

(1868) 06 CAL CK 0009

Calcutta High Court

Case No: None

In Re: Shashi Bhushan Bhadury

APPELLANT

Vs

RESPONDENT

Date of Decision: June 27, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

This appears, to us to be a very different case from In re Tulsidas Seal (2 Ind. Jur., N. S., 133; and 7 W. R., 228). That case was decided with reference to the construction to be put upon Section 45 of Act XX of 1365. By that section it is enacted, that every advocate or vakeel, on the roll of any High Court, shall be entitled as such to practise in any Court in British India other than a High Court in which he is not enrolled. An advocate or vakeel of one High Court is not entitled as such to practise in any other High Court in which he is not enrolled, but, with that exception, he is entitled to practise in any Court in British India. We thought that the Small Cause Court in Calcutta was not a High Court, but that it was a Court in British India, and consequently that an advocate or vakeel of any High Court was entitled to practise there. The present applicant's right does not depend upon that section. His right depends upon Section 12, which states that every person who shall have been admitted to practise as a pleader or mooktear under the Act, may, subject to the conditions of his certificate as to the class of Courts in which he is authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application, he shall be enrolled in a book to be kept for that purpose in such Court. It is only by the terms of his certificate that he is entitled to practise in a Small Cause Court at all. There is no express direction in the law to that effect. The certificate is in the form of certificate set out in the 2nd Schedule to the Act, in which the words "Small Cause Courts" are used. The question then is, what is the meaning of the words "Small Cause Courts" as used in that form of certificate? Do those words extend to the Small Cause Court in Calcutta, or are they confined to the Small Cause Courts in the Mofussil? It appears to us that the words refer to the Small Cause Courts in the Mofussil, and not to the Small Cause Court in Calcutta.

2. By the 4th section of the Pleaders' Act, the High Court is authorised and required to make rules for the qualification, admission, and enrolment of proper persons to be pleaders and mookhtears of the Courts in the territories to which the Act extends; and the word "Court" is defined to mean "all Courts subordinate to the High Court, including Courts of Small Causes," which, we understand to mean "including Courts of Small Causes subordinate to the High Court." We pointed out, in the case to which reference has been made, the reasons for thinking that the Small Cause Court of Calcutta was subject to have a writ of mandamus issued to it by the High Court; but we do not think that the Small Cause Court of Calcutta was, therefore, intended by the Legislature to be included as a Court of Small Causes subordinate to the High Court. In fact, that has been the construction hitherto put upon the Act, inasmuch as this Court has never considered that Section 4 authorized the High Court to make rules for the admission of pleaders in the Calcutta Small Cause Court.

3. We are of opinion that the Small Cause Courts intended to be included in Act XX of 1865 were the Small Cause Courts established under Act XI of 1865, which, according to Section 4 of that Act, are like the Mofussil Courts, made subject to the general control and orders of the High Court. For these reasons, it appears to us, that the Small Cause Court should be informed that we do not think that pleaders of the Mofussil Courts are, as such, entitled to practise in the Small Cause Court at Calcutta.

¹Persons admitted in one Court admissible to practise in other Courts of same or subordinate jurisdiction.

[Sec. 12:-- Every person who shall have been admitted to practise as a Pleader or Mookhtear under the provisions hereinafter contained may, subject to the conditions of his certificate as to the class of Courts in which he is authorised to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application he shall be enrolled in a book to be kept for that purpose in such Court. Provided that neither this section nor the last preceding section shall apply to any Court established by Royal Charter.]

²Upon the decision of the High Court in the case of Tulsidas Seal, a letter to the (sic)lowing effect was written to the Registrar of the High Court, Appellate Jurisdiction, by the Clerk of the Calcutta Court of Small Causes, dated 13th May, 1867:

1. "With reference to the petition of Tulsidas Seal, and the judgment of the High Court thereon, I am directed by the Judges of this Court to enquire, for their information and guidance, whether, as Section 45 of Act XX of 1866,³ has been held to be applicable to this Court, the other sections of that Act are also held to be so applicable. If so, the pleaders at present practising in this Court will have to be enrolled in the High Court, and obtain certificates in terms of paragraphs 7 and 8 of

the Act, and for the future only such persons as are duly qualified under that Act, can be admitted as pleaders of this Court; and the present pleaders cannot be permitted, until they shall have so qualified themselves, to practise here any longer."

2. Reasons are given for thinking that the whole Act does not apply, viz., the definition of the terms "Court" and "High Court," and the reference in the Secretary of State's letter, in regard to the establishment of the High Court, made to the Small Cause Court; and "the High Court, while it has made rules, as it was required by the Legislature to do for the admission of persons to practise as pleaders or mooktears in all the other Courts in British India, has not done so with reference to the Presidency Small Cause Courts."

3. Reference is made to Section 38, Act IX of 1850, Rule 49, passed under provisions of Section 41. "" Under this rule, since April 1856, a body of recognized agents, called pleaders, has been allowed to practise here ; and in 1864, the High Court unanimously held, that by 8 year of permission this body had acquired certain vested rights, of which it would now be unjust to deprive them."

4. "If the High Court is of opinion that Act XX of 1865 in its entirety applies to this (sic) all these arrangements and provisions must be considered as set aside, and new arrangement must be made in this Court".

5. "It does not appear that under Act XX of 1865, the appointment of mooktears for (sic) is any where rendered necessary. None have ever been legally appointed in the (sic)all clauses Court, and the first Judge is of opinion that the recognition of any such (Sic) could be expected to take up the employment, would be a source of unmitigated evil."

Subsequent to the date of this letter, and before any reply was received to it, a petition watt presented to the Judges of the Court of Small Causes at Calcutta, by one Shashi Bhushan (sic) praying to be enrolled as a pleader of the Small Cause Court. That petition was (sic) but later, Shashi Bhrashan Bhadury presented another petition, which was as follows,

"Your petitioner, a pleader of the junior grade, under the old rules, and holding power as such to practise in the Small Cause Court, applied to your Honors to enroll him as a (sic) of this court.

"The order passed on his petition was, that as he was not a pleader of the first grade, (sic) not be admitted.

"Your petitioner now most humbly submits, that the above rule is not absolute it being quite discretionary with your Honors to grant the privilege to any person of (sic) who may have been well educated. In the exercise of this discretion, your (sic) kind enough to admit one Baboo Indra Ohandra Mitter, very lately, as a pleaders of this Court.

"Your petitioner received a good education, having been a senior scholarship-holder in the late Hindoo College, and possesses a good character, and in addition holds a certificate under Act XX of 1865, entitling him to practise as a pleader in the Small cause Court.

"And your petitioner therefore, prays that your Honors will be so kind as to. grant bin (sic), to practise as a pleader in this Court."

On the petition, the following order was made, in June 15th, 1868, by Mr. Thomson, Officiating first Judge:

"The Judges of the Court do not think that it was intended by the provisions of Act XX of 1865, that pleaders of the second grade should be admitted to plead in the Calcutta Small Cause Court.

"A reference has been made to the High Court as to how far the Act referred to applies to this Court. Feuding reply, the Court cannot entertain the petitioner's application."

The Officiating fifth Judge of the Calcutta Court of Small Causes thereupon wrote, on the 17th June 1868, to the Registrar, High Court, Appellate Jurisdiction, as follows :

"I am desired by the Judges of this Court to solicit the advice of the Judges of the High-Court with reference to the following matter :

2. "Shashi Bhushan, Bhadury, a pleader of the second grade, under the old rules, and holding a renewed certificate, dated the 7th April 1868, from Mr. F. Beaufort, Judge of the 24 Pergunnahs under Clauses C, Section 10, Act XX of 1865, and u/s 4, Act XXIX of the same year, entitling him "to practise as a pleader in the Sudder Ameen's Court, Munsiff's a Court, Small clauses Court, and any Criminal Court," recently applied to be enrolled as a pleader of the Calcutta Court of Small Causes.

3. "His application having been rejected by the Judges of the Court, upon the ground that he was not a pleader of the first grade, he has again renewed his application, (sic)ding that under the provisions of Acts XX and XXIX of 1865, he is entitled, as of right, to-be admitted a pleader of this Court.

4. "He urges that in the Acts referred to, no distinction is made between Mofussil Small Cause Courts and the Calcutta Small Cause Court, and that as by Section 47 of Act XX ⁴ its provisions extended to all territories under the Bengal Government, he is entitled, under his certificate, to practise in any Small Cause Court within these territories, the Calcutta Small Cause Court not excepted.

5. "The Judges of this Court desire, in reference to this application, to be guided by the opinion of the Judges of the High Court, as to the interpretation of Act XX of 1865, on which subject they have already had the honour to forward a letter to the Judges of the High Court, dated 13th May 1867. The Judges of the Small Cause Court desire me to bring to the notice of the Judges of the High Court, that in the

judgment of the High Court, in the case of . "Tulsidas Seal, dated the 2nd March 1867, the Chief Justice observed: The Small Cause Court "of Calcutta was substituted for the Court of Bequests, and is, as I understand the law, the "same Court under a new name, and with a different procedure and jurisdiction." The Judges of the Small Cause Court are inclined to think that on this View, their Court being the same the old Court of Bequests, which was established under the Charter of Justice of King George II, it must be considered to be a Court established by Royal Charter, within the meaning of Section 12, Act-XX of 1865 ; and, consequently, that that Section and the preceding section of the Act do not apply to the Calcutta Small Cause Court,"

The Registrar, of the High Court, Appellate Jurisdiction, communicated the following expression of the High Court's opinion, to the Clerk of the Calcutta Court of Small Causes, on the 3rd July 1868:

2. The term "Court" in the 9th clause of the interpretation section 22 of Act XX of 1865, does not, in the opinion of the High Court, include court of Small Causes in the Presidency Towns, constituted under Act X of 1860 as amended by Acts XX of 1857 and XXVI of 1864. In this view it will (sic) be unnecessary that pleaders who intend to practise in the Calcutta, Small Cause Court, should have been enrolled in the High Court, in order to qualify them so to practise nor is it requisite that the High Court should make rules for the admission of such pleaders.

3. "The point decided in the case of Tulsidas Seal is distinct."

Present: Peacock, C.J., Loach, J., Bayley, J., L.S. Jackson, Macpherson, J.

³Advocates and Vakeels enrolled in High Court may practise in any Court other than a High Court in which they are not enrolled.

[Sec. 45:--Every person now or hereafter enrolled as an Advocate or Vakeel on the Roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding any thing hereinafter contained, be entitled as such to practise in any Court in British India other than a High Court on whose roll he is not enrolled, or in any such Court with the permission of the Court, and in any Revenue Office, subject nevertheless to the rules in force relating to the language in which the Court or Office is to be addressed by Pleaders or Revenue Agents. Provided that no such Vakeel shall be entitled to practise under this Section before a Judge of the High Court, Divisional Court or High Court exercising original jurisdiction.]

⁴[Sec 47:--This Act shall take effect in the Territories under the Governments of the Lieutenant-Governors of Bengal and the North-Western Province, (sic) respectively, on the First day of January, 1866, and may be (sic) by (sic) extent of order of any Local Government to the Territories subject to such Act. Government. Every such order shall be published in the official Gazette.]