

In Re: Tarangajit Das

Court: Calcutta High Court

Date of Decision: Jan. 3, 1966

Acts Referred: Advocates Act, 1961 " Section 49, 49(c), 7(c)

Citation: 70 CWN 492

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Arun Prokash Chatterjee, for the Appellant;

Final Decision: Dismissed

Judgement

Banerjee, J.

u/s 6 of the Legal Practitioners Act, 1879, High Courts are entitled to make rules, inter alia, in the following matters, namely :

(a) * * *

(b) the qualifications, admission and certificates of proper persons to be Mukhtars of the subordinate Courts and, in the case of a High Court not

established by Royal Charter, in respect of which the Indian Bar Councils Act, 1926, is not in force of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such.....Mukhtars.

Section 7 of the above Act provides for grant of annual certificates of Mukhtars authorising them to practise. Section 9 of the above Act further

provides as follows :

Every Mukhtar holding a certificate issued u/s 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the

same limits, and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly ;

and thereupon he may practise as a Mukhtar in any such Civil Court and any Court subordinate thereto, and may subject to the provisions of the

Code of Criminal Procedure appear, plead and act in any such Criminal Court and any Court subordinate thereto.

Under section 10 of the above Act no person is to practise as a Mukhtar unless he holds a certificate issued u/s 7 and is enrolled as a Mukhtar in a

Court.

Now, the definition of the word "Pleader" u/s 4 (r) of the Code of Criminal Procedure, prior to its amendment by Act XXXV of 1923, used to

read :

"Pleader" used with reference to any proceeding in any Court, means a pleader or a mukhtar authorized under any law for the time being in force

to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed

with the permission of the Court to act in such proceeding :

Under the definition, as it stood, Mukhtars fell under the second part of the definition and were not entitled, as of right, to practise before Cr.

Courts. It was necessary for a Mukhtar to obtain permission of the Court in each case before he was authorised to practise. Such permission used

to be readily granted. Nevertheless, Mukhtars had a sentimental grievance against this lack of privilege to practise before Criminal Courts as of

right. In order to remove this grievance, the definition of the expression "Pleader" was amended by Act XXXV of 1923 and the words ""or a

Mukhtar"" were added after the words--""means a Pleader"", in the definition. The amendment did away with the necessity of permission and gave

the Mukhtars the status they coveted.

2. The petitioner had himself enrolled as a Mukhtar under the Legal Petitioners Act and began practising before the Criminal Courts at Ranaghat,

district Nadia. In course of his practice he used to stand surety in connection with release of accused persons on bail and earn remuneration for

acting as such.

3. In 1961 came the Advocates Act--an Act to amend and consolidate the law relating to legal practitioners and for the constitution of the Bar

Councils and an All India Bar. Under subsection (3) of section 24 (inserted by Act XXI of 1964) certain classes of Mukhtars were given the

liberty to have themselves enrolled as Advocates. The material portion of the said subsection reads as follows :

(3) Notwithstanding anything contained in sub-section (1) a person who--

(a) before the 31st day of March, 1964, has, for at least three years, been a Vakil, a Pleader, a Mukhtar or was entitled at any time to be enrolled

under any law then in force as an Advocate of a High Court (XX) or of a Court of Judicial Commissioner in any Union territory ;

(b) * * * *

(c) * * * *

may be enrolled as an Advocate of a State roll.

4. The petitioner availed of the liberty and had himself enrolled as an Advocate in the year 1964. At that time he did not anticipate that his new

dignity and status may impede him in earning money in his old fashion.

5. Now section 49 (c) of the Advocates Act authorises the Bar Council of India to frame rules, inter alia, on "the standard of professional conduct

and etiquette to be observed by the Advocates". In exercise of such powers the Bar Council of India prescribed certain rules on standards of

professional conduct and etiquette of which the preamble reads as follows :

An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community,

and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in

his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an Advocate

shall fearlessly uphold the interest of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules

hereinafter mentioned contain canons of conduct and etiquette adopted as general guides ; yet the specific mention thereof shall not be construed

as a denial of the existence of others equally imperative though not specifically mentioned.

Rule 10 of the said Rules further provides :

An Advocate shall not stand as a surety, or certify the soundness of a surety, for his client required for the purpose of any legal proceedings.

6. The respondent Sub-divisional Magistrate of Ranaghat took note of Rule 10 and wrote to the petitioner in the following language :

Notice is hereby given that in terms of section 49 of the Advocates Act, 1961, read with rule 10 of the Bar Council resolution, you will not be

allowed to stand surety in Criminal proceedings on and from 1-1-1966.

7. The petitioner feels aggrieved by the provisions of Rule 10 and the letter quoted above. According to the petitioner, Rule 10 is outside the ambit

and scope of the Advocates Act and the duty of the Bar Council of India, u/s 7(c) of the Advocates Act, being to safeguard the rights, privileges

and interests of the Advocates, the Bar Council should not have curtailed the professional rights of ex-Mukhtar-Advocates. Further, according to

the petitioner, the right to stand as surety for an accused is not derogatory to the conduct and etiquette of professional lawyers and a rule depriving

them of the right should not have been framed. Also, according to the petitioner, Rule 10 would lead to the financial ruination of ex-Mukhtar-

Advocates professionally and the Bar Council of India is not any way authorised to bring about such ruination upon them. Lastly, according to the

petitioner, the respondent Sub-divisional Magistrate had no jurisdiction to write to the petitioner, as done by him, and to deprive him of his

professional rights.

8. In my opinion, the grievances made by the petitioner are mostly without substance. The right of a citizen, in this country, to practise a profession

is not extra legem and may, by law, be subjected to reasonable restrictions. The Advocates Act authorised the Bar Council of India to prescribe

standards of professional conduct and etiquette for Advocates and thus make the profession of law subject to reasonable restrictions of

professional conduct, for the good of the profession itself. The profession of law, in this country, has acquired a reputation. Lawyers are treated

not only as learned men but as gentlemen of very high order. It is the duty of the Bar Council to try to maintain that reputation, which the profession

has won by learning, courage, sacrifice and dignified conduct. In framing the rules of professional conduct the Bar Council of India appears to have

been actuated by that duty and seems to have performed the same with great daring--even to the extent of calling upon Advocates to comport

themselves as "privileged members of the community," in a country pledged by the Constitution to secure to all its citizens "equality of status and

opportunity." The prescription may not be palatable to all tastes but, nevertheless, may embody in itself the ripened result of varied and daring

experience.

9. The petitioner thinks that he had a right to stand surety for accused persons. That right, if it was a right at all, was no peculiar privilege of his

profession. Any reliable person may stand as a surety for an accused person. I do not, therefore, find that in framing Rule 10 the Bar Council of

India made an invasion upon any special privilege enjoyed by professional lawyers and acted beyond the scope of its powers and functions under

the Advocates Act.

10. To stand as a surety has its risks. If an accused person jump his bail, his lawyer surety faces certain consequences not very honorable to him. If

the Bar Council of India thinks that an Advocate should not be permitted to court risks of such dishonor in his professional capacity, and prohibits

him from standing as a surety for a client, I do not think that the Bar Council acted in an unreasonable manner and in excess of its powers.

11. The petitioner himself chose to join the rank of a dignified profession. He must comport himself to the standards of that profession, prescribed

by the authorised body and must not be allowed to import his old carriage in his new world where heights are higher, climates more rigorous and

code of conduct more exclusive. Turning now to the letter from the respondent Sub-divisional Magistrate, I find that it appears to go beyond Rule

10 in one respect. Rule 10 prohibits the petitioner from standing as a surety or from certifying the soundness of the surety for his client. It does not

debar him from standing as a surety, outside his professional capacity, as an ordinary citizen. The letter was addressed to the petitioner is in his

capacity as an Advocate and possibly meant that the petitioner would not be allowed to stand as a surety in his professional capacity. If it meant

anything more, then to that extent the letter was improper. If the competency of the petitioner to stand surety otherwise than as an Advocate, be

doubted, because of the existence of Rule 10, he may try his remedies at that time. In the context of the present petition, I need do no more than to

clarify this position.

With the above observations I dismiss this petition.