

(1912) 07 AHC CK 0022

Allahabad High Court

Case No: None

Nawab Khan

APPELLANT

Vs

Muhammad Zamin

RESPONDENT

Date of Decision: July 16, 1912

Citation: (1912) ILR (All) 649

Hon'ble Judges: Henry Richards, C.J; Tudball, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Henry Richards, C.J. and Tudball, J.

This appeal arises out of an election petition. Nawab Khan was one of the electors at an election of the Municipal Board of Allahabad, which was held on the 8th of March, 1911. At that election the respondent, Muhammad Zamin, was declared duly elected. Within fifteen days the present petition questioning the validity of the election was presented in the court of the Additional Munsif. The grounds for questioning the election are set forth in paragraph 6 of the petition. In Clause (a) it is asserted that fraudulent proceedings were taken and threats were held out, and the defendant, his agents or friends made unauthorized persons vote in place of rightful voters. Four instances of impersonation were then set forth, and it went on to assert that other names would be given later on after the inspection of the ballot papers. Before the petition was heard the petitioner was in a position to give further cases of personation and the petition was amended by adding the particulars of six additional cases of alleged personation. The learned Additional Munsif heard the case and found that a certain number of cases of personation were proved ; and he accordingly set aside the election.

2. The respondent appealed to the District Judge. In that court and in this Court it was admitted that personation, to which the candidate or his agents were parties, was a good ground for setting aside an election. The learned District Judge held that the Munsif had jurisdiction to hear the petition, and in this Court it has not bon

contended and in our opinion, could not be contended--that the Munsif had not jurisdiction to hear the case. The learned District Judge, however, set aside to decree of the Munsif and dismissed the petition upon the ground that the court had no power to amend the petition by adding the further cases after the expiration of fifteen days from the date of the election. The learned District Judge held that those cases which were originally set forth in the petition were not proved and that therefore the petition's case failed.

3. The only question which we have to decide in the present appeal is whether or not the petitioner was entitled to give evidence of the additional cases which were mentioned for the first time after the expiration of 15 days of the election. Rules have been framed under the Municipalities Act, Section 187, with regard to election petitions. Rule 42 is as follows:

The validity of an election made in accordance with these rules shall not be questioned except by a petition presented to a competent court within 15 days after the day on which the election was held by a person or persons enrolled in the Municipal electoral roll:

Provided that no election shall be called in question on the ground that

(a) the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in, the electoral roll or rolls made and revised under rules 1 and 2 of these rules ; or

(b) the name of any person qualified for election as a member of the Board has been omitted from, or the name of any person not qualified for election as a member of the Board has been inserted in, the candidate list as prescribed under Rule 3 of these rules.

4. This is the only rule relating to election petitions. The learned District Judge says:

Reading Rule 42 it seems to me perfectly plain that the intention of the Legislature is that specific and not general grounds for questioning an election shall be alleged and that those grounds shall all be put forward within 15 days of the election. The two provisos, and the words shall not be questioned except by petition presented within 15 days" seem to place this beyond doubt. It would stultify the Section if a petitioner were allowed to allege general corruption and then add specific instances to his plaint at leisure as he gathered material.

5. In the present case the petitioner alleged that the respondent had been guilty of misconduct in the course of the election by procuring persons to personate dead or absent voters. That was the ground of the petition. The particular instances of personation are quite another matter, and in our judgment it was quite open to the petitioner to furnish those particulars after the expiration of the 15 days. What the court had to guard against was the respondent being taken by surprise by the petitioner keeping back the particulars until the last moment. It seems to us

perfectly clear that there is nothing in the rule which requires that all the particulars should be specified in the petition. In many cases, and probably in the present case, it would have been impossible for the petitioner to have furnished all these particulars within 15 days. The practice in England with regard to elections is to allow particulars of the charges to be given after the petition is presented; and we see no reason whatever why the same practice should not prevail here in the absence of clear rules on the point. The court will always have it in its power to prevent any abuse of the process of the court by insisting that proper particulars shall be furnished to the respondent in ample time to enable him to meet the charges. The mere fact that the additional particulars were given by means of amending the plaint is in our opinion no reason why we should hold that the petitioner was not entitled to go into evidence and prove the additional cases.

6. We allow the appeal, set aside the decree of the learned District Judge and remand the case to his court with directions to re-admit the appeal under its original number on the file and to proceed to hear and determine the same according to law, having "regard to what we have stated above. The appellant will have his costs in this Court. Other costs will be costs in the cause.