

Pandit Ajudhia Nath

By MR. JUSTICE JAGDISH SAHAI

Amongst the giants that the Bar of this Court has produced, Pandit Ajudhia Nath is one of the greatest as also one of the earliest. His career was meteoric. Son of Pandit Kedar Nath, he was born at Agra in a Kashmiri family on 8th of April, 1840 and died at Allahabad on 11th of January, 1892. In this span of less than 52 years he compressed activities and achievements which another person would not succeed in doing in a century.

His father was, for some time, the Diwan of the erstwhile state of Jhajhar near Delhi and was a prominent citizen of his time.

He learnt Arabic and Persian in his boyhood and acquired proficiency in both the languages. Later on he acquired knowledge of English, studied law and was enrolled as a pleader of the Sadar Dewani Adalat at Agra. Even as a student, he showed signs of rare promise. The Government report on popular education for the year 1860-61 referred to him is "an intelligent and promising student" and to his answer-books in History and Philosophy as marked by "uncommon acuteness and thought".

Due to the unusual gifts with which nature had endowed him and to which he added industry and application, he virtually marched into the legal profession without having the usual waiting. His practice steadily grew and by 1866 he was recognized as a leading member of the Bar of the Sadar Dewani Adalat.

In the year 1869, a Law Professorship fell vacant in the Agra College, to which he was appointed unsolicited, though there were a very large number of applicants for the same.

When the Court moved from Agra to Allahabad, Pandit Ajudhia Nath also shifted to this place. Here he added fresh laurels to his crown and attained the status of one of the recognized leaders of the Bar and one of the most prominent citizens of the country. His death created a void and there was a widespread gloom all over the country. In the reference on the occasion of his death, Sir John Edge, the then Chief Justice said "It was always a pleasure to us to listen to, and we frequently derived instruction from, the legal arguments of Pandit Ajudhia Nath. I confess that I have not unfrequently been captivated by the display on sudden and difficult emergencies in his case of his knowledge of law, the subtlety of his mind and his persuasive powers."

In this Court there was hardly a case of any importance or of any magnitude in which Pandit Ajudhia Nath did not appear on behalf of either of the parties. The Law Reports of his times are full of cases argued by him. Their perusal bears testimony not only to Pandit Ajudhia Nath's mastery of law, but also to his great forensic talent and a capacity to put the case for his clients at the highest level but without departing from the record.

It is not possible, in a short note like the present, to mention the various cases in which he appeared in this Court, with marked distinction. I am mentioning only some of the interesting ones. One of them is *Empress of India vs. Sarmukh Singh* (I. L. R. 2 All. 218) in which for the first time the power of the Indian Legislature to enact a law was challenged in an Indian court. In the year 1879, a soldier of the Indian Army serving at Cyprus was charged for having committed murder there. He was put on trial before an Agra Magistrate. The Magistrate refused to hold the proceedings on the ground of want of jurisdiction. The local Government brought the case to the High Court. The Division Bench, before which it was listed, directed the Magistrate to enquire into the charge. After his conviction, the soldier preferred an appeal to the High Court. Pandit Ajudhia Nath, who appeared for the soldier in the High Court, challenged the proceedings, on the ground of want of jurisdiction of the Court as also on the ground that the law was *ultra vires* the Indian Legislature. The case was referred to a Full Bench. The Full Bench held that the Court was not precluded by the order of the Division Bench from considering whether the accused person has been rightly convicted. The question relating to the *vires* of the law was left undecided with the observation that "the answer to these questions in the affirmative might be successfully disputed".

In *Lal Singh and others vs. Ghansham Singh* (I. L. R. 9 All. 625), Pandit Ajudhia Nath challenged the constitution of the Full Bench hearing the case on the ground that the High Court itself was not properly constituted, inasmuch as, instead of there being a Chief Justice and five other Judges, there were at that time only the Chief Justice and four other Judges, the vacancy of the fifth Judge not having been filled up. Though the submission was not accepted and it was held by the Full Bench that it was not intended that if the Crown or the Government should omit to fill up a vacancy among the Judges, under the powers conferred by section 7 of the High Courts Act so that the Court should consist of a Chief Justice and four Judges only, the constitution of the Court should thereby be rendered illegal, and the existing Judges, incompetent to exercise the functions assigned to the High Court. A reading of the Report of the case shows the forensic powers and the grasp of constitutional law possessed by Pandit Ajudhia Nath.

It will be interesting to note that at one time it was seriously urged that the High Court of Judicature at Allahabad had only the power of superintendence over the subordinate courts and not judicial powers to revise or interfere with the orders of the subordinate courts. (See I. L. R. 9 All. 104). Pandit Ajudhia Nath appeared in the case and submitted that, by virtue of section 15 of 24 and 25 Vict. c. 104 (the Indian High Courts Act of 1861), the Court had also judicial powers to interfere with or revise judicial orders passed by the subordinate courts. The Full Bench, by a majority, held that, under section 15 of 24 and 25 Vict. c. 104, it is competent for the High Court in the exercise of its power of superintendence, to direct a subordinate court to do its duty or to abstain from taking action in matters of which it has no cognizance, but the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a subordinate court on the ground that the order of the subordinate court has proceeded on an error of law or on an error of fact. The minority view of this Court, which was expressed by two out of the

five Judges constituting the Full Bench, held that the word "superintendence" used in section 15 of the Charter Act contemplated and now included powers of a judicial or quasi-judicial character apart from those conferred on the Court by section 622 of the Civil Procedure Code.

Pandit Ajudhia Nath commanded the esteem and respect of not only the members of the Bar, but also of the Bench of the Court. In the year 1888 the then Chief Justice offered to make him an Advocate of the Court and thus extended to him the privileges which were then confined to the members of the English Bar only (Barristers). Pandit Ajudhia Nath declined the honour saying that he could not take it so long as the other Vakils of the High Court did not get it. Later on, as is well known, some other members of the Vakil Bar accepted to become Advocates.

Another instance, which shows the esteem in which Pandit Ajudhia Nath was held by the Bench of this Court, is provided by what happened in 1889. Along with Pandit Ajudhia Nath was engaged a young English Barrister who, by virtue of his being a member of the English Bar, had the right of pre-audience. The appeal was being argued before a Bench of which the Chief Justice, was a member. The English Barrister stood up and opened the case. The client, who was standing behind, wanted it to be argued by Pandit Ajudhia Nath, and, for that reason, pulled from behind the English Barristers gown more than once and also requested Pandit Ajudhia Nath to argue the case. Insistent on his right the English Barrister continued unbothered. The Bench noticed this and soon retired to their Chamber. The young English Barrister was called by the Judges and was told not to behave in the manner he had done and to allow Pandit Ajudhia Nath to argue the appeal. Thereafter, the Bench re-assembled in the Court and Pandit Ajudhia Nath concluded the arguments. Today, when we are living in the sunshine of independence with a completely Indian Bar, it is not possible to realise what talent and force of personality was required for an Indian, in the second half of the nineteenth century to reach the highest rung of the professional ladder. The Allahabad Bar of Pandit Ajudhia Nath's time, like the Bars of Calcutta, Bombay and Madras, was the virtual preserve of English Barristers. It was given to Pandit Ajudhia Nath to break that close ring, force his entry into the front rank of the Bar and attain the status of a doyen.

Even though law is notoriously a jealous mistress, Pandit Ajudhia Nath did not confine his interest or attention to law alone. He was one of the first nine members of the Legislative Council for the North-Western Provinces and Oudh, which was established in 1886. He took full part in the proceedings of the Council and distinguished himself there.

He was intimately connected with the Indian National Congress, though not one of its founder members. How his connection started with the Congress is described by Mr. W. C. Bonerjee, its first President in the following words:

"I was here (Allahabad) in April 1887, and met Pandit Ajudhia Nath who had not then expressed his view one way or the other about Congress matters. I discussed the matter with him. He listened to me with his usual courtesy and urbanity, and he pointed out to me certain defects which he thought existed in our system; and at last after a sympathetic hearing of over an hour and a half, he told me he would think of all I had said to him, and that he would consider the matter carefully and thoroughly, and then let me know his views. I never heard anything from him from that time until on the eve of my departure for Madras to attend the Congress of 1887. I then received a letter from him in which he said I had made a convert of him to the Congress cause, that he had thoroughly made up his mind to join us, and he sent a message that if it pleased the Congress to hold its next session at Allahabad in 1888, he would do all he could to make the Congress a success. And you know certainly those of you who attended know what success he did make of it."

Pandit Ajudhia Nath was the Chairman of the Reception Committee of the Congress Session of 1888 held at Allahabad. Of this, Mr. W. C. Bonerjee has spoken as follows:

"Pandit Ajudhia Nath as you know, from the time he joined the Congress worked early, worked late, worked with the old, worked with the young, never spared any personal sacrifices, so that he might do good to his country and to the Congress Our venerable President of the Reception Committee of this Congress had told us of the difficulties which had to be encountered to make that Congress a success; and I do not belittle his services or those of any other worthy Congressman who worked with him at that Congress, when I say that it was owing to Pandit Ajudhia Nath's exertions that Congress was the success it was."

In arranging the Congress Session at Allahabad, Pandit Ajudhia Nath had to encounter great opposition and difficulties. At that time the sun of the British Raj was at its meridian and the bureaucratic administrative set up could not countenance any progressive or political activity in the North-Western Provinces and Oudh. Both Dufferin, the Viceroy, and Colvin, the Lieutenant-Governor, were opposed to the idea of a Congress Session at Allahabad; but he "intrepid and unselfish" Pandit succeeded where others would have failed.

Pandit Ajudhia Nath's services to the Congress and his steadfast and dedicated devotion to it, though unfortunately forgotten now, received universal contemporary recognition. When Mr. A. O. Hume left for England, he, by general consent, was elected the Joint Secretary of the Congress; and it had been almost resolved to offer him, the honour of the chair of the Seventh Congress Session held in 1891, had it not been for the feeling that Bombay and Calcutta having till then supplied all the Presidents, Madras should have a chance before the turn of the North-Western Provinces came. For this reason, Rai Bahadur P. Ananda Charlu was chosen to preside over the 1891-Session of the Congress at Nagpur. Pandit Ajudhia Nath proposed the name of Rai Bahadur P. Ananda Charlu and Sir Pheozshah Mehta seconded it. While seconding the proposition Sir Pheozshah Mehta said: "I have great pleasure in seconding the resolution which has been placed before you by the Hon'ble Pandit Ajudhia Nath. I have no doubt that the delegates present would have rejoiced if the Hon'ble Pandit himself had been voted to the

chair this year. But we know that he is as modest and unselfish as he is public spirited, patriotic and energetic. But while we should have been glad to see the Pandit in the chair, we are equally glad to hail as President this year, a representative from that presidency which has done so much for the Congress."

Rai Bahadur P. Ananda Charlu in his address said: "The Hon'ble Pandit Ajudhia Nath is unfortunately for both you and me not a Madrassite. Were it not that he generously abdicated the dignity in favour of Madras, I should gladly have avoided the danger of accepting a situation that would draw me into comparison with that unselfish, whole-hearted, intrepid; and outspoken apostle of this great National Movement. "At this Session, one of the resolutions moved by Pandit Ajudhia Nath was for reducing the incidence of salt-tax and raising the income-tax taxable minimum from RS. 500 to Rs. 1,000.

When Pandit Ajudhia Nath died on 11th January, 1892, on his return from the Nagpur Congress Session, the whole country was plunged into deep grief. At the Eighth Session of the Congress held in the year, 1892, Mr. W. C. Bonerjee spoke about him in the following words:

"Standing on this platform and speaking in this city, one feels almost an overpowering sense of despair when one finds that the familiar figure and the beloved face of Pandit Ajudhia Nath is no more. We mourned for him when he died, we have mourned for him since; and those of us who had the privilege of knowing him intimately, of perceiving his kindly heart, his great energy, his great devotion to the Congress cause, and the sacrifices he made for that cause, will mourn for him to the last."

Sir William Wedderburn, in his book on Allan Octavian Hume, writes: "As is well known there is no one for whom he (i. e. Allan Octavian Hume) had a more sincere personal regard than Pandit Ajudhia Nath."

To the cause of education Pandit Ajudhia Nath contributed generously both in time and money. He was the founder of the Victoria School (now Victoria College) at Agra. He was also a member of the Senates of both the Allahabad and the Calcutta Universities. The Vice-Chancellor of the Allahabad University, while speaking of Pandit Ajudhia Nath, observed:

"He took a very keen interest in education, was a constant attendant at our meetings, and brought to bear upon our work intellectual powers which only few possess. He was a man of whom any country and any race might well be proud. His character was of the highest, his ability was undoubted, and his acquirements were of the most varied description. "

Pandit Ajudhia Nath gave attention to journalism also. In 1879 he started an English daily newspaper styled "The Indian Herald". The undertaking unfortunately proved to be a failure even though he spent a lac of rupees in it. Undeterred he started another organ called "Indian Union" in the year 1890 and Pandit Madan Mohan Malaviya was placed in charge of it. The latter always acknowledged with gratitude his association with Pandit Ajudhia Nath.

Pandit Ajudhia Nath's connection with this Court has not ceased with his death. Fortunately we have today in our midst his worthy son, Pandit Gopinath Kunzru, who is a recognized leader of the Bar and is highly respected.

The Centenary of the High Court and Pandit Ajudhia Nath are separated from each other by almost 69 years. The Pandit has grown into a legendary figure and even though the present generation had not the privilege of seeing him, his name is still resounding into our ears. For us, who stand separated by time from him, it is difficult to visualise what a towering, compassionate and intellectual personality Pandit Ajudhia Nath was. Fortunately, however, for us, the record of his achievements is preserved not only in the Law Reports and the proceedings of Indian National Congress but also in the proceedings of the North-Western Provinces and Oudh Legislative Council and the Universities of Allahabad and Calcutta as also in the legends that have grown round his famous name. On this day, when we are celebrating the completion or hundred years of this Court, it is only just and proper that we humbly remember him with reverence and gratitude.