

## MISCELLANEOUS CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice

IN THE MATTER OF AN ADVOCATE\*

1935  
September,  
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*Bar Councils Act (XXXVIII of 1926), sections 12, 19(2)—Rules made by High Court under section 12 of Bar Councils Act, rule 11—Bench of three Judges considering Bar Council Tribunal's finding—Opinion of majority to prevail and be valid—Letters Patent, clauses 8, 27, 35—Jurisdiction.*

When findings of Bar Council Tribunals come up for consideration before a Bench of three Judges, in accordance with rule 11 of the rules framed by the High Court under section 12 of the Bar Councils Act, the opinion of the majority of the Judges prevails and is the valid judgment; unanimity of the Judges constituting the Bench is not necessary for the reversal of the finding of the Bar Council Tribunal.

Clause 8 of the Letters Patent confers jurisdiction on the High Court to remove or suspend advocates, whereas section 10 of the Bar Councils Act lays down the procedure according to which such jurisdiction should be exercised; the Bar Councils Act has not in itself conferred a jurisdiction on the High Court replacing the previous jurisdiction. As the jurisdiction to deal with advocates still vests in the High Court under clause 8 of the Letters Patent, and the High Court in exercising that jurisdiction is performing a function directed by the Letters Patent, its Benches are therefore governed by the rule as to the opinion of the majority mentioned in clause 27 of the Letters Patent. No doubt under clause 35 of the Letters Patent the provisions of the Letters Patent can be modified by subsequent enactments in India; but there is nothing in the Bar Councils Act or in any rules made thereunder which has expressly abrogated, or has impliedly repealed by providing something inconsistent, the provision of clause 27 that the opinion of the majority of the Judges hearing the case should prevail. Section 19(2) of the Bar Councils Act makes it clear that the Letters Patent shall be deemed to have been repealed only in so far as they are inconsistent with the Act or any rules made thereunder. Indeed the fact that the Act is silent, and so are the rules, on the point would suggest that this provision of the Letters Patent has necessarily been retained. The provisions of clause 27 relating to the powers of single Judges and Division Courts are of

\*Application in Miscellaneous Case No. 147 of 1935.

general application, and unless there is something in the Bar Councils Act—which there is not—which would curtail those powers, they must be considered to be still in force.

Messrs. *K. Verma, A. P. Panday, S. N. Verma, S. N. Misra and Latta Prasad*, for the applicant.

The Government Advocate (Mr. *Muhammad Ismail*), for the Crown.

SULAIMAN, C.J.:—This is an application by an advocate who by an order of the majority of the Judges constituting a Full Bench has been suspended for a period of six months, and who prays that the High Court be pleased to hold that the said order is *ultra vires* and the Bar Council Tribunal's findings should be deemed to be operative and subsisting.

The learned advocate for the applicant has to concede that on the judicial side the Chief Justice would, of course, have no jurisdiction to hear an appeal from the decision of a Bench of three Judges. He is, therefore, compelled to urge that my authority has been invoked on the administrative side, and that the object of the application is that I may, if of the opinion that the order of the majority of the Judges is *ultra vires*, direct the office not to proceed under section 10 of the Bar Councils Act and that no record of this punishment be entered against his name in the roll of advocates.

The main contention urged on behalf of the advocate is that the finding of the Bar Council Tribunal can be reversed by a Bench of the High Court only when all the Judges constituting the Bench are unanimous, and that if a single Judge dissents, the finding cannot be set aside. The argument is that prior to the passing of the Bar Councils Act jurisdiction to deal with advocates for misconduct was conferred by clause 8 of the Letters Patent, and therefore the procedure laid down in clause 27 providing for the opinion of the majority to prevail governed such cases; but the power is now exercised under the provisions of the Bar Councils Act, which contains no section laying down that the opinion of the

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majority alone will be sufficient. It is pointed out that in some other Acts, like the Stamp Act, section 57(2), the Income-tax Act, section 66A, and the Indian Divorce Act, section 17, there are specific provisions that the opinion of the majority of the Judges shall prevail, whereas there is a significant omission of any such provision in the Bar Councils Act. It is accordingly contended that on the analogy of awards of arbitrators, who, in the absence of an agreement to the contrary, must be unanimous, the High Court has jurisdiction to reverse the finding of the Bar Council Tribunal when there is unanimity among all the Judges, and not otherwise.

It has, of course, to be conceded that prior to the 1st of June, 1928, when the Bar Councils Act came into force, this High Court was empowered under clause 8 of the Letters Patent to remove or suspend from practice on reasonable cause an advocate, and that, under clause 27, when the High Court was proceeding in such a matter it must be deemed to have been performing a function directed by the Letters Patent within the meaning of clause 27, and that therefore the opinion of the majority of the Judges had to prevail.

The question for consideration is whether the provisions of clause 27 of the Letters Patent, which are of general application and deal with powers of single Judges and Division Courts, have been completely abrogated or repealed so far as proceedings under the Bar Councils Act are concerned.

No doubt under clause 35 of the Letters Patent the provisions of the said Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, etc., and that therefore the provisions of the Letters Patent can be modified by a subsequent enactment. The question, however, is whether the Bar Councils Act has modified this part of the provision of clause 27.

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The argument based on an omission of all reference to the opinion of the majority in the Bar Councils Act, as compared to the provisions of other enactments mentioned above, has in my view no force. These Acts themselves provided that the cases arising under them should come up for decision before a Bench of not less than three or not less than two Judges. That is to say, a minimum constitution of the Bench empowered to deal with such cases was prescribed, and therefore the legislature felt the necessity of providing further that the opinion of the majority should prevail. The Bar Councils Act, on the other hand, does not contain any provisions specifying that cases under the Act should be disposed of by even more than one Judge. It is on this ground that no necessity was felt to provide what is to happen when there is a difference of opinion.

Section 108 of the earlier Government of India Act preserved the jurisdictions, powers and authority of the High Court as were vested in it at the commencement of that Act. That Act, therefore, did not in itself repeal clause 27 of the Letters Patent. There is a similar provision in section 223 of the Government of India Act, 1935. Under both these sections the High Court has been expressly empowered to make rules for regulating the practice of the Court. On the other hand, section 12 of the Bar Councils Act refers to the framing of rules to prescribe the procedure to be followed by Tribunals and by District Courts, and contains no reference whatsoever to the rules that may be framed for prescribing the procedure to be followed in the High Court itself. It is obvious, therefore, that the Bar Councils Act has left the jurisdiction of the High Court to frame rules for regulating its own procedure quite intact, except to the extent expressly mentioned therein.

It is by rule 11 framed by the High Court under section 12 of the Bar Councils Act that it is provided that the findings of Bar Council Tribunals should come up for consideration before a Bench of three Judges. This

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rule, in my opinion, should more appropriately have been framed under section 108 of the Government of India Act and possibly also under section 122 of the Code of Civil Procedure; but certainly not under section 12 of the Bar Councils Act. I would have no hesitation in holding that the High Court has power to frame a special rule prescribing that when the finding is put up before a Bench of three Judges for consideration, if the Judges are divided in opinion, the view of the majority should prevail.

No such rule, however, exists at present, and it is a matter for consideration whether it necessarily follows that the findings have got to be accepted unless there is unanimity. The answer must depend on the interpretation of the relevant provisions of the Bar Councils Act. The preamble indicates the intention of the legislature to consolidate and amend the law relating to legal practitioners entitled to practise in such courts. There is no section which confers special jurisdiction on High Courts for dealing with cases of misconduct. Nor is there anything in the body of the Act or in the schedule appended thereto which would suggest that clauses 8 or 27 of the Letters Patent have been expressly repealed. The repeal can take place only by a necessary implication, if such a position were tenable. Now the distinction between clause 8 of the Letters Patent and section 10 of the Bar Councils Act is that under the former the High Court is "empowered to remove or to suspend from practice, on reasonable cause, . . . advocates", which undoubtedly confers jurisdiction on the High Court, whilst section 10 merely provides that "The High Court may, in the manner herein provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct." It seems to me that clause 8 of the Letters Patent confers jurisdiction to remove or suspend advocates, whereas section 10 of the Bar Councils Act lays down the procedure according to which such jurisdiction should be

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exercised. In the matter of procedure the Bar Councils Act, being a later enactment, must prevail. But as I read the various provisions of the Bar Councils Act I am unable to hold that the Bar Councils Act has in itself conferred a jurisdiction on the High Court replacing the jurisdiction which had previously been conferred by the Letters Patent.

Section 19(2) of the Bar Councils Act clearly provides that when sections 8 to 16 come into force in respect of any High Court, this Act shall have effect in any such court "notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, *in so far as they are inconsistent with this Act or any rules made thereunder*, be deemed to have been repealed." Thus the entire provisions of the Letters Patent have not been repealed, but only such provisions of it must be deemed to have been repealed as are inconsistent with the provisions of this Act or any rules made thereunder.

It seems to me that the jurisdiction to deal with advocates still vests in the High Court under clause 8 of the Letters Patent, and the High Court in exercising that jurisdiction is performing a function directed by the Letters Patent, and its Benches are therefore governed by the rule as to the opinion of the majority mentioned in clause 27. There is nothing in the Bar Councils Act or in any rules made thereunder which is inconsistent with the provision that the opinion of the majority of the Judges hearing the case should prevail. Indeed the fact that the Act is silent and so are the rules would suggest that the provisions of the Letters Patent have necessarily been retained. As already pointed out, the provisions of clause 27 relating to the powers of single Judges and Division Courts are general in their nature, and unless there is something in the Bar Councils Act (which there is not) which would curtail that power, they must be considered to be still in force. When the legislature left it to the High Court to frame rules, including a rule that such cases should be heard by a

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single Judge only, it could not have necessarily contemplated that there should be perfect unanimity before the finding of the Bar Council Tribunal is reversed. Nor can it be said that the High Court, when it framed the rules regulating its own practice and directing that cases of this kind should be put up before a Bench of three Judges, necessarily intended to lay down that it would have power to interfere with the finding of the Bar Council Tribunal only if the Judges unanimously agreed. As clause 27 contains the general provision which prevails in all cases which are not governed by special provisions of other enactments like section 98 of the Code of Civil Procedure, the necessary inference is that the intention at the time of the framing of the rules was to adhere to the existing procedure and not to depart from it without providing for some new rule of practice in its place. I am, therefore, of the opinion that it is impossible for me to hold that the order passed by the majority of the Judges on the 20th of August, 1935, was altogether *ultra vires* and that it is my duty to direct the office not to give effect to it. On the contrary, I hold that there was no option but to direct that the opinion of the majority shall prevail.

Under the rules of this Court an advocate who has been suspended has a right of appeal to His Majesty in Council. The proper course for the applicant, if he feels aggrieved and considers that the decision was wrong, is to appeal to their Lordships of the Privy Council and not approach me as the Chief Justice.

The application is accordingly dismissed.