APPEAL FROM ORIGINAL CIVIL.

Before Jenkins C J., Harington and Mookerjee JJ.

1913

Feb. 21.

IN THE MATTER OF PROVAS CHANDRA ROY.*

Pleadership Examination—Candidate—Examiners—Specific Relief Act (I of 1877) ss. 45,46 —Mandamus—Discretion.

In making an application under s. 45 of the Specific Relief Act, the provisions of s. 46 must be strictly observed, and in dealing with such an application the principles applicable to a writ of *mandamus* should generally be followed.

Bank of Bombay v. *Suleman Somji* (1) referred to.

APPEAL by the members of the Board of Examiners of the Pleadership and Mukhtearship Examinations from the judgment of Imam J.

This appeal arose out of an application under section 45 of the Specific Relief Act, by Provas Chandra Roy, a candidate for the Pleadership Examination, for an order against the Board of Examiners.

It appears that the petitioner presented himself at the Pleadership Examination held in February, 1912. Shortly after the conclusion of the examination and while the answer papers were under correction, the petitioner, in common with twenty-nine other candidates, attempted to substitute with an examiner, by the offer of a bribe, fresh answer papers in the place of the ones originally written at the examination.

The examiner having reported the matter to the Board of Examiners, an enquiry was held in the month of June, 1912, and the candidates, including the petitioner, confessed that they were guilty of the charge made against them. The Board, thereupon,

* Appeal from Original Civil No. 7 of 1913.

(1) (1908) I. L. R. 32 Bom. 466.

decided that the thirty candidates should be disqualified for the examination of 1912.

On the 26th July, 1912, the usual report on the examination was submitted to the Government of Bengal by the President of the Board, with a recommendation that these thirty candidates should be debarred from appearing at the Pleadership Examination in the future, either absolutely or for a period of five years. By a reply, dated the 5th November, the Government agreed with the view of the Board that the thirty candidates should not be allowed to appear at the examination for five years.

Thereupon the following notification appeared in the *Calcutta Gazette* of the 27th November, 1912:—

"In pursuance of the order contained in the letter of the Secretary to the Government of Bengal, Judicial Department, dated the 5th November, 1912, it is hereby notified that the following candidates have been debarred from taking part in the Pleadership and Mukhtearship Examinations for a period of five years, *i.e.*, from 1913-1917, both inclusive." A list was annexed of the names of the thirty candidates, including that of the petitioner. At the foot of the notice which was dated the 23rd November 1912, appeared the name of W. Graham, Secretary, Pleadership and Mukhtearship Examination Board.

Some time in November 1912, previous to the appearance of the notification n the *Calcutta Gazette*, the petitioner applied for permission to appear at the Pleadership Examination of 1913, depositing the prescribed fee and certificate of character with the District Judge of Alipore. The application was duly forwarded to Mr. Graham, and was refused.

Thereupon, Provas Chandra Roy applied under section 45 of the Specific Relief Act for, (i) an order that the Board of Examiners acted illegally in not

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publishing petitioner's name in the list of successful candidates; (ii) a declaration that petitioner has passed the Pleadership Examination in 1912, and his name should be gazetted as a successful candidate; (iii) a declaration that the order of November, 1912, appearing in the *Calcutta Gazette* of the 27th November, 1912, which was passed by the Board of Examiners or by the local Government, was illegal and *ultra vires*; (iv) a declaration that the Board of Examiners have acted illegally in not entertaining petitioner's application and his certificate of character, and not allowing him to appear at the ensuing examination for 1913.

The grounds alleged in the petition were: *first*, that the petitioner had obtained the requisite number of marks in his original answer papers to pass the examination of 1912, and that neither the Board of Examiners nor the local Government could legally prevent his name being published as a successful candidate at that examination; *secondly*, that the resolution of the Board, and the notification in the *Gazette*, debarring him from appearing at the examination for five years were *ultra vires*; and, *thirdly*, that the petitioner was entitled to have his application for permission to appear at the examination of 1913 considered on its merits, irrespective of the resolution and notification.

On this application, a Rule was obtained on the 15th January, 1913, from Imam J. in the following terms: "It is ordered that the Board of Examiners of Pleadership and Muktearship examinations . . . shew cause before this Court why they should not publish the name of the said Provas Chandra Roy in the list of successful candidates of the last year's Pleadership Examination, or why the said Provas Chandra Roy should not be allowed to appear at the next Pleadership Examination, he having fulfilled the

conditions necessary under the law qualifying him to appear at such examination."

This Rule was in the form adopted in *In the matter of Rudra Narain Roy* (1).

In his affidavit in opposition to the Rule, Mr. Graham, Secretary to the Board, stated that the petitioner had in fact failed to secure the necessary marks to entitle him to pass the examination of 1912, and that on the application of the petitioner for permission to appear at the examination of 1913 being forwarded to him, he, on behalf of the Board, under rule 15 of the rules and regulations relating to the Pleadership and Muktearship Examinations, considered the application and determined that the candidate was not duly qualified, on the ground of want of moral character, and he accordingly refused to allow him to appear at the examination. Exception was further taken to the nature of the relief claimed as being unobtainable under section 45 of the Specific Relief Act.

On the Rule coming on for hearing on the 20th February, 1913, IMAM J. ordered that "the Board of Examiners do entertain and consider the petitioner's application and determine his fitness according to their discretion." After setting out the facts, his Lordship observed as follows:—

"The first part of the Rule, *namely*, why the petitioner's name should not be published in the list of the successful candidates of the last year's Pleadership Examination, was based on the petitioner's statement contained in paragraph 14 of his petition. The Secretary to the Board, Mr. Graham, however, denies the correctness of the petitioner's statement and definitely states that the petitioner has not secured the necessary pass marks. The statement of Mr. Graham is not challenged, and that part of the Rule therefore must fail.

"In respect of the second part of this Rule, the petitioner maintains his complaint that under the rules by which the Board are guided they have no power to stop him from appearing at an examination without entertaining

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his application and considering it. In the matter of permission to candidates to sit at a Pleadership Examination, the powers of the Board are regulated by rules framed by the High Court under Section 6 of Act XVIII of 1879, and in the matter of conducting the examination their powers are governed by regulations made by the Lieutenant-Governor of Bengal under section 37 of Act XVIII of 1879. The rule pertinent to the present case is contained in rule 15, which runs thus :—'The examiners shall, on receipt of the applications from the District Judge take the case of each candidate, with the report of the District Judge, into their consideration, and shall determine whether or not the candidate is possessed of the necessary qualifications. If the candidate is found qualified, the examiners shall cause his name, name of his father, his age and place of residence and other needful particulars to be entered in a register of persons permitted to appear at the examination.' The regulation framed under section 37 that need be at all considered in connection with this case is regulation 13, which runs thus :—'No candidate will be allowed to enter the examination room with any books, private memoranda or paper of any description, and any one detected doing so will forfeit all fees paid by him and will not not be permitted to undergo the examination. Any candidate detected in the act of using unfair means, such as communicating with another, or copying from his neighbour, or from private memoranda or books, etc., will be summarily ejected from the examination room, and will forfeit all benefit to be derived from the previous portion of the examination, and all right to proceed further with it, together with all fees paid by him.'

"Neither the rules nor the regu'ations have provided for a case of such an unusual nature as the one under consideration. The reprobation of such misconduct as is admitted by the petitioner may be, and in my opinion is, necessary in the interests of the litigant public and society generally, but such reprobation must conform to the prescribed rules. The order prohibiting the offending candidates from appearance at the examinations for a period of five years is one of rustication, for which there is no legal sanction, and whatever moral warrant there may be for such an order, an insistence on the Board acting within their powers has to receive attention. In this connection aptly may be quoted the words of Lord Chancellor Cottenham in *Frewin* v. *Lewis* (1) :—'The limits within which the Court interferes with the acts of public functionaries are clear and unambiguous. So long as they confine themselves within the exercise of those duties which are confided to them by law, the Court will not interfere. The Court will not interfere to see whether any alteration or regulation they may direct is good or bad ; but if they are departing from that power which the law has vested in them, if they are assuming to themselves a power over property which the law

(1) (1838) 4 Mylne & Craig 249, 254.

does not give them, the Court will no longer consider them as acting under the authority of their commission, but treat them, whether they be a corporation or individuals, merely as people dealing with property without legal authority.'

"My attention has been drawn to a case similar to this, *In the matter of Rudra Narain Roy* (1), which in principle applies here, though the circumstances are different.

"Mr. Graham, in paragraph 7 of his affidavit states thus :—'I, on behalf of the Board, according to paragraph 15 of the rules of the Board, considered it (the application) and determined that the candidate was not duly qualified and accordingly I refused to allow him to appear, as he had no moral character.' This is all that has been said on behalf of the Board in respect of their satisfying the provisions of rule 15, and it seems to me that it is not enough. The language of that rule is preceptive, and makes it obligatory on the Board themselves to consider the application of each candidate and to determine whether or not the candidate is possessed of the necessary qualifications. It is quite clear from the statement of Mr. Graham that the Board have not done so, but he did it on their behalf. There is no provision either in the rules or the regulations to enable the Board to delegate their powers to the Secretary of the Board, or to any single member. Had the Board themselves in the present instance considered the fitness of the candidate and decided whichever way their discretion led them, it would not have been open to this Court to entertain an application against their decision.

"On behalf of the Board, objection is taken to the form of the Rule, but I hold that it is comprehensive enough for the order that I make in the case."

From this judgment and order the members of the Board of Examiners appealed.

Mr. B. Chakravarti (with him *Mr. Pearson*), for the appellants. The Court of first instance should not have exercised the discretion allowed by section 45 of the Specific Relief Act in favour of the petitioner, who was guilty of such gross misconduct. Apart from the merits of the matter, the Rule and petition are so radically bad in form as to vitiate the application. The first objection, which, however, the appellants desire to waive, is that the Rule has been issued against the "Board of Examiners," which has no corporate

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being, and has been served on the Secretary, instead of having been issued against and served on the examiners individually. *Secondly*, the relief claimed is by way of declarations, which is not contemplated by, and not directed under, section 45. *Thirdly*, the rule obtained is not within the terms of the relief claimed. Moreover, the order made is at variance with the relief claimed and the Rule.

Mr. S. P. Sinha (with him *Mr. H. D. Bose* and *Mr. Asghur*), for the respondent. It is admitted the misconduct of the petitioner was grave: but the punishment is severe. The petition is undoubtedly irregular in form, but at the time of applying for the Rule I intimated to the Court of first instance that the relief sought was that the examiners be ordered to consider the petitioner's case. The Secretary cannot act for the body of examiners, under rule 15. The Rule and order were framed in the terms adopted in *In the matter of Rudra Narain Roy* (1).

[JENKINS C. J. I confess I do not understand that decision.]

The requirements of section 46 are substantially fulfilled by the letter to the Secretary, which is set out in the petition. It is true there is no further affidavit. The local Government had no power to issue the notification in the *Calcutta Gazette*, and, it is submitted, if the examiners observe or carry out an illegal order, relief can be obtained against them. Under rule 15 the whole body of examiners must take into consideration the case of each applicant on each occasion: they cannot consider themselves bound by the notification.

Mr. Chakravarti, in reply. It is unnecessary for me to discuss whether the notification of the Government is legal or binding or not, or whether or not it

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should affect the examiners of subsequent years. The present application should fail, and the appeal be allowed.

JENKINS C.J. This appeal arises out of an application under Chapter VIII of the Specific Relief Act. Section 45 of that Act enables this Court to order public servants and others to do certain specific acts, and section 46 indicates how the application is to be made, and the procedure thereon. The present applicant is one who was examined last year for the pleadership examination, and in connection with that examination he was found to have been guilty of grave misconduct. Notwithstanding this, he now seeks to be admitted to this year's examination, and, his claim being disallowed, he has presented a petition under section 45 of the Act. He has succeeded in obtaining an order in these terms, "that the Board of Examiners do entertain and consider the application of Provas Chandra Roy, and determine his fitness according to their discretion." From that order, what has been called the 'Board of Examiners'—that, I presume, means the Examiners,—have appealed; and, at the outset, it is urged that this application must fail, as it is opposed to the terms of the Specific Relief Act, and as the order is at variance with that for which the applicant prayed and with the Rule that issued.

By his petition, the applicant prays first for an order that the Board of Examiners acted illegally in not publishing the petitioner's name in the list of successful candidates, that is, the list of the successful candidates at last year's examination: next, that it may be declared that the petitioner has passed the Pleadership examination in 1912, that his name should be gazetted as a successful candidate, or, it may be declared that the order of November, 1912,

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appearing in the *Calcutta Gazette* of the 27th November, 1912, which was passed by the Board of Examiners of the Pleadership and Mukhtearship examinations, or by the local Government, is illegal and *ultra vires*: and, finally, that it may be declared that the Board of Examiners have acted illegally in not entertaining the petitioner's application, and his certificate of character, and not allowing him to appear at the ensuing examination for 1913. Not one of these prayers is justified by the terms of the Act, and this application must have been drawn up without reference to the relevant sections. They are clear in their terms: section 45 enables the Court to make an order requiring any specific act to be done or forborne, and nothing else: section 46 provides that the application must be founded on an affidavit of the person injured, stating his right, his demand of justice and the denial thereof. All this has been completely disregarded. not only in form but in substance. But on these materials the applicant obtained a Rule in these terms:—"It is ordered that the Board of Examiners for Pleadership and Mukhtearship examinations, being served with this order on or before the eighteenth day of January instant, do on Wednesday the twenty-second day of January instant, at the hour of eleven o'clock in the forenoon, show cause before the Court why they should not publish the name of Provas Chandra Roy in the list of successful candidates of the last year's Pleadership examination, or why the said Provas Chandra Roy should not be allowed to appear at the next Pleadership examination, he having fulfilled the conditions necessary under the law qualifying him to appear at such examination." At the hearing of the Rule an order was made in the terms I have stated. That order is at variance with the prayer in the petition, and with

the Rule that was granted. But in dealing with an application under Chapter VIII of the Specific Relief Act, the principles applicable to a writ of *mandamus* should, generally speaking, be followed, and it was laid down by the Privy Council in *The Bank of Bombay* v. *Suleman Somji* (1), that "one of the principles is that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right, to enforce which he asks for the interference of the Court; that he has claimed to exercise that right and none other, and that his claim has been refused." This is in substantial accord with section 46 of the Act. When it was put to the learned counsel who appeared for the petitioner whether he could point to the prescribed demand of justice, and the denial thereof, it was admitted that it was only by a very liberal reading of certain passages in the petition that any suggestion of that demand and denial could be made. Even if we could, I do not think we should overlook these defects. The present applicant is not a person in whose favour we ought to strain the jurisdiction that has been invoked. It is an inadequate description to say he does not come to the Court with clean hands; he admits his own turpitude and comes here with peculiarly dirty hands, so that I see no reason for making the slightest concession in his favour. In my opinion, it would be wrong to uphold the order that has been made, and I therefore hold that this appeal must be allowed, and the application dismissed with costs in both the Courts.

HARINGTON J. I agree.

MOOKERJEE J. I agree.

J. C. *Appeal allowed.*

Attorney for the appellants: *C. H. Kesteven.*

Attorney for the respondent: *K. N. Dey.*

(1) (1908) I. L. R. 32 Bom. 466, 476.