

(1957) 05 AHC CK 0006

Allahabad High Court

Case No: Misc. Case No. 215 of 1952

In Re: S.N. Mukerji

Vs

APPELLANT

RESPONDENT

Date of Decision: May 9, 1957

Acts Referred:

- Allahabad Bar Council Rules - Rule 1
- Bar Councils Act, 1926 - Section 9

Citation: AIR 1957 All 536 : (1957) 27 AWR 541

Hon'ble Judges: Mootham, C.J; Srivastava, J; Raghubar Dayal, J

Bench: Full Bench

Advocate: Rajeshwari Prasad, for the Appellant; G.N. Kunzru, for the Respondent

Final Decision: Allowed

Judgement

Mootham, C.J.

This is an application by one Sailendra Nath Mukerji for admission as an Advocate of this Court.

2. The applicant is a graduate of the University of Rangoon, where he obtained the degree of Bachelor of Arts in the year 1938 and that of Bachelor of Law in 1941. Thereafter he completed a course of training in the office of an Advocate practising in the Rangoon High Court, and in April, 1942, he applied for admission as an Advocate of that Court. Very shortly after this however came the Japanese invasion of Burma, and the applicant was compelled to leave Rangoon for India where he arrived in May, 1942.

He has remained in India since then, but it was not until 3-12-1951 that he filed an application in this Court for admission as an Advocate. Notice of the application was, in accordance with the Rules made u/s 9 of the Indian Bar Councils Act, 1926, served on the Bar Council which on 19-5-1952, objected to the admission of the applicant

on the ground that the sixth proviso to Rule 1 of the Rules as interpreted in the case of Bankim Chandra Guha, Misc. Case No. 127 of 1951 All (A) was a bar to his admission. The objection was considered by a bench of this Court, which having some doubt as to the correctness of the view taken in Bankim Chandra Guha's case (A) has referred the objection to a larger bench.

3. The applicant has appeared in person and he has argued his case very well.

4. The Rules made by the Bar Council u/s 9 of the Indian Bar Councils Act, 1926, were amended in certain material respects in 1950 and 1951, the material notifications being published on 16-12-1950, and 6-10-1951. The Rules so amended were, therefore, in force when the applicant filed his application on 3-12-1951. He has, however, frankly and properly conceded that he is not qualified for admission as an Advocate under the amended Rules.

His contention is that he was qualified for admission under the unamended Rules and that it is those Rules which were applicable to his application. In order to appreciate his contention it is necessary to refer to the first paragraph of Rule 1 of the unamended Rules, which reads thus:

""Any Barrister of England or Ireland, any member of the Faculty of Advocates in Scotland, and any graduate in Law of any university established by law in British India who is a graduate in Arts, Science or Commerce of such university and who in each case has further undergone a course of training for one year as provided by the Allahabad Bar Council under the Rules made u/s 15 of the Act may present an application for his admission to the roll of Advocates of the Court."

The petitioner's argument is that as he was in 1941 a graduate of both Arts and Law of the University of Rangoon he thereupon acquired an indefeasible right to be admitted as an Advocate of this Court in accordance with the Rules as at that time in force. We are clearly of opinion that this submission is not well founded.

Assuming that in 1938 the University of Rangoon was a University established by law in British India (an assumption which in view of the separation of British Burma from British India on 1-4-1937, we think not to be correct) the fact that the applicant was a graduate in Arts and Law of that University and had (it appears) undergone a course of training which satisfied the requirements of the Allahabad Bar Council, he certainly acquired the right to present an application for admission as an Advocate of this Court, and had he applied for admission at a time when the unamended Rules were in force his application would have been considered in the light of those Rules.

He, however, made no such application. He did not apply for admission until the Rules had been amended, and as it is not the applicant's case that the amended Rules are in any way invalid, we are of opinion that the applicant must satisfy the requirements of those Rules. The applicant has referred us to authorities which lay

down that a legislative enactment will not be presumed to have retrospective effect. That principle is well established but it has no application in the present circumstances, for it is not suggested that the amendments made to the Rules u/s 9 of the Indian Bar Councils Act would be applicable to applications for enrolment "other than such applications as were made subsequent to the date upon, which such amendments took effect.

5. We are, however, of opinion that even under the unamended Rules the applicant was not eligible for enrolment as an Advocate of this Court in view of the sixth proviso to Rule 1, of those Rules. That Proviso reads thus :

"Provided, sixthly, that a graduate of a University situate in a Province, the High Court and the Bar Council of which Province do not admit to their rolls a graduate of any of the Universities situate in the United Provinces will not be eligible for enrolment as an advocate of this High Court."

The applicant contends that as under the rules framed by the Bar Council of Rangoon any person who produces a certificate signed by the Secretary of the Public Service Commission, Burma, that he has passed the Advocateship Examination held in Burma is eligible to be enrolled as an Advocate of the Rangoon High Court, and that as a graduate of a university in the United Provinces is as much entitled to obtain that certificate as a graduate of the University of Rangoon, no discrimination has been made between a graduate of a university in this State and a graduate of the University of Rangoon.

We think, however, that the question is not one of discrimination but of reciprocity. Under Rule 1 made by the Bar Council of this Court any graduate of a university established in British India who is a graduate both in law and in arts, science or commerce of such university is qualified for admission to the roll of advocates of this Court provided he has undergone a course of training for one year; and we think that the meaning and effect of the sixth Proviso is to render ineligible for enrolment a graduate of a university in another Province the High Court of which does not admit to its rolls a graduate of a university of this Province on the same terms. We are of opinion, therefore, that the view taken in 1951 by this High Court in the case of Bankim Chandra Guha (A), was correct and that the objection of the Bar Council must be upheld.

6. The applicant has, however, further contended that this Court has power to waive compliance with the rules made by the Bar Council u/s 9 of the Act, and that they should be waived in his case. We entertain considerable doubt whether this Court possesses the power which the applicant claims that it has but it is unnecessary for us to enter into the matter for, even if we were satisfied that we had the power to waive compliance with the requirements of the rules we do not think that this is a case in which it would be proper for us to exercise that power.

The applicant came to India in May 1942, but he allowed nearly ten years to elapse before he applied for enrolment and on the date on which he made that application he clearly was not qualified for admission to the roll of advocates under the rules which were then in force. In such circumstances we are of opinion that we should not be justified, assuming that we had the power, to waive, compliance with the rules in the case of the applicant.

7. We uphold the objection preferred by the Bar Council.