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(1872) 06 CAL CK 0011

Calcutta High Court

Case No: Appeal No. 2 of 1872

In Re: Huris Chunder  
Mitter

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** June 25, 1872

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### Judgement

Macpherson, J.

Putting on one side the question whether the decision of the Chief Justice in this matter is a judgment within the meaning of cl. 15 from which any appeal lies, it appears to as that there is another and fatal preliminary objection to the whole application of the petitioner, which renders the proceedings he has taken wholly bad, and makes it unnecessary for us to enter now into the merits of the questions he desires to raise before us. Having been removed from his office by a resolution or order of four Judges of the Court (the English Committee), the petitioner has applied to a Division Bench, consisting of two other Judges of the Court, praying the Court to review and re-consider the resolution which removed him. But is quite clear that no Division Bench has any power to re consider, or review, or set aside a decision of the English Committee, or to order the Judges of the English Committee to re-consider, or re-View or set aside their decision; and that no order which the first Bench could have made, or which we now can make, could by any possibility restore the appellant, or render it incumbent on the English Committee to review their proceedings. That being so, the petitioner"s application is wrongly conceived, and must be wholly infructuous. We therefore decline to enter into the merits of his case.

It is said that the Chief Justice, by hearing the petitioner showed that he considered the application was one which the petitioner was entitled to make. But if the circumstances under which the application was heard are borne in mind, it will be seen that no such inference can fairly be drawn from the fact of the petitioner having been heard. Before expressing any opinion on the case of Baboo Huris Chunder Mitter, the Chief Justice, in the matter of the Moonsiff of Poll■s, in order that the question of the regularity, or otherwise, of the proceedings of the English Committee might be finally determined, referred the application to a Court of five Judges, consisting of himself and the four

surviving members of the English Committee by whom the Moonsiff of Poll█s had been dismissed. That Bench, being composed of the members of the English Committee, whose decision was objected to, could and would, of course, have reviewed their decision if they had thought any injustice had been done.

2. The Chief Justice, considering (as is usually considered by the Judges of this Court) that the unanimous decision of a Bench of five Judges must be taken as conclusive on the questions disposed of by it, and considering (as is the fact) that the application of the present petitioner was clearly governed by the decision of the five Judges in the Poll█s Moonsiff's case, simply decided that, for the reasons given in the Poll█s Moonsiff's case, the application must be dismissed. It never became necessary or the Chief Justice to consider what order in particular the Division Court, of which he was a member, could make which would benefit the appellant. There is nothing, therefore, in the mere fact of his having heard the petitioner before he dismissed the application which in any degree shows that the Chief Justice meant, either directly or indirectly, to decide that a Division Bench could make any order setting aside or altering a decision of the English Committee, or could compel the English Committee to review their proceedings.

3. It is urged that we ought not to deal with this matter strictly, or to treat it as if it were supposed to be technically an application for review of judgment, such as may be made under the Civil Procedure Code. But whether we look at the case strictly or otherwise, we find that the petitioner's object is always one and the same--to obtain re-hearing of his case, and a re-consideration of those matters which have already been considered by the English Committee of four Judges, who, having considered them carefully and fully, ordered the petitioner to be removed from office. Whether the procedure of the English Committee and their final order were legal and valid or otherwise, there the order is: and there is nothing in the Charter which authorizes us, or any other Division Court, to review, or re-consider it, or to set it aside.

4. Supposing we were to say that the appellant should have been dealt with in a manner differing from that in which he was dealt with, in what respect would he be benefited? His position would be exactly what it is now, and he would be no nearer restoration than he is at present. The petitioner's application being entirely wrongly conceived and inofficious, we dismiss this appeal.

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(1) The resolution of the High Court dated the 27th July 1871, in the case of the Moonsiff of Poll█s, and the decision on his application for a review, dated the 29th January 1872, were as follows:--

Present: Mr. Justice Norman, Officiating Chief Justice, Mr. Justice Loch, Mr. Justice L.S. Jackson, and Mr. Justice E. Jackson.

Read the following correspondence:--

A letter from the Judge of Dacca, No. 142, dated 16th February last, reporting the result of his personal enquiry into the cause of certain arrears on the file of Baboo Deenonath Mullick, Moonsiff of Poll■s as evincing willful and systematic disobedience on the part of the Moonsiff of the law and the Circular Orders of the High Court.

A letter from the Officiating Registrar, High Court, to the Moonsiff of Poll■s, dated 3rd April 1871, No. 1046, suspending that officer and calling upon him to show cause why he should not be removed from his office.

A letter from the Officiating Registrar to the Judge of Dacca, informing him of the foregoing suspension, and intimating that the explanation called for from the Moonsiff should be submitted through him (the Judge).

A letter from the Judge of Dacca, No. 531, dated 21st June 1871, forwarding, with comments, the Moonsiff's explanation and the diary of the Moonsiff's Court.

After full consideration of the foregoing correspondence and papers, the Court proceeds to put on record the conclusions it has arrived at in respect of the Moonsiff, Baboo Deenonath Mullick's conduct, and the action it deems it necessary to take.

It is shown that, instead of taking up and deciding contested cases when the witnesses are in attendance on the day fixed for hearing, the Moonsiff habitually postpones them. On the day to which the hearing is adjourned, instead of taking the adjourned case immediately after any routine or other business which will not admit of delay, giving it priority over cases in which there has been no adjournment, the Moonsiff habitually takes up small and unimportant cases which go to swell his returns. These postponements are made without any reference to the interest of the suitors, or the duty of a judicial officer as regards witnesses who attend in obedience to a summons.

One case is a sufficient illustration of the delays of such cases in the Court of the Moonsiff of Poll■s.

No. 428 was a suit for the possession of land instituted on the 4th of April 1870. After the issues were framed (29th April and 16th May), the 17th of June was fixed for the hearing.

On the 17th of June witnesses attended, but were not heard.

Postponed to 7th of July with a similar result.

Postponed to 9th of July with a like result.

Postponed to 15th of September as before.

Postponed to 28th October. Defendant's witnesses in attendance as before.

Postponed to 17th November. Witnesses attended. Three of plaintiff's witnesses examined.

Postponed to 18th November. Witnesses attended. Three witnesses examined for plaintiff, one for defendant.

Postponed to 19th November. Defendant's witnesses attended. Three of defendant's witnesses examined.

Postponed to 8th December. Three of defendant's witnesses present not heard.

Postponed to 22nd December. Defendant's witnesses not heard.

Postponed to 23rd December. Defendant's witnesses not heard. Witnesses sent away.

Postponed to 31st December. Plaintiff petitioned to make defendant a witness.

Postponed to 12th January 1871. Defendant examined. Local enquiry ordered, and case further adjourned.

In January, on the thirteenth of the days for which the case was fixed, it was discovered that a local enquiry was necessary, a matter which the Moonsiff, if he had taken up the case and paid proper attention to it, would have found out on the 7th or 9th of July.

The Moonsiff professes to give an explanation of the causes of the several adjournments. The postponement on the 17th of June was made by the Moonsiff's predecessor; the 7th of July may therefore be taken as being the first day on which the case stood on the Moonsiff's list as an adjourned case. The Moonsiff writes:--

On the 7th of July 1870 decided one original suit, 7 of 1870; fixed issues in four cases; and examined sixteen witnesses, of whom five were examined in original suit, 954 of 1869.

The Moonsiff's diary shows what was the work which he did on this 7th of July. A copy of the entries on that day shows that in.

No. 954 of 1869, three witnesses for plaintiff, and two for defendant, were examined. Postponed because there was no time to decide it.

No. 718. Three witnesses for plaintiff examined. Postponed because there was no time to decide it.

One decree ex parte, two witnesses.

No. 785. Two witnesses examined. Postponed.

No. 776. One witness for plaintiff, and two for defendant, examined. Case postponed.

No. 1085. One witness for plaintiff. Case postponed.

Four cases, issues framed.

The 8th was a holiday.

On the 9th the Moonsiff says he disposed of one original suit, four claim cases under s. 246 of Act VIII of 1859, and framed issues in four original cases. Examined eleven witnesses. The diary is as follows:--

One claim admitted on evidence of two witnesses.

One rejected, four witnesses.

One suit decreed ex parte.

One claim admitted, two witnesses heard.

One certificate case, two witnesses.

One witness heard for decree-holder in claim case.

Four cases, issues framed ex parte.

The Moonsiff, by way of explanation why the claim and other cases were taken up before the adjourned case, says:-- "As Saturdays are devoted to the hearing of miscellaneous cases, I disposed of several cases of that kind on that day, including claims to attached property under s. 246 of Act VIII of 1859, and I had no time left on that day to take up the case No. 428."

The Judge notes that this excuse is not warranted by the memorandum book of cases fixed for hearing, which shows suits for hearing in every stage, from the hearing of the plaintiff's witnesses to final decision, to have been fixed for hearing on Saturdays just the same as on other days.

The Judge has gone through the details of work done by the Moonsiff on each of the several days on which the postponements occurred, and the conclusion at which he arrives is that, in four days out of five, the Moonsiff did not give anything approaching to a fair day's work, and adds that he thinks the diary shows that the Moonsiff systematically put off contested cases, and took up ex parte cases to the great injury of the parties in the contested and more important cases. The Judge adds:-- "The book shows incontestably that the greater part of every day's work was regularly postponed day by day." He says:-- "It is not possible to believe that the great bulk of the postponements were not attributable to the indolence and indifference of the Moonsiff." He points out "the great and unjustifiable inconvenience and expense to which the suitors and witnesses were subject."

In the opinion of the Court these conclusions of the District Judge are fully made out.

One thing is certain that the Moonsiff has habitually neglected the plain duty of taking up, and of hearing out, each case on the day fixed, a rule to which the attention of judicial officers was pointedly called by the Circular Order of the 13th of October 1863, No. 31.

The Circular Order of the 7th of December 1865, No. 30, contains a warning that the Court will not allow the law and orders which require that each case shall be taken up in its appointed time, and then and there tried out, or regularly adjourned for some sufficient cause, to be treated as a dead letter.

The Court warned judicial officers who should disregard the Circular Order of October 1863 that they would render themselves liable to dismissal. The Court pointed out that it was determined to enforce its orders, and expressed its conviction that severe example would be needed. It seems to the Court that the occasion for making that example has come; that Deenonath Mullick, late Moonsiff of Poll■s, must no longer retain an office, the duties of which he is either unable or unwilling to perform. The Court accordingly, in the exercise of the power vested in it by s. 33 Act VI of 1871, is pleased to order that Baboo Deenonath Mullick, Moonsiff of Poll■s, in Zillah Dacca, be, and he hereby is, removed from the office of Moonsiff.

Ordered, that one copy of the fore going order be forwarded to the late Moonsiff, Baboo Deenonath Mullick, for his information, and another copy to the Judge of Dacca for his information and guidance.

Before Sir Richard Conch, Kt., Chief Justice, Mr. Justice Loch, Mr. Justice L.S. Jackson, Mr. Justice, Macpherson, and Mr. Justice E. Jackson.

In the matter or the Petition of Deenonath Mullick (Late Moonsiff or Poll■s).

The Judgment of the Court was delivered by

Couch, C.J.--In this case an application was originally made to myself and Glover, J., by Mr. Woodroffe, on behalf of the Moonsiff of Poll■s, who had been removed from his office by an order of the Judges of this Court who form the English Committee. Considering that it raised a question of much importance, I thought it desirable that the application should be heard by myself and the other Judges of the Committee who were acquainted with the manner in which the case had been disposed of.

Mr. Woodroffe contended that, as the Court now derives its powers from Act VI of 1871, the Bengal Civil Courts" Act, removal or suspension of a Moonsiff under s. 33 of that Act must be either a judicial proceeding, and be ordered by one of the Division Courts sitting in the usual way; or, if it is to be considered an executive rather than a judicial act, it must be the act of the whole Court; and inasmuch as the Moonsiff in this case had not been so removed, his case ought to be re-heard.

S. 33 of the Bengal Civil Court's Act, 1871, provides that the High Court may appoint a commission for enquiring into the alleged misconduct of any Moonsiff, and on receiving the report of the result of the enquiry may, if it thinks fit, remove him from office, or suspend him, or reduce him to a lower grade. The High Court may also, under the same section, without appointing any Commission, remove or suspend any Moonsiff, or reduce him to a lower grade. The section, it appears to me, includes two classes of cases: one, where the Moonsiff is charged with misconduct, and it is proper that there should be a formal and public enquiry into the truth of the charge; the other, where, from general misconduct, or neglect of duty or incapacity, it may be necessary to remove or suspend him, or reduce him to a lower grade. In the former cases there will be a regular judicial enquiry, the provisions of Act XXXVII of 1850 being made applicable: but the High Court is not, we think, bound, on receiving the report, to make any further enquiry, or to allow the Moonsiff to be heard by way of appeal against the report. The Court may, if it is satisfied with the report, at once remove or suspend, or reduce him to a lower grade. The act of the Court may be considered a judicial one, as the Court determines whether there is just cause for the removal or suspension; but it by no means follows from this that the Court is to adopt all the forms of a judicial enquiry. And it appears to us that by this Act the Court has vested in it the powers which the Government had, and which were reserved to it by s. 25 of Act XXXVII of 1850, and the Moonsiff being removable at pleasure, the Court may remove or suspend him upon making such enquiry, and giving him such an opportunity of being heard as it may think fit. We think a Moonsiff ought not to be removed or suspended as a punishment, or reduced to a lower grade, without having had an opportunity of being heard: but the mode of hearing is in the discretion of the Court, and it is not bound to adopt any particular mode. The rule that a person cannot be removed from an office, without having an opportunity of being heard, was affirmed by the House of Lords in *The Queen v. Saddler's Company* 10 H.L. Ca., 404, and although in the case of an officer re-moveable at pleasure, a removal without it might be valid, we think this Court ought to adopt the rule when it exercises the powers conferred upon it by this Act.

Mr. Woodroffe contended that the removal or suspension of a Moonsiff under the Act is a judicial proceeding, and must be had in open Court before a Division Court, with the forms of a judicial enquiry, as in the case of the suspension of an attorney by the Court on its original side; or, if not, as the duty is to be performed by the Court, it must be the act of the whole of the Judges.

S. 13 of 24 & 25 Vict., c. 104 (the High Courts' Act), provides "subject to any laws or regulations which may be made by the Governor-General in Council, the High Court established in any presidency under this Act may, by its own rules, provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice."

Now it cannot have been the intention of the Legislature that, whilst judicial duties of the gravest importance, either civil or criminal, may be performed by one Judge, or a Division Court composed of two Judges, the other duties of the Court, many of them being of little importance, and some purely ministerial, are to be performed by all the Judges. It would be, we might almost say, absurd to suppose this. The section must not be construed strictly, but liberally and comprehensively: and we think the meaning of the Legislature cannot be carried into complete effect except by construing jurisdiction to include the exercise by the Court of all powers, either of an original or appellate nature, which are conferred upon it. And for the same reason, the word "jurisdiction" in the 36th clause of the Charter should receive the same construction. We may refer to s. 15 as containing powers which it could not have been intended that all the Judges must concur in exercising.

Since the passing of the Bengal Civil Courts" Act, no formal rule has been made as to the exercise by the Court of the powers contained in it, but as a rule the powers have been exercised in some cases by the Judge in charge of the English Department, and in others by the Judges composing the English Committee according to the nature of the case, in the same manner as similar powers were exercised by the Court before the passing of the Act. The case of the present applicant has been disposed of in the same manner as it would have been if a formal rule had been made. It has been determined on its merits by the same Judges, and I do not consider that the absence of a formal rule furnishes a ground for a re-hearing of the case.

The application is therefore rejected.

Jackson, J.--The judgment just delivered is the judgment of us all: and I wish only to add the following statement:--

It appears that, since the passing of Act XVI of 1868, and of Act VI of 1871 the case of four Moonsiffs have been inquired into with the result of their dismissal from office; and in each case the matter was decided by the Judges composing what is called the English Committee. In the case of Baboo Deenonath Mullick, the present petitioner (as also in the other cases), the fullest opportunity was given to him of making his defence and justification, and that defence and justification were most fully considered.