

It seems to their Lordships that the High Court have taken an entirely right view of the matter, and they will humbly advise His Majesty that the appeal ought to be dismissed. No respondent having put in an appearance, there will be no costs.

Appeal dismissed.

Solicitor for the appellants : Mr. W. W. Bow.

J. V. W.

1901

RADHA
RAMAN
SHAH
v.
PRAN
NATH
ROY.

ORIGINAL CIVIL.

Before Mr. Justice Stanley.

IN THE MATTER OF RUDRA NARAIN ROY.

*Board of Examiners for pleadership and mukhtearship—Candidate—
Examination.*

1901
June 7.

When a candidate applies to the Board of Examiners for pleadership and mukhtearship to be allowed to present himself for examination, stating that he has complied with the rules and regulations entitling him to enter for such examination, the Board of Examiners for the time being should enquire into each individual case and form its own opinion as to the fitness of such applicant, even though such applicant may have been rejected as an improper person on a previous application to the Board in some past year when composed of different members.

THIS was a matter, in which a rule had been obtained on the 22nd of February 1901 under s. 45 of the Specific Relief Act (1 of 1877), calling on the Board of Examiners for Pleadship and Mukhtearship to shew cause, why Rudra Narain Roy should not be allowed to appear at the next examination for mukhtears and pleaders, he having fulfilled the conditions necessary under the law qualifying him to appear at such examination.

Mr. O'Kinealy (on behalf of the Board of Examiners) shewed cause—The form of the rule may be taken objection to, as it states that Rudra Narain Roy had fulfilled the conditions necessary under the law—this cannot be true of a man like Rudra Narain Roy, who has been guilty of personation at the Calcutta University. [Mr. Sinha—He was acquitted of that.] He was discharged for want of proof of identity, and that does not shew that he was faultless. The Court has no jurisdiction to revise or set aside the proceedings of the Board arrived

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at honestly. The opinion of the Board of Examiners of 1893 was that Rudra Narain Roy was not of good moral character, and was not fit to present himself as a candidate for the Pleadership and Mukhtearship Examination. [STANLEY, J.—I am not going to deal with that now. Is a man never to have a chance? If he makes a slip, is he to suffer for the rest of his life?] This Court has no jurisdiction to call upon the present Board of Examiners to set aside the order of their predecessors. They were of opinion that he was not a fit and proper person, and he is permanently disqualified from presenting himself. [STANLEY, J.—I have heard of hardened criminals turning out to be excellent members of society. It is for the present Board of Examiners to decide whether the man is a fit and proper person to present himself for the examination. I am afraid I shall have to make the rule absolute.]

Mr. *Sinha* (in support of the rule).—My client has not been fairly dealt with. He was charged with false personation by the Calcutta University, but he was acquitted of that charge, and the Calcutta University subsequently admitted him to their First Arts Examination held in 1898. The Calcutta University have changed their opinion and given the man a chance, but the Board of Examiners are too conservative and unreasonable. My client having fulfilled all the conditions required, should be allowed to present himself for examination.

STANLEY, J.—This matter comes before me on a rule obtained by the petitioner, Rudra Narain Roy, calling on the Board of Examiners for Pleadership and Mukhtearship to show cause, why the Board should not allow him to appear at the ensuing examination for mukhtearship, and to appear at any other similar future examinations to be held by the Board, upon his fulfilling the conditions necessary under the law to qualify him to appear at such examinations.

It appears from the petition that the petitioner applied for liberty to present himself for the examination for mukhtearship last year, supporting his application with certificates of good character and of having passed publicly an examination at the

University, which under the rules are necessary before he can offer himself as a candidate.

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In the petition he states that in 1891, he was tried before the Chief Presidency Magistrate on a charge of having personated one Hemanga Chunder Kinla at the examination of that year. The charge was heard and after hearing evidence the Chief Presidency Magistrate was not satisfied as to the identity of the accused with the person, who was said to have been personated, and he was discharged. Though this does not amount to an acquittal of the charge, it shews there was not sufficient evidence to satisfy the Magistrate of the guilt of the accused.

Subsequently in 1893 he sent in certificates to the Board and offered himself as a candidate at the examination for mukhtearship. The Board then investigated his case and exercising no doubt a wise and proper discretion came to the conclusion that he was not a fit and proper person to be accepted as a candidate.

A number of years have passed since then and the Board is, with the exception of one member, changed. On the application of the petitioner to be examined last year, the present Board considered that they were entitled to rely on the decision of the previous Board and that they would not be justified in investigating a matter, which had already been disposed of, and consequently they refused to entertain the application or to examine the certificates of character presented to them by the petitioner and refused to allow him to be examined.

Considering himself aggrieved by this order the petitioner has applied to this Court under s. 45 of the Specific Relief Act, praying for the relief mentioned in the Rule.

If the present Board of Examiners had gone into the question of the present fitness of the candidate and had, in the exercise of their discretion, decided that he was not a fit and proper person to be admitted as a mukhtear, I certainly should not have entertained the application, for it is for the Board and not for the Court to determine the fitness of a candidate for that post.

His present fitness as it appears to me from the evidence has not been considered by the Board. This was not, in my judgment,

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right. Before the Board debars a person from presenting himself as a candidate, they ought to examine into his fitness at the present time.

It may be that a man's moral character in 1893 was such as fully to justify a refusal to accept him as a candidate in 1893, and yet in 1901 he may be of a reformed and estimable character. It is not consistent with justice, I think, to debar a man, who has once gone astray, of the opportunity of establishing that he is a reformed character and fitted for a post of honor or emolument. Therefore I think this application is one that is sustainable. I do not in any way judge the question of the petitioner's fitness; this is a matter for the Board. I therefore guard myself from its being supposed that I am in any way usurping the duties of the Board.

The order will be that the applicant be at liberty to present to the Board the certificates required by the 6th Rule of "the Rules and Regulations for examination, etc., for pleadership and mukthearship of candidates, &c.," and I shall ask that the Board consider those certificates, and, if satisfied that the candidate possesses the qualifications prescribed by the rules, he be allowed to present himself for examination.

Under the circumstances and as the Counsel on behalf of the Board withdrew the technical objection, which was raised as to the form of the rule, I shall make no order as to costs.

Attorney for the Applicant : Babu *J. C. Dutt*.

Attorney for the Opposite Party : Mr. *H. C. Eggar*.

J. E. G.
