

**(1960) 09 CAL CK 0001**

**Calcutta High Court**

**Case No:** Civil Revision Case No. 94 of 1959

Sarat Kurmar Mohdal and

Another

APPELLANT

Vs

Kali Charan Paul and Others

RESPONDENT

**Date of Decision:** Sept. 7, 1960

**Citation:** 65 CWN 472

**Hon'ble Judges:** Banerjee, J; Amaresh Roy, J

**Bench:** Division Bench

**Advocate:** Nirmal Chandra Sen and Naresh Chandra Ganguly, for the Appellant; Sunil Krishna Dutta and Chandra Sekhar Bhowmick, for the Respondent

### **Judgement**

Banerjee, J.

This Rule is directed against an order made by the Chief Judge, Small Causes Court, Calcutta, deciding a dispute as to validity of an election under the Calcutta Municipal Act and dismissing an election petition. The election in question related to the election of a Councillor from Constituency No. 16 of the Calcutta Corporation, held on March 29, 1957. The petitioners are two in number and their names are borne in the Final Electoral Roll of the Constituency, as electors.

2. Three candidates contested in the election, namely, Kali Charan Paul (Opposite Party No. 1), Sambhu Nath Barick (Opposite Party No. 2) and Bejoy Krishna Banerjee (Opposite Party No. 3). Kali Charan Paul was declared elected by the largest number of votes.

3. According to the petitioners the election was not a free and fair election and was vitiated by a number of corrupt practices resorted to either by Kali Charan or his agents or by other persons with the connivance either of Kali Charan or of his agents.

4. The petitioners, therefore, filed an application u/s 73 of the Calcutta Municipal Act, inter alia, praying:-

(a) A finding and declaration to the effect that the election of Respondent Kali Charan Paul was void on the ground of corrupt practices specified in Parts I and II of Schedule II to the said Act, and for an order setting aside the said election.

(b) A finding and a declaration to the effect that Respondent Kali Charan Paul in consequence incurred the disqualification mentioned in section 55(1) (j) of the said Act.

5. Amongst the various grounds alleged against the validity of the election, we are concerned, in this Rule with only one, namely, ground (m) which we materially set out below :-

That the Tribunal below failed, to construe or apply properly or at all sections 55(1) (j), 55(1) (k), 63 and 75 of the said Act (meaning the Calcutta Municipal Act) and Schedules II and III to the said Act and that the Tribunal should have held that respondent Kali Charan Paul had filed a false and incomplete return of election expenses and that the said return was not according to law and that the result of the election had been materially affected thereby, and that the said election was thereby vitiated and that the respondent, Kali Charan Paul, became disqualified for being a Councillor.

6. In support of the above ground reliance was placed on the following extract from the deposition of Kali Charan Paul himself, who stated as follows:-

I spent in all Rs. 194/- in addition to the deposit money which I have got back \* \* \* \* I had got some donations at the time of the election \*\*\*\*\* Krishna Dhawa of 176, Manicktolla Main Road had given the security deposit money \* \* \*. In the affidavit I had not given the name of any donor because that was my money having been given to me. I had not named Krishna Dhawa in the election return expenses as the person who had furnished me with the security deposit to the tune of Rs. 250/-.

7. The learned Chief Judge of Small Causes Court over-ruled the contention grounded on return of false election expenses with following observation:-

It has been stated by O.P.W. No. 2 in course of his cross-examination that in the return he had not given the name of any donor because that was his money having been given to him. He had not named Krishna Dhawa in the election return expenses as the person who had furnished him with the security deposit to the tune of Rs. 250/-. He got the refund of the money probably in May, 1957, say about the middle. Krishna Dhawa had given him the money absolutely. In Rule 1 of Schedule III it has been laid down that under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of the expenses incurred on account of, or in connection with or incidental to the election and the amount received from each person, club, society or association separately. Evidently there has been a violation of the rule, but the

question is whether for such violation the election should be set aside. This rule has been framed on the basis of section 63(1) of the Act. In accordance with the provisions laid down in section 75(1) (c) inspite of the violation of the rule it must be proved by the petitioners that the result of the election has been materially affected by non-compliance with the provisions of section 63(1) read with rule 1 of Schedule III of the Calcutta Municipal Act, 1951. It would appear from the deposition of O.P.W. 2, Kali Charan Paul, that he had got donation but he does not remember if it could come upto Rs. 10/- or Rs. 50/-. In other words, the donation will not have exceeded Rs. 50/-. He has also got from Krishna Dhawa a sum of Rs. 250/-which was utilised as security deposit. These are paltry sums and it seems to me that because the rule 1 referred to above had not been complied with by the O.P. No. 1, the result of the election had not been materially affected thereby.

8. Against the order of the Chief Judge of the Small Causes Court, Calcutta, the petitioners obtained a Rule, on ground (m) of the petition already set out.

9. Mr. Nirmal Chandra Sen, learned Advocate for the petitioners contended before us that the Chief Judge of the Small Causes Court, Calcutta, functioning as the Election Tribunal, should have found Kali Charan Paul (Opposite Party No. 1) guilty of a corrupt practice in that he had filed a false return of election expenses and on that ground he should have disqualified him and should have declared his election void.

10. In our opinion this contention is misconceived. u/s 73 read with section 75 of the Calcutta Municipal Act an election may be set aside if the result of the election has been materially affected by corrupt practice. The material portions of sections 73 and 75 are set out below:-

73. (1) If there is any dispute as to whether any person whose name is published under sub-section (6) of section 59 is eligible for election as a Councillor, or if the validity of any election is questioned, whether by reason of the commission of any corrupt practice by a candidate or his agent or by any other person or by reason of the improper rejection of a nomination or of the improper reception of refusal of a vote, or for any other cause, any person enrolled in the electoral roll may at any time within eight days after the said publication, apply to the Chief Judge, Small Causes Court of Calcutta:

75. (1) If in any proceeding instituted u/s 73, the Chief Judge, Small Causes Court, is of opinion that-

(a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or

(b) any corrupt practice specified in Part I of Schedule II has been committed.

(c) \*\*\*\*\* he shall make an order setting aside the election of the returned candidate.

11. Schedule II of the Act gives a list of acts which are to be deemed to be corrupt practices under the Act; the list does not include the filing of false return of election expenses. Section 63 of the Act deals with the return of election expenses and is set out below:-

63. (1) Within one month or such longer period as the State Government may allow after the date of the declaration of the election every candidate, either personally or through his election agent, shall cause to be lodged with the Commissioner a return of his election expenses containing the particulars specified in Schedule III.

(2) Every such return shall contain a statement of all payment made by the candidate or by his election agent or by any persons authorised by the candidate to act on his behalf for expenses incurred on account of, or in respect of, the conduct and management of the election, and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent which shall be in the form contained in Schedule III and shall be made on oath or affirmation before a Magistrate.

(4) The Commissioner shall cause to be prepared and maintained a record showing the names of all candidates at every election of a Councillor under this Act and the date on which the return of election expenses of each candidate has been lodged with him.

12. Rule (1) of Schedule III of the Act deals with the items to be included in the receipt side of the form prescribed for return of election expenses. The said Rule (1) is set out below:-

1. Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

13. Section 55 of the Act deals with general disqualifications, material portion whereof is set out below:-

Sec. 55 (1). A person shall not be qualified for being elected a Councillor or Alderman if he-

\*\*\*\*\*

\*\*\*\*\*

(k) being a candidate at an election as a Councillor under this Act or an election agent of such councillor has failed to lodge any prescribed return of election expenses or has lodged a return which is found either by the Chief Judge of the

Small Causes Court, Calcutta in the course of any proceeding u/s 73 or by a Magistrate in a judicial proceeding, to be false in material particulars :

Provided that

\*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

(iv) The disqualification under clause (k) of sub-section (1) shall cease at the end of 5 years after the date of the election, to which the return of the election expenses referred to in the said clause relates.

14. The filing of a return of election expenses which is materially false is certainly a ground of general disqualification u/s 55 of the Act. But such a disqualification, incurred for the first time attaches to the elected Councillor, subsequent to the election. A disqualification mentioned in section 55(1) (k) of the Act may be removed, under sub-section (2) of section 55 of the Act by the State Government by an order in this behalf. If such disqualification be not removed, such a person shall cease, u/s 68 of the Act, to be a Collector or Alderman, with effect from the date on which the State Government shall declare the seat to be vacant.

15. According to the scheme of the Act the taking of action in respect of disqualification subsequent to the election appears to be the duty of the State Government. The Chief Judge of the Small Causes Court, functioning as the Election Tribunal can only set aside an election, if he is of the opinion that the result of the election had been materially affected by corrupt practice or if he is of the opinion that any corrupt practice specified in Part I of Schedule II had been committed in course of the election. The filing of a false return of election expenses is no doubt a reprehensible practice but is not a corrupt practice within the meaning of Part I of Schedule II of the Act nor is a practice which is likely materially to affect the result of the election. We are, therefore, of the opinion that the filing of a false return of election expenses cannot be a ground for setting aside the election.

16. Mr. Sen realised this difficulty. He, therefore, contended that the Election Tribunal should have declared the election of Kali Charan void because of this disqualification. In our opinion the Chief Judge of the Small Causes Court, Calcutta, functioning as an Election Tribunal, has no such power u/s 73 read with section 75 of the Act.

17. Even accepting the argument by Mr. Sen that the return of election expenses by the Opposite Party No. 1 was false in material particulars and he earned the disqualification as referred to in section 55(1) (k), which we do, we have to hold that the State Government alone may take action against him in exercise of powers u/s 68 of the Act. The Chief Judge of the Small Causes Court can neither set aside

election of Opposite Party No. 1 nor declare his election to be void on the ground of disqualification by reason of filing false return of election expenses.

18. In the view that we take, we have to discharge this Rule. There will be, however, no order as to cost. Let a copy of this judgment be forwarded to the Superintendent and Remembrancer of Legal Affairs, Government of West Bengal, so that he may advise the State Government what action to take against the Opposite Party No. 1, if any at all, by reason of the disqualification.

Amarendra Roy, J.

19. I agree.