(1925) 12 CAL CK 0019

Calcutta High Court

Case No: None

Nishi Kanta Chaudhury alias N. Choudhury		APPELLANT
	Vs	
Gopeswar Chatterjee and Others		RESPONDENT

Date of Decision: Dec. 21, 1925

Citation: AIR 1926 Cal 1070 : 96 Ind. Cas. 620

Hon'ble Judges: Suhrawardy, J; Mukerji, J

Bench: Division Bench

Judgement

1. The plaintiff was a candidate for election as a Municipal Commissioner in one of the Wards of the Assansole Municipality. The election was held on the 4th November, 1922. The largest number of votes were secured by Mr. Hari Das Goswami, the pro -forma defendant No. 2, next in order was the plaintiff, then the defendant No. 1 and last, in order, was another gentleman. There were two vacancies, and Mr. Goswami and (he defendant No. 1 were declared duly elected. The plaintiff then instituted this suit for a declaration that the election of defendant No. 1 was not legal but void and that he, the plaintiff is a duly elected Municipal Commissioner. The suit was decreed by the trial Court and that decree has been affirmed on as appeal preferred by defendant No. 1. Defendant No. 1 has preferred this appeal.

2. The first ground urged on behalf of the appellant is that the Courts below have, erred in holding that his election was not. valid. The Courts below held that the election of the appellant was void as his I name did not appear on the voters" list. It is urged that the appellant possesses the requisite qualifications and chat the omission of his name in the voters" list cannot deprive him of his status to vote or stand as a candidate, and it is a matter which is purely one of form and not of substance. For this argument reliance has been placed upon the decision in In re Corkhill 22 C. 717 : 11 Ind. Dec. 476. That was a case under the Calcutta Municipal Consolidation Act (II B.C. of 1888) and the Rules issued by the Local Government u/s 19 of the Act. In that case the Court construed the

different sections of the Act dealing with matters relating to election and found, that as regards persons qualified to vote, there was nothing specific in the Act which prevented or disentitled a person who was qualified to vote u/s 8 from exercising his right in the event of his name not appearing in the revised list of voters, that the only prohibition of the nature which existed was that to be found in the Rules issued by the Local Government u/s 19, but at the same time, there was no similar prohibition to be found in the rules which would disentitle or disqualify a person qualified to vote u/s 8 from exercising his right of either becoming a candidate or proposing or approving the candidature of some other person. The wording of the sections of Act II (B.C. of 1888) or the Rules referred to above are not the same as those of the relevant sections of the Bengal Municipal Act as it stands at present, or the Bengal Municipal Election Rules of 1896 under which the election in the present case was held. Section 15 of the Act imposes upon the Local Government the duty of laying down rules not inconsistent with the provisions of the Act for the conduct of elections and relating to the qualifications required to entitle any person to vote at an election and embodies in it a proviso specifying; the condition which would entitle a person to vote at the election. Rule 2 while laying down the qualifications of voters repeats and enlarges the provisions of Section 15 and makes it a condition of eligibility to vote that the person has been duly registered as provided in Rules 4 to 12, Rule 11 lays down that the register prepared and amended in conformity with the earlier rules shall be deemed to be the final register of voters entitled to vote whether at a general election or at any bye-election. Rule 13 in laying down the qualifications of candidates says that any person qualified to vote under the rules and not disqualified u/s 57 of the Act shall be qualified to be elected as a Commissioner. It is noticeable that Rule 13 says "any person qualified to vote under these rules", while Rules 11 and 12 say "persons entered in the final register are entitled to vote." From this a plausible argument has been advanced that a person who is qualified to vote, that is to say, possesses the requisite qualifications of a voter, is qualified to be elected a Commissioner, although his name not being in the register, he may not be entitled to vote. This argument, however, overlooks the provision which is to be found in Section 15 itself and which runs in those words : "No person who is not entitled to vote at the election of the Commissioners of a Municipality shall be deemed qualified for election to be a Commissioner of such Municipality." The only possible view, if the Act and the rules are read together, is that unless the name of the candidate is in the list, he is not entitled to note for election and is not qualified to be elected. It is said that this interpretation will result in an anomaly as under Rule 14 the nomination has to be sent in not less than 21 days before the election, and the final register is not prepared until much later, and, therefore, it would not be possible at the time of sending in the nomination to know who would or would not be entitled to vote or stand at the election. Rule 13, however, speaks only of the qualification required at the time of election and not at the date of the nomination. Rules which are of similar import were considered in the case of Budge v. Andrews (1878) 3 C.P.D. 510 : 47 L.J.C.P. 586 : 39 L.T. 166 where it was held that a candidate"s name must be on the rolls at the time of the election but it is not necessary that it should be on the roll at the time of nomination. In an interesting judgment in the

case of Stowe v. Jolliffe (1874) 9 C.P. 734 :ï¿½ 43 L.J.P.C. 265 : 30 L.T. 795 : 22 W.R. 911 Lord Coleridge reviewed the history of the establishment of registers of voters by the Reforms Act, in connection with voting under the Ballot Act of 1872, u/s 7 of which the entry of the name of a voter on the register was a condition precedent to the exercise of a franchise by him, and observed that register was established by the Reforms Act expressly for the purpose of obviating long and expensive scrutinies. Dealing with a case of election of the head priest of a temple under a scheme framed by the Court, this Court had occasion to refer to the Bengal Municipal Act and the election rules under that, Act, in the case of Raghu Nath Sarma Daloi and Dhaneswar Sarma Barduari and Others Vs. Jiban Chandar Sarma, and the following observations appear in the judgment: "A similar provision (meaning similar to that contained in Section 7 of the Ballot Act of 1872) will be found in the rules framed on the 21st November, 1896, under the Bengal Municipal Act. These rules are so framed as to make no person eligible to vote unless he has been previously duly registered" in accordance with the rules prescribed for 1 the maintenance of register of voters". This is the view that we take of the rules and we are accordingly of opinion that the appellant"s first contention cannot succeed. The next contention of the appellant is to the effect that the plaintiff was not entitled to a declaration that he was a duly elected candidate. That a suit for a declaration that the election of, the defendant was void is maintainable u/s 42 of the Specific Relief Act cannot be disputeed. Rule 29 which says that all disputes arising under the rules shall be decided by the Magistrate and his decision shall be final and Rule 23 which says that the presiding officer shall then and there declare such candidates as have the largest number of votes to be duly elected and which authorizes the presiding officer to adjourn the proceedings in the case of a dispute which he is unable to decide and to report to the Magistrate and makes the decision of the Magistrate on the dispute final, cannot be taken to oust the jurisdiction of the Civil Court in view of the proviso to Section 15 of the Bengal Municipal Act. That proviso runs in these, words: "Provided that, nothing contained in t is section nor in any rules made under the authority of this Act shall be deemed to affect the jurisdiction of the Civil Courts." In this suit no consequential relief but only declarations have been asked for and the question is what are the declarations which the plaintiff is entitled to obtain. The plaintiff asks for two declarations, viz., that the election of the defendant No. 1 was illegal and void, and that he himself was the duly elected Commissioner. u/s 42 of the Specific Relief Act the Court may make a declaration that the plaintiff is entitled to a legal character or to a right as to some property, and the other declarations that may be incidentally made are merely ancillary to the declaration sanctioned by the section which limits it to specific legal character or rigid, to property. Ram Das Hazra v. Secretary of Slate for India 16 Ind. Cas. 922 : 17 C.L.J. 75 : 18 C.W.N. 106 and Kunhiamma v. Kunhunni 16 M. 140 : 5 Ind. Dec. 805. There is some authority for the proposition that the plaintiff in a suit u/s 42 of the Specific Relief Act may obtain a declaration that he was duly elected. Sabhapat Singh v. Abdul Gaffur 24 C. 107 : 12 Ind. Dec. 736, That was a suit instituted by a person who had secured the largest number of votes and whose election was set aside by the Magistrate on the ground that he was not a person qualified to stand as a candidate. He instituted the suit for a declaration that he was a person qualified to

vote and stand as a candidate and for a declaration that he was duly elected. The learned Judges held that the words "legal character" in Section 42 of the Specific Relief Act are wide enough to include the right of franchise and also a right of being elected as Municipal Commissioner. So far as this declaration is concerned, it clearly comes u/s 42 of the Act. At regards the declaration that the plaintiff was duly elected the learned Judges proceeded to consider the merits and found that there was a grave irregularity and refused to grant the declaration, being of opinion that they ought not to do anything to validate an election which was open to so grave an objection. This certainly suggests that, in their opinion, such a declaration could be given in the suit. The matter, however, does not appear to have been contested or argued and in the result the declaration was not granted. The right to declare a candidate as duly elected being entirely in the presiding officer or the Magistrate, whether the Civil Court in a suit u/s 42 of the Specific Relief Act and which is not of the character contemplated by Section 45 of the Act is entitled to make such a declaration is a matter which is open to doubt. The authority of the decision, in the case of Sabhapat Singh v. Abdul Gaffur 24 C. 107 : 12 Ind. Dec. 736 has been doubted by the Madras High Court in the case of Nataraja Mudaliar v. Municipal Council of Mayavaram 12 Ind. Cas. 311 : 36 M. 120 : 10 M.L.T. 219 : (1911) 2 M.W.N. 233 : 21 M.L.J. 878 and the observations of the learned Judges as to the second declaration have been held to be in the nature of obiter dicta. Assuming, however, that in Sabha pat Singh''s case 24 C. 107 : 12 Ind. Dec. 736 such a declaration might legally be made as the plaintiff has secured the largest number of votes and would have been duly elected but for the Magistrate''s order holding that he was dis. qualified to stand as a candidate, I am clearly of opinion that the plaintiff in the present suit is not entitled to a declaration to that effect. He has succeeded in showing that the, election was void, and the necessary consequence of his success in this respect is that he cannot get any benefit out of it. A person who was not entitled to stand as a candidate was allowed to have votes recorded in his favour and though the plaintiff obtained the next smaller number of votes, it is impossible to foresee what the result of the poll would have been if the defendant No. 1 was not allowed to stand. This declaration, therefore, the plaintiff was not entitled to obtain in the present suit but only a declaration that the election was void as the defendant No. 1 was not qualified to stand as a candidate and a declaration that the plaintiff was entitled to participate in the election after the exclusion of the defendant No. 1 as his rival candidate. The decree passed by the Munsif which has been upheld by the Sub ordinate Judge should accordingly be altered in the manner indicated above.

3. The appeal succeeds to the extent indicated above but in the circumstances of the case each party should bear his own costs in this Court.