.

In *In the matter of Rajendra Nath Mukerji* (2), where an advocate of this Court had been removed from the roll, the High Court granted a certificate for appeal under section 595 of the Civil Procedure Code and the appeal was entertained by their Lordships of the Privy Council. Section 595 of the Civil Procedure Code, Act XIV of 1882, corresponded to the present section 109 of the Civil Procedure Code.

In *In the matter of Sashi Bhushan Sarbadhicary* (3) an advocate of this Court had been suspended from practice for four years, and leave was granted by the High Court to him to appeal to His Majesty in Council, though it appears that he also obtained special leave from the Privy Council.

In *In the matter of an Advocate of Benares* (4) a Bench of this Court presumed that on previous occasions this Court had treated applications for leave to appeal as falling under section 109(c) of the Civil Procedure Code and granted leave in fit cases, and following the previous practice granted leave in that case when they were satisfied that it was a fit case for appeal.

In *In the matter of a Pleader* (5), who had been suspended for six months for contempt of court, another Bench granted leave to appeal to His Majesty in Council. The attention of the Court was drawn to the

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(1) (1895) I.L.R., 17 All., 498

(2) (1899) I.L.R., 22 All., 49.

(3) (1906) I.L.R., 29 All., 95.

(4) [1932] A.L.J., 861.

(5) (1932) I.L.R., 55 All., 246.

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decisions of the Patna, Madras and Calcutta High Courts in which it had been laid down that the High Courts were not authorised to grant such leave; but the Bench, in view of the consistent practice of this Court, did not propose to depart from this practice and held that leave may be granted under section 109(c). They also pointed out that if leave could not be granted under that section of the Code then it may be granted under clause 30 of the Letters Patent.

The view which seems to have prevailed in other High Courts is that when the High Court exercises its power to remove or suspend from practice on reasonable cause an advocate or pleader, it is not exercising any jurisdiction at all, but is merely exercising its special power. It seems to have been assumed that the jurisdiction mentioned in clause 30 of the Letters Patent must mean only civil, criminal, admiralty, testamentary and matrimonial jurisdiction, whether original or appellate, and would not include any other class of jurisdiction. If one were confined to the clauses of the Letters Patent alone, it may well be said that the word "jurisdiction" was not used therein in connection with any other class of exercise of power. But clause 35 of the Letters Patent expressly provides that the Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council. It follows that the provisions of the Letters Patent can be amended from time to time by Imperial Acts and that fresh jurisdiction not specifically conferred by the Letters Patent may be conferred on the High Court to hear and try cases not expressly provided for under the Letters Patent.

Under clause 30, in any matter not being of criminal jurisdiction, an appeal lies to His Majesty in Council from any final judgment, decree or order of the High Court made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by the Judges, provided certain conditions are

fulfilled, and also from "any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal" to the Privy Council.

No doubt the words "or otherwise as aforesaid" must mean an order made in the exercise of the original jurisdiction referred to in the earlier portion of the clause, but it is noteworthy that the expression is "original jurisdiction" and not "original civil, criminal, admiralty, testamentary or matrimonial jurisdiction". It seems to us that if by statute original jurisdiction is conferred upon the High Court and to that extent the Letters Patent are amended, and in the exercise of which an order is made, it would be an order passed in exercise of original jurisdiction, though it may not necessarily be classified as civil, criminal, admiralty, testamentary or matrimonial jurisdiction referred to in clauses 9 to 29 of the Letters Patent. Of course where the High Court is acting departmentally or is making any administrative order it would not be regarded as exercising its jurisdiction in a judicial matter, but where the Court is acting judicially and making an order in a judicial matter, it would be difficult to say that it is not exercising any jurisdiction at all.

The position is now made clear by the passing of the Bar Councils Act (Act XXXVIII of 1926). Sections 10 to 13 deal with the inquiry into the conduct of an advocate. Under section 10 the High Court may reprimand, suspend or remove from practice any advocate whom it finds guilty of professional or other misconduct. Upon receipt of a complaint made to it by any court or by the Bar Council or by any other person the High Court, if it does not reject the complaint, shall refer, or may of its own motion so refer, any case for inquiry either to the Bar Council or to the court of a District Judge. Section 11 provides that the case shall be inquired into by a Committee of

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the Bar Council called the Tribunal, which will be governed by the procedure prescribed by rules for the conduct of such inquiries. The "finding" of the Tribunal on inquiry referred to the Bar Council has to be forwarded to the High Court and the "finding" of the District Judge is similarly forwarded to the High Court, and on receipt of such "finding" the High Court is to fix a date "for the hearing of the case" and cause notice to be given and afford an opportunity to the advocate, the Bar Council and the Advocate General, of being heard before orders are passed in the case. Thereafter the High Court may either pass such *final orders* in the case as it thinks fit or refer it back for further inquiry, and upon receipt of the finding after such further inquiry, deal with the case and pass final orders thereon, and in passing such final orders the High Court "may pass such orders as regards the payment of the costs of the inquiry and of the *hearing* in the High Court as it thinks fit." The High Court is also given power to review the orders passed by it and maintain, vary or rescind the same, as it thinks fit. Then section 13 lays down that the Tribunal or the district court shall have the same powers as are vested in a court under the Code of Civil Procedure in respect of attendance of witnesses, production of documents and issuing of commissions. Section 13(2) provides that such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code; and a Tribunal shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Criminal Procedure Code. Lastly, the proceedings before a Tribunal or a district court in any such inquiry are deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act.

It seems to us that when special power has been conferred upon the High Court under section 10 of the Bar Councils Act to get an inquiry made into the

alleged misconduct of an advocate and, on receipt of the finding, to fix a date for the hearing of the case and to hear the parties concerned and then pass such final orders in the case as it thinks fit and make an order as to the payment of the costs of the inquiry and of the hearing in the High Court and, if necessary, later on to review its order, the High Court in such a proceeding is acting judicially and not merely in an administrative capacity. The entire proceeding is of a judicial nature and the proceeding is a hearing before the High Court and orders for the payment of costs of such proceedings can be passed. No doubt, in essence the action taken is a disciplinary action, but the proceeding in itself is of the nature of a judicial proceeding and the inquiry is a public inquiry in which the parties concerned are entitled as of right to be heard. We therefore find it very difficult to hold that in such a judicial proceeding the High Court is not exercising any "jurisdiction" within the meaning of clause 30 of the Letters Patent. Such a jurisdiction obviously is not an appellate jurisdiction, nor is it a criminal jurisdiction. As it is the High Court only which passes final orders in the case on the receipt of the finding, it must be held to be exercising original jurisdiction and not any appellate jurisdiction.

In this view of the matter we find it most difficult to hold that the order passed in such a proceeding is not an order passed in the exercise of original jurisdiction of the High Court, conferred upon it by the Indian Bar Councils Act, modifying to some extent the power conferred upon it by the Letters Patent. At the same time, we would say that the mere fact that the words in clause 8 are "especially empowered to remove or suspend from practice, on reasonable cause" would not necessarily show that the High Court is not exercising any jurisdiction when it exercises such power. In view of the certificate granted in *In the matter of*

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*Rajendro Nath Mukerji* (1) it has been suggested in this Court that the case may very well fall under section 109(c) of the Civil Procedure Code also. In the latest case of this Court it has been further pointed out that clause 30 of the Letters Patent applies.

Following the rulings of this Court and differing from the views of the other High Courts, we hold that this High Court has jurisdiction to grant leave to appeal to His Majesty in Council, provided we are satisfied that this is a fit and proper case.

The next question is whether this case is a fit one for appeal to His Majesty in Council. There were several charges framed against the advocate. He was exonerated by the Bar Council as regards all except the first charge. As to this, the finding of the Bar Council was that he should not have filed a fee certificate on the strength of a promissory note without actually having received his fees and his conduct in doing so was not a proper conduct. At the same time they were of opinion that he did so under a *bona fide* misapprehension and misinterpretation of the rules and had committed an honest mistake. The High Court on a consideration of the finding came to the conclusion that not only the filing of the fee certificate was contrary to the rule framed by this Court but that he acted in bad faith in filing it.

The point raised in appeal is that an objection should have been filed within ten days by the Government Advocate against the finding of the Bar Council, that the proper interpretation of rule 1 of chapter XXI (page 256) of the General Rules (civil) for civil courts is that the fee need not be paid in cash, that there was some contradiction in the two sub-sections of the rule at the time when the advocate had got his form of certificate printed, which contradictions have been lately removed by amendment, that there was latitude allowed to him inasmuch as it was provided that the certificate

shall be "so far as is possible" in the form prescribed, and that in filing a certificate he had made it clear in it that he had not received the amount in cash but had accepted a promissory note in lieu of the fee, and lastly that two District Judges of Budaun had interpreted the rule in his favour.

It has been held in this Court in *Bhagwant Singh v. Bhao Singh* (1), which view has now been accepted by the Full Bench, that the fee cannot be taxed unless it has been actually paid, and that the mere giving of a promissory note would not amount to an actual payment of the fee. There are other points also raised which were embodied in a written argument filed in this Court.

The question whether this is a fit case for appeal is no doubt a difficult one. We would not allow an appeal to be filed invariably in every case and no leave should be granted unless the advocate satisfies the Court that it is a fit case for appeal to His Majesty in Council. Having regard to the special circumstances of the case, we are of opinion that this is a case which should be certified as a fit one for appeal to His Majesty in Council under section 109(c) or at any rate under clause 30 of the Letters Patent. We, therefore, grant the necessary certificate.

Before Mr. Justice King and Mr. Justice Rachhpal Singh

SRINATHJI AND OTHERS (DEFENDANTS) *v.* PANNA KUNWAR  
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*Limitation Act (IX of 1908), article 123—Suit for a legacy—Maintenance bequeathed by will—Defendant not an executor or administrator but in possession of the estate—Limitation Act (IX of 1908), section 19—Acknowledgment—Interest—Interest Act (XXXII of 1839).*

\*First Appeal No. 309 of 1930, from a decree of Bhagwan Das Bhargava, Additional Subordinate Judge of Muttra, dated the 11th of March, 1930.

(1) (1932) I.L.R., 54 All., 490.