

(1952) 07 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rule No. 1143 of 1952

Dr. Satish Chandra Bhattacharjee and Another	APPELLANT
Vs	
R.N. Bose and Others	RESPONDENT

Date of Decision : 04-07-1952

Acts Referred:

Bengal Municipal Act, 1932 — Section 26, 56(2)
Bengal Municipal Election Rules, 1932 — Rule 1(6), 16, 16(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1953 Cal 520 : 57 CWN 122

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Nani Coomar Chakravarty, for the Appellant; Sankar Banerjee, Standing Counsel and Mihir Kumar Sarkar, (for No. 1), Diptakana Bose, (for No. 2), Santosh Kumar Bose and Arun Prokash Chatterjee, (for Nos. 3 to 6), for the Respondent

Final Decision : Allowed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for an appropriate writ directing respondents 1 and 2 to forbear from giving effect to certain orders dated 1st April, 10th April and 16th April 1952 and to act and proceed according to law in the matter of holding certain municipal elections.

2. The case of the petitioners is that on 16-12-1951 the electoral rolls for the fourth General Elections of the 5 wards of the Garden Reach Municipality were finally published by respondent 2 who is the Chairman of the said Municipality. As the petitioners did not pay up the rates and taxes of the Municipality and were in arrears in respect thereof, their names did not find place in the said finally published, electoral rolls. The fourth General Election was filed on 16-3-1952. The last date for filing nomination papers of Wards Nos. 1 and 4 was fixed on 9-2-1952. The scrutiny was held on 18-2-1952 and the nomination papers of 11 candidates in respect of Ward No. 1 which had four seats were found valid and in respect of Ward No. 4 which had seven seats the nomination papers of 14

candidates were declared valid, and respondent 2 published a list of the candidates under Rule 17 (5), Bengal Municipal Election Rules. One Aswini Kumar Paul preferred appeals before the Magistrate at Alipore, under Rule 20 (1) and the learned Magistrate ordered, that the names of all the candidates excepting, three in respect of Ward No. 1 and excepting, six in respect of ward No. 4 should be expunged.

The result was that the 9 candidates whose nominations were upheld as valid by the Magistrate were declared to have been duly elected under Rule 22 (3), Bengal Municipal Election Rules. But the names of these elected candidates have not been published in the Calcutta Gazette by the Government as contemplated in Rule 44 of the Rules. The newly elected body of Commissioners have not started functioning nor have they elected any Chairman and vice-Chairman as provided by S, 45, Bengal Municipal Act. On 1-4-1952, respondent 1 purporting to act in pursuance of Rule 2 (1) (b) fixed" 31-5-1952 as the date for holding election of one commissioner in each of the Wards Nos. 1 and 4 of the said municipality. Respondent 2 published the said order of respondent 1 on 10-4-1952 for the information of the rate-payers. On 16-4-1952, respondent 2 fixed 26-4-1952 as the last date for submitting nomination papers for holding the said election of one Commissioner in each of the said wards Nos. 1 and 4. Prior to that the petitioners on 15-4-1952 wrote a letter to respondent 2 to the effect that although at the time of preparation of the last electoral roll they were defaulters for payment of taxes, they had since then paid all arrears of taxes and had, therefore, become entitled to be enrolled as voters and to stand as candidates for election as commissioners in respect of the said wards Nos. 1 and 4.

It was further pointed out in this letter that before holding a fresh election u/s 26, Bengal Municipal Act the electoral roll should be revised as contemplated in Rule 16, Bengal Municipal Election Rules and unless this was done no fresh election could be held u/s 26 of the Act. On 22-4-1952 respondent 2 intimated to the petitioners that as he had been ordered by respondent 1 to hold the election on 31-5-1952 he could not take any action on the representation made by the petitioners by their said letter dated "15-4-1952. The petitioners thereupon applied to this Court on 23-4-1952 and obtained the Rule nisi;

3. On 19-5-1952 four of the elected commissioners applied to this Court to be added as respondents to this application for the purpose of contesting this application, and an order was made on that date adding them as parties respondents.

4. Mr. Nani Coomar Chakravarty, the learned Advocate for the petitioner, has challenged the validity of the orders and notifications dated 1st April, 10th April and 16th April, 1952. The main ground urged by him is that without revising the electoral roll, as contemplated by Rule 16 (2), Bengal Municipal Election Rules, respondents 1 and 2 had no jurisdiction to make the said orders or publish the said notifications. It is submitted by Mr. Chakravarty that the names of the

elected commissioners should have been published as required by Section 50, Bengal Municipal Election Act and Rule 44 Bengal Municipal Election Rules and after that these newly elected commissioners should have started functioning and after electing a Chairman and a Vice-chairman the Commissioners should have appointed a committee to function as "Registering Authority" and this Registering Authority should have revised the electoral roll before holding election in respect of Wards Nos. 1 and 4 or fixing the date for submission of the nomination papers. It is argued that it is only the newly elected Commissioners who have the power to revise the electoral roll and without such revision no date for election can be fixed or any election can be held u/s 26 of the Act.

5. Mr. Santosh Kumar Basu the learned Advocate for respondents 3 to 6 has, however, contended that as u/s 56 (2) of the B. M. Act the old commissioners and the old Chairman and Vice-chairman continue to be in office until the date of the first meeting of the newly formed body of commissioners at which a quorum is present the "Registering Authority" as defined in Rule 1 (5) and as constituted by the old Chairman (respondent 2) and 2 commissioners u/s 21 of the Act read with Rule 2 (3) of the Rules had been functioning at all material times and are still functioning as such and therefore this old Registering Authority was competent to revise the electoral roll under Rule 16, and so the contention of the petitioners that no electoral roll can be prepared except by "Registering Authority" constituted by the newly elected body of commissioners is fallacious. It appears to me that the contention of Mr. Basu is correct. The effect of Section 56 (2) of the Act is to preserve the continuity of the office and functions of the members of the old "Registering Authority" and in my view this "Registering Authority" was competent to revise the electoral roll at all material times.

The petitioners did ask for revision of the electoral roll by their letter of 15-4-1952 but the Chairman had definitely stated in his reply that he could not take any action on the representation of the petitioners. The order fixing the election was made on the 1st April, and it was made known to the public on the 10th of April. Immediately thereafter the petitioners protested in their letter of 15th April. Their representation was turned down on the 22nd and on the very next day they moved this Court for reliefs. The last date for submitting nomination papers was the 26th and so the only course open to them was to apply to this Court. It has been contended by Mr. Santosh Coomar Basu that there are no facts stated in the petition showing that the petitioners have the qualifications as required by Section 23 of the B. M. Act which entitled the petitioners to have their names included in the electoral roll as voters in respect of any wards in the municipality. It is submitted that the petitioners should have stated affirmatively that they possess each of the requisite qualifications for being a voter in the municipality. But all that is stated in the petition is that the petitioners have paid off the arrears of rates and taxes and as such, they are entitled to vote at an election of commissioner of the said municipality. It is, therefore, further submitted that the petitioners have not disclosed in the petition sufficient interest to maintain this application.

I am unable to accede to these contentions of Mr. Basu. The net effect of paras. 3 and 4 of the petition is that the only disqualification that disabled the petitioners from being included in the electoral roll as voters was that they had defaulted in payment of the rates and taxes of the municipality. But that disability has been got over by the petitioners by paying off the arrears and they are now fully qualified to be enrolled as voters and to stand as candidates for election as commissioners of the municipality. There is no affidavit either by respondent 1 or respondent 2 disputing the statements, in para. 4 of the petition or suggesting that the petitioners do not possess all the requisite qualifications. Respondents 3 to 6 have filed a counter-affidavit but the only statement that is, made therein with reference to para. 4 of the petition is that the said respondents are not aware of the truth of what is stated in para. 4 of the petition. In my view the petitioners have disclosed sufficient interest to maintain this application.

6. It was next submitted by Mr. Basu as also by Mr. Shankar Banerjee who appears for respondent 1 that as the petitioners have not specifically asked for revision of the electoral roll and inclusion of their names in the revised roll they cannot ask for the other reliefs which they have claimed in the several prayers of the petition. It may be pointed out that the main grievance that is agitated in the petition is the failure or neglect to revise the electoral roll and to prepare a fresh electoral roll for the purpose of holding fresh election of the commissioners. That is the burden of the entire application. In the prayers of the petition the petitioners have asked for cancellation of the orders and notifications dated the 1st April, 10th April and 16th April and they have also asked for "issue of orders and/or directions on the respondents to act and proceed according to law in the matter of holding election". This general prayer is wide enough to embrace within its scope the prayer for revision of the electoral roll and inclusion of the names of the petitioners as voters in such roll. It is true that some of the cases of this Court have held, that the prayers of the petition must be specific but it has also been pointed out by Mukherjee J. of the Supreme Court that absence of proper prayers in the petition moved under Article 32 of the Constitution does not take away the discretion of the Court to grant suitable reliefs in appropriate cases.

It was observed by Mukherjee J. in the said case of -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (A), as follows:

"Anyway, Article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for."

These observations made by Mukherjee J. are equally applicable to the application under Article 226 of the Constitution. It is no doubt desirable that the prayers of a petition should be as specific and definite as they can be, but the Court is not powerless to afford necessary reliefs in proper cases.

7. It has been further contended by Mr. Santosh Kumar Basu that as the two commissioners who constitute the "Registering Authority" along with respondent 2 are not parties to this application, no direction for revision of the electoral roll can be given by this Court in their absence. I do not think that there is much substance in this contention. The petitioners have complained of only the acts of respondents 1 and 2. The order fixing the date of election was by respondent 1. The notification dated 10th April which published the order of respondent 1 fixing the date of election, was issued under the signature of respondent 2 as chairman of the Municipality. The notification fixing the last date for submitting nomination papers for holding the fresh election was also issued under the signature of respondent 2. Consequently the issue of appropriate writ and directions against respondents 1 and 2 will give effective reliefs to the petitioners. Therefore the non-joinder of the two commissioners is not fatal to the maintainability of the application. If this point had been taken in the affidavits, this alleged defect could have been got over by serving notice of the Rule on the two commissioners.

8. It is true that the order dated 1-4-1952 which was made by respondent 1 fixing 31-5-1952 as the date for holding the election of commissioners in respect of wards 1 and 4 of the municipality was a good and valid order at the time it was made. But it is clear that omission to revise the electoral roll as required by Rule 16 (2) of the B. M. E. Rules made the holding of such election contrary to law and as such the petitioners are entitled to seek the interference of this Court by directing respondents 1 and 2 to forbear from giving effect to the impugned orders and notifications issued by them for the purpose of holding fresh elections.

9. It was contended both by Mr. Basu and Mr. Banerjee that the election fixed on 31-5-1952 is merely a continuity of the General Election which was fixed to be held by 16-3-1952 and as such the finally published electoral roll of 16-12-1951 will hold good and is available for this fresh election and no revision of electoral roll is necessary. This contention appears to me to be without substance, inasmuch as the order of the Additional District Magistrate of 1-4-1952 makes it quite clear that the fresh election that is to be held, is one u/s 26 of the B. M. Act. Further Rule 16 provides in definite and unambiguous terms that before an election u/s 26 and other sections specified therein is held, revision of electoral roll is necessary and shall be made.

10. It is to be noted that the date for holding the election has passed and therefore the entire proceedings for holding the contemplated election have become infructuous. It is therefore not necessary now to issue any writ directing the respondents to forbear from giving effect to the orders and notifications dated 1st April, 10th April and 16th April, 1952.

11. In my view this petition should succeed and the Rule is made absolute to the extent that respondents 1 and 2 are directed to act and proceed according to law in the matter of holding election of a commissioner in respect of each of the Wards Nos. 1 and 4 of the Garden Reach Municipality. I make no order as to costs.