

**(1927) 03 CAL CK 0016**  
**In the Calcutta High Court**

Bhuban Mohan Basak and Others

APPELLANT

Vs

Chairman, Dacca Municipality and Others

RESPONDENT

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**Date of Decision :** 28-03-1927

**Acts Referred:**

Specific Relief Act, 1877 — Section 42

**Citation :** AIR 1927 Cal 704 : 103 Ind. Cas. 890

**Hon'ble Judges :** Mukerji, J;Graham, J

**Bench :** Division Bench

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## Judgement

Graham, J.—These four appeals are against judgments and decrees of the Additional District Judge of Dacca, revering decisions of the Munsif, 4th Court, Dacca, and arise out of a Municipal election held on the 3rd March 1925. One of these suite (Suit No. 802 of 1925) was brought by three rate-payers of the Dacca Municipality to set aside the whole election, while the remaining three suits were instituted by unsuccessful candidates for the purpose of setting aside the election in the particular wards in which they failed. All the suits were decreed by the Court of first instance. On appeal the learned Additional District Judge reversed those decisions and dismissed the suits. The plaintiffs have now appealed to this Court.

2. Appeal No. 636, arising out of suit No. 802, in which the entire election is sought to be set aside, may be conveniently dealt with first. The facts are briefly as follows:

3. The general election of the Commissioners of the Dacca Municipality was notified to be held on the 14th February 1925 by a notification published in the Calcutta Gazette of 5th November 1924. Thereafter the register of voters, which is kept by the Municipality, was revised and brought up to date according to the rules framed by the Government under the Municipal Act. Thy register was published at the local hanas on 1st December 1924, and, after scrutiny, was published on 31st January 1925. On the same date, at a meeting of the Commissioners, polling officers were appointed for conducting the election on the

14th February 1925. On the 10th February, however, at an ordinary meeting of the commissioners, it was decided to postpone the election to 3rd March 1925, on the ground that the final publication of the register had been made less than 15 days before the date fixed for the election, which was in contravention of Rule 5 of the Election Rules. Incidentally it may be observed the commissioners have apparently no power to fix or postpo the date of election, but the commissioner of the division, with whom that power rests," appears to have accepted the decision of the commissioners and notified the 3rd March a3 the date of the election. The change of date was duly notified by beat of drum. Thereafter a notice was issued for an extraordinary meeting of the commissioners on 13th February, when fresh polling officers for the new election were appointed and the time and place of, the poll were fixed. The voters" register was republished on the same date. The election duly took place on the 3rd March according to the revised notification. The plaintiffs. Bhuban Mohan Basak and two others, who are ratepayers of the Dacca Municipality, thereupon instituted a representative suit on behalf of the general body of rate-payers to set aside the election on the ground that in the preparation and publication of the register there had been various illegalities which invalidated the whole election.

4. The Munsif framed a number of issues, one of these being whether the plaintiffs had any locus standi to bring the suit, while the others related to breaches of the Election Rules, and in particular Rules 4 to 11 as well as Rule 32 of the Meeting Rules. He found that the plaintiffs had the right to sue, and that there had bean a breach of Election Rules 9, 10, 11 and 15, and also of Rule 32 of the Meeting Rules. He accordingly set aside the election and issued an injunction restraining the newly elected commissioners from sitting on the Municipal Board. On appeal the learned Additional District Judge held that the plaintiffs in their capacity as rate payers had no right to sue and that the suit should have been dismissed. He also held that no non-compliance with the rules had been made oat sufficient to invalidate the election, and accordingly allowed the appeal and dismissed the suit.

5. The first point which arises for determination is whether the plaintiffs had any right to bring the suit. It has been urged on behalf of the respondents that a rate-payer as, such, is not entitled to challenge the validity of a Municipal election, and reference has been made in support of this view to precedents in connexion with Parliamentary and Municipal elections in England. At an English Parliamentary election objection can be taken by any person who voted at the election, or had a right to vote for a candidate at such an election, or one who could be a candidate. A Municipal election in England can be similarly challenged by an election petition on certain grounds mentioned in the Municipal Corporation Act of 1882, as well as by persons who either voted or were voters or candidates.

6. With regard to Section 15 of the Municipal Act, which was relied on on behalf of the appellants, it was contended for the respondents that, while that section saves the jurisdiction of the civil Courts in the matter of elections, it cannot be

held to entitle a mere rate-payer to sue. An election can only be challenged u/s 42 of the Specific Relief Act, where a right has been denied to a person who is entitled to the same. At an election a mere rate-payer, if he is not a voter, has no right at all, and consequently there can be no question of any denial of any right possessed by him.

7. In my judgment these contentions are well founded, and, in my opinion, the learned Additional District Judge was right in holding that the plaintiffs had no right to sue. Apart, however, from this view as to the maintainability of the suit, the appeal in my judgment fails upon the merits. I will deal briefly with the points which have been urged on behalf of the appellants. It was first contended that the election fixed for the 14th February was not postponed, that the Act does not give the Commissioner power to postpone an election, and that, as a fresh date for election had been fixed for the 3rd March, all the rules, viz. Rules 4 to 11, should have been complied with over again.

8. In the course of the hearing of the appeal it appeared to be conceded that the Commissioner has power to postpone an election, and there can be no doubt that, u/s 22, Bengal General Clauses Act, the power to fix a date for election must be taken to include the power to postpone any date so fixed. It is argued, however, for the appellants that the election was not postponed, but that a date was fixed for a new election, and that therefore all the necessary formalities should have been complied with over again. I do not think this contention can be allowed to prevail. It is, I think, reasonably clear that, though the notification did not mention the word "postpone," the intention was that the election previously fixed for the 14th February should be postponed till the 3rd March. The Commissioners of the Municipality were clearly of opinion that the election was merely being postponed (vide resolution of the 10th February) If it was a postponed election, merely for the purpose of allowing the necessary interval of 15 days required by Rule 5 of the Election Rules, there would be no necessity for fresh compliance with Rules 4 to 11 of the Election Rules. The register, as already prepared and amended, would be a valid register for the purpose of the postponed election. Rule 4 requires revision of the register at least three months before the date fixed for any general election. Rule 5 says that the general register shall be published not less than 60 days before the date fixed for a general election, and Rule 9 requires publication of the register not less than 15 days before the date of election. The qualifying words in each instance have the effect of importing some elasticity to the time-limits imposed, and in my opinion these rules were complied with as the required interval had elapsed between these formalities and the date of the election. The argument that the necessary formalities should be complied with over again would lead to this result : that a postponed election could not be postponed to a nearer date than three months, which might entail very great inconvenience. Stress was laid on behalf of the appellants on the fact that the result would be that voters, whose right to vote may have accrued is the interval, would be shut out from voting, but that is inevitable under any circumstances. There is necessarily an interval between the

completion of the register and the date of election during which some voters will qualify, but will not be eligible to vote.

9. It was next contended that, even allowing that the Commissioner could postpone the date of election, the appointment of polling officers, and the fixing at the meeting of the 13th February of the time and place of the polling, was in breach of Rule 32 of the Meeting Rules, and that the election held by officers so appointed was invalid.

10. Rule 32 read as follows:

Unless not less than two-thirds of the Commissioners consent, by signing a requisition, no subject ones disposed of shall be re-considered within six months.

11. In my opinion the rule has no application in such circumstances as the present. There was no question of re-considering any subject which had already been disposed of at a previous meeting. All that was done was to appoint fresh polling officers and to fix a new date and place for polling consequent on the changes in the date for election. There was no question of rescinding any resolution. What was done at the previous meeting was in reference to the election notified for the 14th February, while what was done on the 13th February was in regard to the election fixed for the 3rd March. The subject-matters were not identical, and the subsequent meeting did not rescind anything which had been already dealt with by the previous meeting.

12. The next point urged on behalf of the appellants was with reference to Rules 9 and 10 of the Election Rules. Rule 9 relates to the publication of the revised register of voters, and Rule 10 provides that any person, whose application under E. 6 or 7 has been refused, may, within eight days after such refusal, apply to the Magistrate to have his name inserted in, or a name omitted from, the register of voters. The trial Court found that the register had been published at the Municipal office on the 28th January, and that the last of the applications under Rules 6 and 7 were disposed of on the 23rd January so that, if these dates be accepted, there would not be the prescribed interval of eight days in which to appeal.

13. In my opinion, however, we should not be justified in sitting aside the election on this ground for two reasons: firstly, because it has not been shown that the omission, if any, to comply with the rule affected the result of the election; and, secondly, because, on reference to the record, there is not a tittle of evidence to show that any of the applications was wrongly rejected.

14. It was further argued on behalf of the appellants that the new date fixed for the election did not allow the time prescribed by Rule 14 for candidates to put in their nomination papers, and that four applications filed by candidates after the 14th February ought not to have been rejected as filed out of time. This argument proceeds on the assumption that it was a new election and that the formalities had to be complied with afresh. As I have already held that it was

merely a postponed election the four applications were out of time and were rightly rejected.

15. It was next argued that the notice of the meeting of the 13th February, not having been served upon all the Commissioners, and two clear days notice of the meeting not having been given, as required by Rule 5 of the Meeting Rules, the meeting was illegal and ultra vires; that the resolution passed therein as to the appointment of polling officers, and the place and time of polling, were bad and that the election held by officers so; appointed, and at such time and place, was equally bad and illegal. There is no substance in either of these contentions. The rule, it is true, says that notice shall be given to every Commissioner, and one of the Commissioners was, it appears, not so served, because he happened to be in England. It was obviously not possible to comply strictly with the rule in these circumstances, and it would be absurd to hold that the meeting could be rendered invalid by this fact. Rules must be interpreted with some degree of commonsense.

16. There was a technical breach of the two days rule regulating extraordinary meetings of the Commissioners, but it has not been shown that this breach materially affected the election, and I do not think that the election should be set aside upon such a ground. In my opinion the appellants in this appeal had no right to sue, and, on the merits, no case was made out for sitting aside the election. This appeal, therefore, should be dismissed with costs.

Appeal No. 637, Ward No. VI.

17. In this ward the successful candidate, Umesh Ghandra Dutt, obtained 212 votes, while the appellant, Abdul Sobhan, obtained 209, so that there was a difference of 3 votes only. In addition to the general grounds urged in the representative suit going to the election as a whole, it has been urged on behalf of this appellant that the polling officer had no power to alter or extend the place fixed for polling, and that, in so doing, he committed a breach of Rules 17 and 17 A of the Election Rules. The argument is based on an extremely technical interpretation of the rules in question. The facts appear to be that the place notified as the polling centre for this ward was the Nabakumar Institution, which is surrounded by a wall, and within the compound so enclosed a bamboo enclosure was erected for the purposes of the poll. This enclosure was apparently not strong enough to withstand the rush of voters at 6-30 p.m., the time for the close of the poll, with the result that the polling officer, in order to meet the emergency, had the gate of the outer wall of the institution closed, as well as the gate of the bamboo enclosure, and after 6-30 p.m. no one who was not inside the outer wall of the institution was permitted to vote. The notification stated that the poll would take place at the Nabakumar Institution, and I think the learned additional Judge has rightly held that any voter who presented himself at the place so appointed before 6-30 p.m. could demand to have his vote recorded. The notification made no mention of any enclosure at all.

18. Apart from this view of the matter it is obvious that, in the circumstances which arose, the polling officer adopted the only course which was practicable. The rules, as I have said before, must be interpreted with common-sense.

19. The election ought, certainly, not to have been set aside upon such a ground. In my judgment this appeal should be dismissed with costs.

Appeal No. 638. Ward No. III.

20. In this appeal two points have been urged : firstly, that Mr. Ahmad Hossein, who took the poll, had no authority to do so and, secondly, that the secrecy of the ballot was not maintained, as some of the voters openly declared their votes. Reference has been made to Rules 19 and 25. Objection is taken, in the first place, that Mr. G.C Majumdar, who had been appointed polling officer in the first instance was not unable to attend, and therefore that the contingency enabling the appointment of a substitute had not arisen; and, secondly, that the Chairman's powers of delegation u/s 45, Bengal Municipal Act, do not extend to powers conferred upon him under the rules framed under the Act.

21. With regard to the first point, it seems to me that the argument proceeds upon an unduly narrow view of the rule. For reasons of convenience Mr. Ahmad Hossein was appointed in place of Mr. Majumdar, and it appears that Mr. Hossein had in fact been appointed a reserve polling officer at the meeting of the Commissioners held on the 28th January. The Chairman gave his approval to the arrangement.

22. As to the second point, I am clearly of opinion that the Chairman had power to delegate his powers, not only under the Act, but under the rules as well, the rules forming an integral part of the Act.

23. In any view of the case it seems clear that an election ought not to be set aside upon such grounds as are alleged here, there being no allegation whatever against the polling officer who conducted the election, nor is there anything to show that the result of the election was affected in any way by the change of polling officer.

24. The objection as to the secrecy of the poll not being maintained is to my mind frivolous. It is obviously not possible, when dealing with illiterate voters, to prevent some such breaches of secrecy. The polling officer cannot be blamed for such indiscretions, and it would be ridiculous to set aside an election upon such a ground.

25. In my opinion this appeal fails and should be dismissed with costs.

Appeal No. 639, Ward No. V.

26. In this appeal the following points were urged on behalf of the appellants:

1. That the Court of appeal below erred in holding that Rai Bahadur Keshab Chandra Banerjee was competent under Rule 19 of the election rules to act as

polling officer.

2. That Rai Bahadur Keshab Chandra Banerjee being a candidate for election the general election held on the 3rd March 1925, and the election in Ward No. 5 held on the 25th March being a part of the said general election, Rai Bahadur was not competent to act as polling officer under Rule 14.

3. That the Rai Bahadur as Vice-Chairman of the Municipality had no authority to appoint himself as the polling officer under the Municipal Act or the rules framed thereunder.

4. That the lower appellate Court erred in law in holding that the Chairman was entitled to delegate to the Vice-Chairman the authority to appoint a polling officer u/s 45 of the Act, the powers to do so being confined to himself under Rule 19 of the election rules.

27. I do not think that there is any substance in these contentions. The circumstances in which the Vice-Chairman came to take the poll himself have been referred to in the judgment of the learned Additional District Judge, and in view of those circumstances it is difficult to see what other course he could have adopted. In my opinion Section 45 of the Act enables the Chairman to delegate to the Vice-Chairman his powers not only under the Act but also under the rules framed under the Act, That being so, the Vice-Chairman would have power to appoint another fit and proper person in place of the polling officer who failed to attend. It is clear from the wording of Rule 26 that the Chairman might himself be polling officer, and, if that is so, there can be no reason why the Vice-Chairman should not exercise the same function. As regards the argument, that there was a bar to the Vice-Chairman acting as polling officer in the present case because he was himself a candidate for ward No. 1, the answer is that he had been defeated at the poll in ward No. 1 on the 3rd March, so that his interest in the election ceased from that date, and there was no bar to his acting as polling officer on the 23rd March.

28. In my judgment this appeal also fails and should be dismissed with costs.

Mukerji, J.

29. I agree in the conclusions which my learned brother has arrived at and in the orders which he has passed in these appeals. I desire only to add a few words with regard to who matters.

30. The first relates to the question of maintainability or otherwise of the representative suit. The suit, was instituted by three rate-payers of the Dacca Municipality to set aside the entire elections in all the wards of that Municipality, with permissions under Order 1, Rule 8, Civil P.C. on behalf of all the ratepayers of that Municipality, for a declaration that the election held on the 3rd March 1925 was void, as it was held without conforming to the procedure, which, under the rules, must precede a general election, and for an injunction restraining the candidates declared elected at the said election from acting as commissioners.

The fact that two out of these three persons are voters is immaterial, because the same interest within the meaning of Order 1, Rule 8, Civil P.C., which enables them to sue on behalf of all is their interest as ratepayers. If the suit is treated as one u/s 42 of the Specific Relief Act, the requisitions of that section have not been fulfilled, because no legal character or right to property to which any rate payer is entitled by virtue of his being a rate-payer has been denied, nor are the defendants or any of them interested to deny the same.

31. It, may, however, be said that Section 42 of the Specific Relief Act is not exhaustive for the declaratory suits entertainable by the civil Courts. This position is suggested by the following observations of the Judicial Committee in the case of *Robert Fischer v. Secretary of State for India* [1898] 22 Mad. 270. Their Lordships said:

Now in the first place it is at least open to doubt whether the present suit is within the purview of Section 42 of the Specific Relief Act. There can be no doubt as to the origin and purpose of that section. It was intended to introduce the provisions of Section 50 of the Chancery Procedure Act of 1852, 15 and 16 Viet., Cap. 86, as interpreted by judicial decisions, Before the Act of 1852 it was not the practice of the Court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer. But the present suit is one to which no objection could have been taken before the Act of 1852. It is in substance a suit to have the true construction of a statute declared and to have an act done in contravention of the statute, rightly understood, pronounced void and of no effect This is not the sort of declaratory decree which the framers of the Act had in their mind.

32. Now, assuming that the suit is one which is not contemplated by Section 42 of the Specific Relief Act, its maintainability would depend upon the existence of a cause of action. The rights of the plaintiffs as rate-payers have not been injured or threatened, and the suit therefore is not maintainable. The cases of *Vaman Tatyaji v. The Municipality of Sholapur* [1898] 22 Bom. 646, in which individual taxpayers sued for an injunction restraining a Municipality from misapplying fund<sup>3</sup>, in the proper application of which the tax-payers are interested, and of *Lakshminarasimha Somayagiyar Vs. Ramalingam Pillay*, in which the plaintiff, who had a fair chance of being appointed or elected as a member of the Taluk Board and had a substantial interest in the matter of the proper constitution of the Board, sued for a declaration that the election of a member of that Board was invalid - cases which have been referred to on behalf of the appellants - are cases in which there was a right in the plaintiffs sufficient to enable them to maintain the suits. The case of *Molla Ataul Huq v. Chairman, Maniktolah Municipality*<sup>24</sup> C.W.N. 969, on which also reliance has been placed on behalf of the appellants was that of a suit by a person qualified to vote. I am therefore of opinion that the suit was not maintainable.

33. The second relates to what I consider to be the only substantial one out of the numerous irregularities that are complained of, viz. the publication of the

revised register on the 31st January 1925. Rule 9 of the election rules relates to the publication of the revised register by the Chairman after dealing with applications under Rules 6 and 7 inclusive, and omission of names in and from the register that has to be published by him under Rule 5 not less than 60 days before the date fixed for any general election. Rule 10 says that

any person whose application under Rules 6 and 7 has been refused may, within 8 days after such refusal, apply to the Magistrate for an order to have his name inserted in, or a name omitted from, the register of voters, and such Magistrate shall, after enquiry, make such order as to the insertion or omission of the name as appears to him to be just; and the Chairman shall, upon receipt of a copy of such order, give effect to the same, and such order shall be final.

34. Rule 11 says that

the register thus prepared and amended shall be deemed to be the final register of persons entitled to vote at a general election.

35. It is clear, therefore, that at least 8 clear days must elapse between the rejection of an application under Rule 6 or 7 and the publication of a revised register under Rule 9, which is the final register contemplated by Rule 11. To proceed with the election on the footing of a register published within 8 days of the rejection of an application under Rule 6 or 7 is out of the question under the rules and interferes with the right of a person whose application has been so rejected to apply to the Magistrate under Rule 10, for which the rule gives him 8 days time. It is true that there is no prohibition to file the said application, even though the revised list happens to be published in the meantime, but the publication may create an impression that the process of revision is closed and may thus discourage the filing of the application. In the present case a very large number of applications were rejected on the 23rd. That was the date mentioned in the plaints, on or before which, according to the plaintiffs, the applications were refused. During the trial the plaintiffs put in numerous applications which were fixed for hearing on the 23rd to 25th, and the plaintiffs wanted to show that they were rejected on the 29th.

36. This was objected to on behalf of the defendants on the ground that, as the plaintiffs had admitted in the plaints that the applications had been disposed of on or before the 23rd, these applications should not be admitted in evidence because, if there was no such admission in the plaints, the defendants could have shown that, although the applications purported to show that they were rejected after the 23rd, they had, as a matter of fact, been rejected orally before that date; and, if they were rejected after the 23rd, no application to the Magistrate would have been made by the aggrieved parties under Rule 10. The appellants appear to have conceded these two matters in order to get these applications admitted in evidence. That the concession extended thus far and did not extend to the applications rejected on the 23rd, or before the 23rd, is quite clear from several passages in the Munsiff's judgment. The plaints state that the

publication, of the revised register was on the 31st January 1925. The publication on that date, it has been found, was at the thanas. It has been found by the Munsif that the revised register was finally published on the 28th January 1925 and despatched to the thanas on the same day and published there on the 31st.

37. This finding has not been upset by the learned Additional Judge. The latter seems to have proceeded upon an erroneous view of the concession. The revised register having been published on the 23rd, the rights of persons under Rule 10 whose applications were rejected between the 20th and 23rd, both days inclusive, in my opinion, were affected as they did not get 8 clear days before the revised list was published, and the publication of the revised list on the 28th may have dissuaded them from applying to the Magistrate as they were entitled to do under Rule 10. This, in my opinion, was a serious irregularity and, in view of the very large number of applications that were dealt with in that way, it is clear to my mind that there was something egregiously wrong either in the conduct of the executive or of the applicants. It is not possible, however, to say whether the rejections were right or wrong as, in fact, there was no application under Rule 10, and excepting the statement of one witness whose application was rejected on the 23rd and who said he could not "appeal" by reason of shortness of time, there is no evidence that any of the others even intended to proceed under Rule 10, and, further, that there is not a tittle of evidence which would go to suggest that any single application was wrongly rejected. The rights which the successful candidates acquired in the elections cannot be interfered with unless at least it is reasonably clear that the irregularity contribute directly or indirectly to the acquisition of those rights or that it has really operated to the prejudice of the rata-payers who intended to take part in the elections. Of these there is no evidence.