(1919) 05 AHC CK 0013

Allahabad High Court

Case No: None

Mohammad Abdul Baqi Khan		APPELLANT
	Vs	
Dr. Siraj-Ul-Hasan and Others		RESPONDENT

Date of Decision: May 21, 1919

Citation: 52 Ind. Cas. 67

Hon'ble Judges: Walsh, J; Stuart, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This is a question of procedure arising out of an election petition consequent upon a recent Municipal election in Allahabad which has been referred to us by the Commissioner, the tribunal appointed for the trial of the petition, such reference being in his opinion a question of law u/s 23, sub Section 2, Clause (e) of the Municipalities Act.

2. The point may be shortly stated in this way: Is it competent for an unsuccessful candidate, petitioning against the election of more than one successful candidate to join a claim that all or any of the successful candidates, being more than one be unseated in one petition? In this particular case there were six candidates, three of whom were elected, the present petitioner being the 4th, two other persons who were formerly respondents and have been struck out being 5th and 6th on the poll. The petition claims that upon various; grounds raising questions of legality, corrupt practices, personation and so forth, the three successful candidates should be declared not to have been duly elected or in other words unseated and that the petitioner and his two colleagues (the two other unsuccessful candidates) should be declared elected in their places as members of the Board or that vacancies should be declared in respect of those candidates decided to be unseated. A farther claim is made that in view of the practices alleged, the Court should take proceedings under other sections of the Municipalities Act against the respondents.

3. The provisions with regard to election petitions arid the procedure thereunder are contained in Sections 19 to 26 of the Municipalities Act and, with one possible exception which has given rise, to the main argument on behalf of the respondents in this case, seem to us to be clear and free from any difficulty. By Section 19 the lawful election of a candidate as a member of the Board may be questioned in an election petition on certain grounds. By Section 20 such petition must be presented within 15 days of the election day and shall contain a summary of the grounds on which the election is challenged. Further, by the same section a right is given either to an unsuccessful candidate or to ten or more electors to present the petition. In the case of the candidate presenting the petition, he must be one who claims to be declared elected in the room of the person whose election is questioned. If this provision stood alone, it would appear to indicate that the petition in the case of an unsuccessful candidate claiming to be elected in the place of the successful candidate, who is unseated, must be confined to one successful candidate. The result of this would be a somewhat clumsy arrangement, because there is nothing in the Act which indicates that if an unsuccessful candidate acting upon information in his possession believes that he has grounds for unseating all three but is uncertain of his success against either of the particular individuals, be may not, if he wishes to make assurance doubly sure, claim that each of the three be unseated and that he be elected in the place of either one or other of those whose election is declared void; he would be compelled in that case to file separate petitions against each. Clause 23, however, gets over this difficulty. By sub Section 2 (a) it is provided that two or more persons whose election is called in question may be made respondents to the same petition and their cases may be tried at the same time, and any two or more election petitions may be heard together but so far as is consistent with such joint hearing, the petition shall be deemed to be a separate petition against each respondent. That section is perfectly clear. It provides in unmistakable language for a joint petition against more than one respondent, otherwise it would be inappropriate to deem it to be a separate petition; if only separate petitions were allowed there would be no necessity for the Legislature to provide for a petition to be deemed to be separate against each respondent. After all the argument would be the same if the unsuccessful candidate filed a separate petition against each of the three successful candidates claiming the seat of each. He could not fill more than one vacancy, if all his petitions succeeded. The word "petition" is clearly used in the section in two senses. In the earlier part of the clause "petition" means the paper or complaint which is originally presented and which must be presented within 15 days and must contain the summary of charges. That is the petition which is in question in this reference, the contention being that it is bad ab initio because presented against three respondents, but in the latter part of the section the word "petition" clearly means the procedure under which the complaints against the election of a candidate are investigated and decided. The word "petition" is quite common both in familiar use and in legal use in both senses and what that clause clearly provides is that a joint petition filed against one or more respondents who

have been elected may be heard as one or as two and usually for the purpose of evidence be treated as separate petitions against each individual, giving the Court a wide discretion for its own conduct of its own proceeding but protecting the respondent against any unfair breach of the laws of evidence. This seems to us a perfectly reasonable provision on general grounds. The mere fact that so short a time as 15 days is allowed for the presentation of the petition places a very heavy burden in-deed upon the petitioner to prepare any sort of case at all, in a matter covering such a wide area as a contested election, and it is far easier as a matter of procedure for the Court in the exercise of its discretion to separate oases which have once been united in a joint complaint than it is to consolidate several cases which have been originally filed as separate and distinct matters. So far as the consequences of the proceeding are concerned it is really unimportant, except for the purpose of qualifying the candidate who presents the petition to present the petition by declaring himself ready to fill a vacancy which he asks to be created, whether as a matter of law the Court decides in its discretion to declare the unsuccessful candidate elected in the place of the candidate unseated or whether it prefers to declare that the seat is merely vacant, and that a fresh election should be held. That decision does not in the least depend upon the claim made by the candidate presenting the petition, but upon the general circumstances of the case and the exercise of the Court''s discretion which is wide under the Act.

4. The real difficulty of construction raised by Dr. Sapru in his argument on behalf of the respondent occurs in the use of these words in Clause 20, sub-section 2. The candidate who presents a petition must be a person who claims in the petition to be declared elected in the room of the person whose election is questioned", and it is said that this by implication imposes a limitation not upon the procedure but upon the right, that is to say, inasmuch as one man can take only one vacant place, if it is desired to challenge the election of more than one successful candidate, it cannot be challenged by one man because he cannot ask to fill the vacancies of the persons whose election he questions. In other words, as he cannot fill the vacancy of three persons, he cannot by himself question the election of three persons. There is a good deal to be said for this argument, but on the whole we have come to the conclusion that it is not the correct view, for these reasons: It seems to us that the intention of the legislature really was, as is sufficiently expressed in this clause, that whereas any number of electors might question an election so long as they are not less than 10 in number without reference to any claim to succeed to the vacancy if one were created as the result of the petition, in the case of a candidate who no longer holds any position distinct from that of an ordinary elector after the election is over, he must show, so to speak, his bona fides, or at any rate his public spirit by following up the attack which he makes upon his successful rival by willingness to take his place if he is unseated, and reading the other portions of the Act in connection with Clause 20, sub-clause 2, particularly Section 25 which gives a wide discretion to the Court as to whether it; shall or shall not declare any other

candidate to have been duly elected or prefer to declare a vacancy and, therefore, involve re-election, all that was meant was that so long as the candidate claimed the vacancy, he was qualified to present a petition, but there is nothing in the rest of the Act to indicate that he may not do as this petitioner has done, that is, claim one vacancy in particular and leave it to the Court to decide whether the other vacancies which he has also attacked shall be filled by the other unsuccessful candidates or left vacant. As a general rule where a vacancy is declared for malpractices, corruption and so forth such as are alleged in this petition, it by no means follows that the unsuccessful candidate, in this case the petitioner, has any moral claim to the vacancy when it is declared; whereas if as the result of an election petition it is shown that, if the election had been conducted according to law, i. e, there had bee no personation or duplicate voting or vote by unqualified voters and so forth, the unsuccessful can did not would probably have succeeded, than no doubt the unsuccessful candidate is awarded the seat. But where the vacancy is created by a decision that the election has been carried through by improper practices, the usual consequence is that a vacancy is declared and a fresh election ordered. Having regard to these considerations, it seems to us that Section 20, subsection 2, does no more than require the candidate presenting the petition to claim the seat of the person or one of the persons whom he claims to have been unduly elected. This the petitioner has done. We think that it is in accordance with the Act and that the answer to the question must be that the claim (we think the words "cause of action" in connection with an election petition should be altogether avoided) made by the petitioner is properly made and that the petition is presented according to law.

5. We think, subject to any special reason to the contrary which the Commissioner may consider, that the costs of this proceeding should be costs of the petition.