

Privy Council Appeal No. 77 of 1930.

Prafulla Ranjan Das - - - - - *Appellant*

v.

The Chief Justice and the Judges of the High Court of Judicature
at Patna - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND
DECEMBER, 1930.

Present at the Hearing :

LORD ATKIN.

LORD RUSSELL OF KILLOWEN.

SIR JOHN WALLIS.

[*Delivered by* LORD ATKIN.]

This is an appeal from so much of an order of the High Court of Judicature at Patna as refused to allow the appellant as advocate to appear in the Courts of the province of Bihar and Orissa. The appellant in 1905 was called to the English Bar by the Hon. Society of the Middle Temple. In 1906 he was admitted as an advocate of the High Court at Fort William in Bengal. On the establishment of the High Court at Patna he caused his name to be removed from the roll of advocates of the High Court in Calcutta, and was enrolled as an advocate of the High Court at Patna. He practised as an advocate, and in February, 1919, was appointed a Judge of that High Court. His name remained on the roll of advocates. In February, 1930, he retired from his office as Judge on medical grounds, on a pension. Meantime, in 1926, had been passed the Indian Bar Councils Act, which provides that the High Court shall

prepare and maintain a roll of advocates of the High Court, and that no person shall be entitled as of right to practise in any High Court unless his name was entered in such roll. Immediately after his retirement the appellant applied to the High Court to have his name entered on the roll of advocates. It was at first refused, but on a renewed application in which the appellant was represented by counsel the Judges on the 29th March made the following order :—

“ That although in the opinion of a majority of the Judges Mr. P. R. Das is entitled to be enrolled as an advocate under section 8 (2) (a) of the Indian Bar Councils Act, yet in view of the fact that he was a Permanent Judge of this Court the Judges refuse to allow him to appear in the Courts of this Province.”

On the 5th April the name of the appellant was enrolled on the roll of advocates, and on the same day the High Court issued to the appellant a formal certificate under this Act, certifying that Mr. P. R. Das, barrister-at-law, has this day been enrolled as an advocate of this Court under section 8 (2) (a) of the Indian Bar Councils Act, 1926.

In these circumstances the appellant contends that he is entitled by statutory right to practise in the Courts of the province under the provisions of the Indian Bar Councils Act, 1926. By section 2 “ Advocate means an advocate entered in the Roll of Advocates of a High Court under the provisions of this Act.” By section 14 “ An Advocate shall be entitled as of right to practise (a) subject to the provisions of subsection 4 of section 9 ” [which are irrelevant for this purpose] “ in the High Court of which he is an Advocate.” The appellant is undoubtedly entered on the roll of advocates ; he is, therefore, he contends an advocate who has the right given under section 14. This reasoning appears to their Lordships irresistible.

The only method of meeting the argument which could be suggested by counsel for the respondents was the contention that the High Court was wrong in deciding that the appellant was entitled to be enrolled under section 8 (2) (a) of the Act. By section 8, subsection 2 :—

“ The High Court shall prepare and maintain a Roll of Advocates of the High Court in which shall be entered the names of :—

(a) All persons who were as Advocates, Vakils or Pleaders entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof. and

(b) All other persons who have been admitted to be Advocates of the High Court under this Act.”

It was not suggested that the appellant came under (b), and the contention is that as immediately before the Act came into force he was a Judge he was not a person who as advocate, was entitled as of right to practise in the High Court at that date. Their Lordships do not propose to pronounce any opinion upon

this contention, for in the present proceedings it does not appear to be open to the respondents. The contention obviously raises questions of importance as to the position of advocate and Judge in India, whether a Judge on appointment ceases to hold the qualification of advocate, and if so how, if at all, on ceasing to be a Judge he may resume the position of an advocate. The High Court at Patna resolved the question in favour of the appellant: their reasons are not before the Board; no cross-appeal is brought from this decision, and their Lordships in the circumstances feel bound to accept the enrolment as an accomplished fact on the basis of which the rights of the appellant must be determined. No question arises in this case as to the exercise of any discretion by the High Court, for the appellant relies upon, and in their Lordships' view has established, a statutory right to practise. Their Lordships therefore refrain from expressing any opinion upon the important question as to the propriety of an ex-Judge practising in the Courts of the province where he has exercised judicial functions. Their Lordships at the hearing intimated that they would humbly advise His Majesty to set aside so much of the order of the 29th March, 1930, as refused to allow the appellant to appear in the Courts of the Province, and that they would thereafter set out their reasons as they have now done. There will be no order as to the costs of this appeal.

In the Privy Council.

PRAFULLA RANJAN DAS

v.

THE CHIEF JUSTICE AND THE JUDGES OF THE
HIGH COURT OF JUDICATURE AT PATNA.

DELIVERED BY LORD ATKIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1930.