(1909) 02 CAL CK 0004

Calcutta High Court

Case No: None

Bepin Behary Sen		APPELLANT
	Vs	
Chairman of Santipur Municipality		RESPONDENT

Date of Decision: Feb. 15, 1909

Judgement

Carnduff, J.

The Municipality of Santipur seems to have been established in the district of Nadia in 1865 with a body of 25 Commissioners--See the Bengal Code, Vol. III at p. 493. It appears in the second schedule to the Bengal Municipal Act of 1884 as being a Municipality in which the appointment of the chairman rests with the Local Government and that of two-thirds of the Commissioners with the rate payers. By paragraph 8 of a Resolution, dated the 29th August 1903, and issued u/s 65 of the Act, the Local Government suspended the Commissioners from office for a period of one year, to expire on the 2nd September 1904. By this order the then Commissioners vacated their offices as such by virtue of Clause (a) of Section 66 of the Act; and, by a further order passed under Clause (b) of the same section, the Sub-Divisional Officer of Ranaghat was appointed as the person by whom "all the powers and duties of the Commissioners during the period of supersession should be exercised and performed."

2. During this period, the Sub-Divisional officer, proceeding u/s 9(e), recommended that the number of the Commissioners should be reduced from 25 to 9, and this recommendation was accepted by the Local Government. At the same time a Resolution dated the 31st August, 1904, was issued directing, under the last paragraph of Section 66, that the Municipality should be entered in both the first and the second schedules to the Act. As already stated, the Santipur Municipality was already in the second schedule, and to that extent the order just quoted may be said to have been supererogatory; but, be that as it may, the result was that the Municipality became one in which all the Commissioners, as well as the chairman, had to be appointed by the Local Government. It appears that the corporation was

then reestablished with a body of only nine Commissioners, and thereafter the body so reconstituted imposed certain now rates, to which the appellant, inter alia, was assessed to the extent of some three rupees. He at first refused to pay; but, under pressure of the issue of a distress warrant, did eventually pay and bring a suit for the recovery of the amount levied and damages. The suit was tried by the Munsiff of Ranaghat in the exercise of his ordinary jurisdiction and was dismissed; an appeal was then preferred to the Subordinate Judge of Nadia and also dismissed; and a second appeal has now been laid before this Court.

3. The preliminary objection has been taken that, as the suit was valued at less than Rs. 500 and is "of the nature cognizable in a Court of Small Causes," no second appeal lies u/s 586 of the Code of Civil Procedure. It seems to me, however, that the suit falls under Clause (35)(j) of the second schedule to the Provincial Small Cause Courts Act of 1887, as being a suit for compensation for illegal distress" and so excepted from the cognizance of a Small Cause Court. The preliminary objection, therefore, fails.

4. As to the merits, it is argued by the learned Vakil for the appellant that the corporation was not properly constituted on its revival on the 2nd September 1904, and that consequently there was no valid authority for the levy of any new rates. I regret to be forced to the conclusion that this contention is sound.

5. The last paragraph of Section 66 of the Act provides that "on the expiration of the period of supersession specified in the order, it shall be lawful for the Local Government to direct that the Municipality shall be entered in the first schedule or the second schedule; or in both the first and second schedules but otherwise the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under Clause (a) shall not be deemed disqualified for appointment or election."

6. The expression "Commissioners" is defined by Section 6(18) of the Act as meaning ''the persons for the time being appointed or elected to conduct the affairs of the Municipality."

7. As it seems to me, the order of supersession did not abolish the body corporate or render it defunct, but simply relegated it to what may be described as a state of suspended animation, during which the exercise of the powers necessary for the temporary administration of Municipal affairs was provided for by the nomination of the Sub-Divisional Officer under Clause (b) of Section 66. At the end of the period of supersession the Municipality was restored to the status quo, and the only change, which the Local Government could then make in its constitution, was in respect of the manner of appointing the Chairman and Commissioners. But it is argued for the respondent that the Sub-Divisional Officer had for the time being, amongst the powers entrusted to him, the power to proceed under Clause (e) of Section 9, and that the Local Government was enabled by his recommendation under that clause

to alter the number of the Commissioners. I am unable to accede to this argument. Throughout the Act there is a clear distinction made between the powers of "the Commissioners" and those of "the Commissioners at a meeting"; and to illustrate these it will suffice to refer to Section 85 and the following sections. In Section 85, it is laid down that "the Commissioners at a meeting" may impose a tax, and by the later sections "the Commissioners," through their Chairman--see Section 44--are empowered to take the necessary ancillary action for assessing it, recovering it, and so forth; but from time to time in matters of importance--e.g. in the matter of the appointment u/s 114 of Commissioners to deal with objections to assessment--the authority of "the Commissioners at a meeting" is invoked. The powers placed in the hands of the Sub-Divisional Officer under Clause (b) of Section 66 were the powers of "the Commissioners," that is to say--see again Section 44--merely the powers of the Chairman, and the vitally important power u/s 9(e) of moving in the direction of reducing the number of the Commissioners is not one of these, but a power expressly and, no doubt, advisedly vested in the Commissioners at a meeting." True it follows from this conclusion that some of the powers conferred by the Act, must remain in abeyance during a supersession, and it is urged that this may lead to inconvenience. An examination of the Act, however, leads me to think that there is no real foundation for apprehending any grave inconvenience in connection with what is obviously intended to be a merely temporary arrangement; but, even were it otherwise, the argumentum ab inconvenienti would not weigh me against what is, in my opinion, the clearly expressed intention of the Legislature.

8. The scheme of the Act strikes me as perfectly clear and intelligible, and the point raised seems to present no real difficulty. But I am well aware that the Government is not in the habit of exercising'' statutory powers without legal guidance, and I have, therefore, taken time to consider it carefully. 1 am, however, unable to come to any other conclusion than that the Municipality of Santipur was not properly constituted when these new rates were imposed. The only saving clause in the Act, to which an appeal might be made, is that contained in the second proviso to Section 13, where it is laid down that no act of the Commissioners or of their officers shall be deemed to be invalid by reason only that the number of the Commissioners did not, at the time of the performance of such act, amount to the number specified in the notification "; but it is obvious that that has no application to the circumstances of the present case.

9. It goes without saying that a body owing its existence to a statute must be duly constituted before it can exercise any of the statutory powers. And it follows that, as the rates with which I am now concerned, were illegally imposed, the appellant must succeed. His appeal is, therefore, allowed with costs.