

MANU/BH/0049/1946

Equivalent Citation: AIR1946Pat369

**IN THE HIGH COURT OF PATNA
SPECIAL BENCH**

Decided On: 23.04.1946

Appellants:**In Re: Devasaran Lall Sinha**

Hon'ble Judges/Coram:

C.M. Agarwala, Actg. C.J., Das and Syed Jafar Imam, JJ.

JUDGMENT

C.M. Agarwala, Actg. C.J.

1. This is an application by Mr. Devasaran Lall Sinha, an Advocate of the High Court of Judicature at Bombay, praying for the recall of a letter issued over the signature of the Registrar of this High Court, stating that the applicant was not entitled to practise regularly in the Courts subordinate to this Court as an advocate, although he was stated to be entitled to practise in the Courts subordinate to this Court as a mukhtar, provided he renews his mukhtarship license annually. The application is opposed by the Government Pleader on behalf of the Patna High Court Bar Council.

2. The facts are that the applicant, who is a matriculate, passed the mukhtarship examination held by the Calcutta High Court in 1909, when Bihar was under the jurisdiction of that Court. By reason of having passed that examination the applicant was entitled to be enrolled as a mukhtar in any district which was within the jurisdiction of the Calcutta High Court and to practise as a mukhtar in that district subject to annual renewal of his license. In 1941 the applicant sat for an examination held by the Bombay High Court, the passing of which entitled him to be enrolled as an advocate of that Court and to practise in that Court and in Courts subordinate to that Court. As a matter of fact the applicant has never attempted to practise in the Bombay High Court, or in the Courts subordinate to it. Since his enrolment as an advocate of the Bombay High Court, he has been practising in the district of Gaya in this Province. When the matter was brought to the notice of this Court that the applicant was not enrolled as an advocate of this Court, the letter of the Registrar to which reference has been made above was issued.

3. The applicant, however, states that the letter is founded on a misconception of his legal position, and that in law he is entitled as of right to practise as an advocate in Courts subordinate to this Court. He bases his claim on Section 14(b), Bar Councils Act, 1926. That section provides that an advocate shall be entitled as of right to practise save as otherwise provided by Sub-section (2) (which has no application to the present case), or by or under any other law for the time being in force, in any other Court in British India and before any other tribunal or person legally authorised to take evidence. For the purposes of this Act "advocate" has been defined as an advocate enrolled in the roll of advocates by a High Court under the provisions of this Act. The applicant has produced before us in original a certificate issued to him by the High Court of Bombay stating that he has been entered on the roll of advocates of that Court under the provisions of Section 8(2) of the Act on 2nd April 1943. There is no doubt, therefore, that the applicant is an advocate within the meaning of the Bar

Councils Act and entitled to the benefit of provisions of Section 14(b) of the Act.

4. The only point remaining for consideration is whether there is any law in force which debars the applicant from the right to practise in Courts subordinate to this Court. The qualification for advocates, vakils and attorneys under Section 4, Legal Practitioners Act, 1879, requires for an advocate who wishes to appear in a Court subordinate to a High Court in which he was not enrolled that he should ordinarily be practising in the Court in which he is enrolled. As the applicant is admittedly not regularly practising in the Bombay High Court in which he is enrolled as an advocate, this section, had it stood by itself, would have been a bar to his practising as an advocate in Courts subordinate to this Court. But Section 38, Legal Practitioners Act, provides that nothing in that Act, except Section 36, shall apply to persons enrolled as advocates of any High Court under the Bar Councils Act, 1926. From this it is clear that the provisions of Section 4 of the Act do not apply to, and cannot operate to debar the applicant from practising in Courts sub-ordinate to this Court as he is in fact an advocate of a High Court enrolled under the Bar Councils Act of 1926.

5. Precisely the same point arose in Madras and was considered by a Full Bench of that Court in District Judge, Anantapur v. K.V. Vema Reddi. MANU/TN/0008/1945 : A.I.R. 1945 Mad. 144. The Full Bench held that Section 4, Legal Practitioners Act, has no application to advocates enrolled under the Bar Councils Act by any High Court, and that being so, Section 4 had to be ignored in the cases with which they were dealing which were cases of persons enrolled as advocates in the High Court at Bombay and claiming to be entitled to practise in Courts subordinate to the High Court at Madras as advocate by virtue of their enrolment as advocates by the Bombay High Court.

6. These facts are indistinguishable from the facts of the present case, and with great respect, I can see no reason to differ from the view taken by the learned Judges who decided the Madras case. The letter of this Court from the Registrar referred to in the opening paragraph of this judgment must, therefore, be recalled and it must be declared that the applicant is entitled to practise as an advocate in the Courts subordinate to this High Court.

Syed Jafar Imam, J.

I agree.

Das, J.

I agree.

© Manupatra Information Solutions Pvt. Ltd.