

(1933) 03 CAL CK 0037
In the Calcutta High Court

Bankim Chandra Dutta and Others

APPELLANT

Vs

Khagendra Nath Ganguli and Others

RESPONDENT

Date of Decision : 07-03-1933

Acts Referred:

Bengal Municipal Act, 1884 — Section 23(2), 27

Citation : AIR 1933 Cal 443

Hon'ble Judges : Mallik, J; Jack, J

Bench : Full Bench

Judgement

Mallik, J.—This appeal arises out of a certain proceeding of the Municipality of Howrah, held on 18th April 1932. One Mr. B.P. Pain who was the Chairman of the Municipality, resigned on 4th March 1932. His resignation was accepted by the Local Government on the 24th of that month. Thereafter, on 18th April 1932, there was a general meeting of all the commissioners for the purpose of electing a new Chairman in the vacancy caused by the resignation of Mr. Pain. At that meeting three commissioners were proposed and seconded. They were Mr. B.C. Dutt, Mr. B.P. Pain and S.N. Kar. Mr. S. N. Kar withdrew. A question was raised by one of the commissioners that Mr. Pain having resigned, was no longer eligible for being re-elected in view of the provisions of Section 27, Bengal Municipal Act 1884. After some discussions the meeting was adjourned to 18th May 1932. Before the adjourned meeting could be held the plaintiffs who are eight of the commissioners, instituted a suit on 16th May 1932 against the remaining twenty two commissioners, in the Court of the Munsif at Howrah for a declaration: (1) that Mr. Pain who was defendant 1 was not eligible for re-election in the vacancy caused by his own resignation; (2) that Mr. B.C. Dutt plaintiff 1, should be declared to have been elected Chairman u/s 34-B of the business rules of the Howrah Municipality; and (3) for an injunction restraining the defendants from putting forward Mr. Pain as a candidate for re-election as Chairman in that vacancy and from voting for him at any meeting for filling up that vacancy. The Court of first instance held that Mr. Pain was not eligible and it granted the injunction that was prayed for. It held also that Mr. Dutt, plaintiff 1 could not be

declared to have been duly elected as Chairman. An appeal was taken before the District Judge against the decision of the Munsif on the second point and a cross-objection also was filed before him. The lower appellate Court reversed the decision of the trial Judge on the first point and held that Mr. Pain was eligible and made the consequential order that the meeting for re-election should go on. The learned District Judge agreed with the Munsif in the view that Mr. Dutt could not be declared to have been duly elected. Against this decision of the learned District Judge the plaintiffs have come up to this Court in second appeal.

2. It appears that there was a certain amount of controversy in the lower appellate Court over the relationship between Section 23(2) and Section 27, Bengal Municipal Act, and the District Judge held, and in my opinion rightly held, that Section 23, Sub-section (2) is the real section which confers upon the commissioners the right to elect a Chairman either at an original election or at a bye-election, the latter being governed by the particular provisions of Section 27 of the Act. On behalf of the respondents it was said that Section 27 only lays down a procedure and is not a disqualifying section. There is no authority however for saying so. Section 27, as it stands, clearly excludes the person whose resignation or removal caused the vacancy that is to be filled up; and that being so, it is clearly a disqualifying section, disqualifying from the bye-election the person by whose resignation or removal the vacancy was caused. Now Section 27 runs thus:

If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office or shall avail himself of leave granted u/s 26-B, the vacancy caused by his resignation, or removal, or death or absence on leave, shall be filled by the appointment or election as the case may be of another person.

3. The chief controversy between the parties is whether the expression "another person" that is to be found in Section 27 really excludes the person whose resignation or removal has caused the vacancy to be filled up. The learned District Judge is of opinion that it does not; herein, in my opinion, he is clearly wrong. He thinks that the expression "another person" was put in by the legislature inadvertently without any realization of the inconsistency that it would, in view of Section 22, create, and in that view he has practically thrown out the expression altogether from the statute. This, in my opinion was a very violent thing to do, especially in view of the fact that by putting a certain interpretation a restricted meaning on one or two words in Section 22 of the Act from which the inconsistency arises, inconsistency may, as I will presently show, be removed and the two sections may be harmonized. Section 27 says that a Commissioner, Chairman or Vice-Chairman whose removal or resignation has caused the vacancy, can under no circumstances be elected at a bye-election. Section 22 says that a Commissioner (who I may observe at this stage, may become a commissioner either by appointment or election) who has been removed on certain grounds cannot be elected or re-elected without the consent of the Local Government, implying thereby that there would be no bar to his

election or re-election when the consent of the Local Government is obtained.

4. This is not quite consistent with Section 27, at least so far as it relates to a Commissioner. But this inconsistency can, in my opinion, be removed if the term "elected" or "re-elected" is taken in a somewhat limited sense, in the sense that it means "elected" or "re-elected" except at a bye-election u/s 27. It is a recognized rule of interpretation that the words of a statute should be so construed as would bring them in harmony with the other provisions of that statute provided of course the interpretation does no violence to the meaning of which they are naturally susceptible. To put only a narrow and limited meaning to a word and to interpret the words "elected" or "re elected" in Section 22 as meaning elected or re-elected except at a bye-election, would not, in my opinion, be doing any such violence. In this connexion, namely, what the true interpretation of the words "elected" or "reelected" in Section 22 is, it is significant that the expression "at any time," which was to be found in the old Section 22, was deleted when that section was amended by the legislature in 1894. I would therefore hold, disagreeing with the learned Additional District Judge, that the expression "another person" in Section 27 of the Act has its ordinary grammatical meaning, that it would operate as a bar against Mr. Pain and that Mr. Pain is not eligible for election at the bye-election to fill up the vacancy caused by his own resignation.

5. As regards the second point in the case, viz., whether Mr. Dutt should have been declared to have been duly elected as Chairman at that meeting of 18th April 1932, a point which was found against the plaintiffs by both the Courts below, it is necessary to consider Rule 34-B of the Rules of Business of the Howrah Municipality. The relevant portion of the Rule runs thus:

If only one candidate for the office of Chairman is properly proposed and seconded the President shall declare such candidate to be elected.

6. On behalf of the appellants it was contended that as Mr. Pain was not eligible, the President of the meeting had before him only one candidate for the office of Chairman and as that one candidate was Mr. Dutt, the President should have declared him to have been duly elected. This contention, in my opinion, is not of much substance and in my opinion it should fail and that on more than one ground. In the first place it is to be observed that the meeting of the 18th was not brought to a completion and instead of being completed it was adjourned to 18th May. Then it cannot be said that the President in the present case had before him only one candidate properly proposed and seconded. Both Mr. Pain and Mr. Dutt had been proposed and seconded according to the provisions of the first portion of Rule 34-B and the proposing and seconding of both of them were therefore perfectly valid in form and therefore proper: *John Pritchard v. Mayor, Alderman and Citizens of Borough* (1888) 13 AC 241, *Harford v. Linskey* (1899) 1 QB 852 and *The King v. Bridge* 105 ER 29. The second prayer of the plaintiffs was therefore, in my opinion, rightly refused.

7. Then as regards the injunction, the trial Judge granted the prayer restraining the defendants from putting forward Mr. Pain as a candidate for re-election as Chairman, from voting for him at any meeting for filling up the vacancy caused by Mr. Pain's resignation. In view of what I have held on the first point in the case, the injunction was, in my judgment, perfectly justified. The result therefore is that the appeal will be allowed in part and the decree of the Court of first instance restored. In view of the nature of the case and the circumstances the parties will bear their own costs throughout.

Jack, J.

8. This appeal has arisen out of a suit by Mr. B.C. Dutt and seven others, Commissioners of Howrah Municipality for a declaration (1st) that Mr. B.P. Pain who has resigned his Chairmanship of the Municipality is not eligible for re-election to fill up the vacancy caused by his resignation; (2nd) that Mr. Dutt should be deemed to have been duly elected Chairman at the meeting held on 18th April 1932, and (3rd) for a permanent injunction restraining the defendants from, putting forward Mr. Pain as a candidate for reelection as Chairman.

9. The Court of first instance held that the plaintiffs were entitled to the declaration that Mr. Pain was ineligible for reelection as Chairman and that they were entitled to the injunction asked for, but that they were not entitled to a declaration that Mr. Dutt had been duly elected. The lower appellate Court dismissed the suit entirely. The principal question in issue depends on the interpretation of Section 27, Bengal Municipal Act, which is as follows:

If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, or shall avail himself of leave granted u/s 26-B, the vacancy caused by his resignation, or removal or death or absence on leave shall be filled by the appointment or election, as the case may be, of another person;

10. The defendants contend that this section only relates to procedure and that u/s 23(2) of the Act, it is open to the Commissioners to elect anyone in the vacancy and they are not debarred, from re-electing the ex-Chairman. Section 23(2) is as follows:

The Commissioners of every municipality the name of which is not included in the said schedule, shall at a meeting, elect one of their members to be Chairman, or may, whenever a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman, and such a Chairman shall be appointed by name.

11. Heading these two sections together it is clear that between them they provide the means of filling up vacancies. When a vacancy occurs the Commissioners may act under the second part of Section 23(2) and request the Local Government to fill up" the vacancy or they may proceed u/s 27 to elect a Chairman to fill the vacancy, and in the latter case it is open, to them to elect another parson to fill the vacancy. The first part of Section 23(2) has obviously

nothing to do with filling up vacancies. There is no ambiguity what so ever in the wording of these sections and where the meaning of a Statute is plain its wording cannot be altered on the conjecture that the legislature must have meant something else unless the adoption of the plain meaning would lead to an absurdity or manifest inconsistency. It is contended that Section 27 as it, stands is inconsistent with Section 22 inasmuch as under the latter section an appointed or elected Commissioner who has been removed is eligible with the sanction of the Local Government for election or re-election, but u/s 27 he is not so eligible. Section 27 however does not make him ineligible but only prevents his re-election for the remainder of that term of office to fill up the vacancy. There is therefore no inconsistency in the two sections for "reelected" in Section 22 does not necessarily means elected in a vacancy, the words. "elected" or "re-elected" corresponding to "appointed" or "elected" in Section 19. There being no inconsistency between Section 22 and Section 27 there is no possible excuse for altering the plain meaning of the Statute in Section 27.

12. The legislature obviously made no provisions for the case of a Chairman who resigned and immediately afterwards sought re-election; possibly the intention was to discourage this practice, but" it is useless to conjecture why he was made ineligible for re-election for that term of office. If he merely changed his mind and wanted to continue as Chairman the simple way was to withdraw his resignation. The plaintiffs are therefore entitled to the declaration that Mr. Pain is ineligible for re-election. They are obviously not entitled to a declaration that Mr. Dutt has been duly elected u/s 34-B of the Municipal Rules on the ground that no other candidate was properly proposed and seconded. Admittedly the meeting adjourned without the President of the meeting pronouncing anyone duly elected because he did not definitely decide the objection to Mr. Pain's candidature, the meeting being adjourned at that stage to let the Commissioners who voted for Mr. Pain, reconsider their position in view of the opinion of the Advocate-General that Mr. Pain was ineligible. When the meeting is resumed it should be open to the electors to put forward if they choose another candidate instead of Mr. Pain upon which there must be a fresh election. This they are entitled to do since they were not informed before the election that Mr. Pain was ineligible. As to the injunction it follows that the plaintiffs are entitled to the injunction asked for. The appeal is allowed in part and the decree of the Munsif is restored. The parties to bear their own costs throughout.