

(1953) 06 CAL CK 0022

In the Calcutta High Court

Case No : A.F.O.O. No. 60 of 1953 (Mandamus)

Dr. Surendra Nath

APPELLANT

Vs

S.M. Murshed

RESPONDENT

Date of Decision : 24-06-1953

Acts Referred:

Bengal Municipal Act, 1932 — Section 552, 553
Calcutta High Court (Appellate Side) Rules — Rule 10, 17, 8
Calcutta High Court (Original Side) Rules, 1914 — Rule 2
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Cal 189 : 58 CWN 175

Hon'ble Judges : G.N. Das, J; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Nani Coomar Chakravarty and Dipti Kana Bose, for the Appellant; Hemendra Kumar Das, Sr. Govt. Pleader and Tarapada Kumar Pal, for the Respondent

Judgement

G.N. Das, J.—This is an appeal from the judgment of Bose J. dated the 2nd December, 1952.

2. The appeal arises out of an application under Article 226 of the Constitution for the issue of an appropriate writ or order directing the respondent not to give effect to the order of supersession of the Budge Budge Municipality.

3. The facts which have been found by Bose J. may be set forth as follows. The Budge Budge Municipality began to function with ten Commissioners on and from the 4th of February, 1948 for a term of four years. On the 17th of February, 1951 the appellant was elected the Chairman of the Municipality u/s 45 of the Bengal Municipal Act. On the 23rd of August, 1951 the State Government confirmed the appointment of the appellant as Chairman u/s 46 of the Bengal Municipal Act. As the term of four years for which the Commissioners were to function, was about to expire it was directed that a fresh election of the Commissioners of the Budge Budge Municipality numbering twelve would be held on the 8th of March, 1952.

It appears, however, that only eight nomination papers for eight different constituencies of the said Municipality were filed. No nomination papers were filed in respect of the remaining four constituencies. The result was that the eight nomination papers which were filed were found on scrutiny to be correct and eight Commissioners were elected and a declaration under rule 22(2) of the Election Rules was duly made. On the 1st of April, 1952 it was notified that the election of the remaining four members would be held on the 31st of May, 1952. In the first week of April, 1952, the eight out of the ten members of the old Municipality which was then functioning resigned and thereafter these eight members ceased to attend meetings of the Municipality or to take any interest in the affairs of the Municipality. Out of the two remaining members one was the appellant, the Chairman of the Municipality. The remaining one did not also take any interest in the affairs of the Municipality and did not attend any of its meetings thereafter. The resignations of 5 out of 8 members who had submitted their resignations were accepted by the Chairman in a meeting which was attended by himself alone. On the 24th of April, 1952 the appellant was directed by the State Government to carry on the routine administration of the Municipality. The appellant was also directed by the District Magistrate to have the cheques drawn by the appellant countersigned by him.

As I have already stated, the date for the election of the remaining four members had been fixed for the 31st of May, 1952. Meanwhile, on the 28th of April, 1952 two persons, namely Pannalal Mondal and another moved this court under Article 226 of the Constitution for the issue of an appropriate writ to the effect that the election of the four remaining members could not be held on the basis of the existing electoral roll and that a revision of the electoral roll was necessary. An interim injunction was granted holding up the election. This Rule was made absolute on the 22nd of July, 1952. On the 3rd of June, 1952 the appellant moved this court under Article 226 of the Constitution and obtained a Rule challenging the order of the District Magistrate that the cheque drawn by the appellant should be countersigned by the District Magistrate. This Rule, we are told, is still pending disposal. On the 24th of July, 1952 a resolution u/s 553 of the Bengal Municipal Act declaring that the Commissioners of the Budge Budge Municipality were incompetent and that they were superseded was duly published. On the 29th of July, 1952 respondent No. 2, who was appointed to act as administrator, took charge of the affairs of the Budge Budge Municipality. Thereafter this Rule was obtained by the appellant. The Rule was ultimately discharged by Bose J. on the 2nd of December, 1952. The appellant has accordingly preferred this appeal.

4. Mr. Nani Coomar Chakravarty, who has appeared in support of the appeal, has contended that it was not incumbent for the State Government to pass a resolution declaring the Commissioners to be incompetent and superseding the Municipality without resorting to the provisions of section 552 of the Bengal Municipal Act

5. Chapter XXVII of the Bengal Municipal Act deals with delegation of powers by the State Government and with control of the Municipality. It is necessary to refer to sections 551 and 553 of the Bengal Municipal Act.

6. Section 552 provides that if in the opinion of the State Government the Commissioners have shown their incompetency to perform or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, the State Government may, by an order in writing published in the Official Gazette direct a fresh election to be held. The section then proceeds to state what would happen as a result of such fresh election.

7. Section 553 provides that if in the opinion of the State Government the Commissioners have shown their incompetency to perform or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, or have exceeded or abused their powers, the State Government may, by an order in writing published with the reasons for making it, in the Official Gazette, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order, provided that except in case of misappropriation of municipal funds or persistent default in the performance of duties by the Commissioners the State Government shall not "ordinarily" exercise power under this section until action has been taken u/s 552.

8. Mr. Chakravarti contends that in this case the resolution proceeded on the footing that the Commissioners were incompetent, and as such in view of the terms of the proviso the State Government should ordinarily have directed a fresh election in terms of section 552. It is obvious that the "use of the word "ordinarily" in the pro-viso leaves some discretion in the State Government either to hold a fresh election in terms of section 552 or to supersede the Municipality in terms of section 553. It is quite true that the State Government in the exercise of its discretion should not act arbitrarily but if the State Government has acted in the matter bona fide there is no reason why the State Government should not be competent to supersede the Municipality without directing a fresh election to be held u/s 552. The question, therefore, ultimately turns on a question of fact, namely whether it was proper for the State Government to supersede the Municipality or whether it was incumbent on the State Government to proceed u/s 552 of the Bengal Municipal Act and to direct a fresh election to be held. In the present case the resolution sets out the circumstances under which the Governor was pleased to direct the Commissioners to be superseded. It appears from the terms of the resolution that eight out of the ten members of the old Municipality have resigned and one was not taking any interest. There was thus a deadlock in the affairs of the Municipality. No meeting could be held as there was no quorum. The budget could not be passed in view of the inaction of the other members of the Municipality. The only person who was functioning was the Chairman.

The result was that the entire administration was being carried on by the Chairman. The State Government had directed an election of the remaining four members to be held on the 31st of May, 1952. This was prevented by an application made by Pannalal Mondal and another to this Court under Article 226 of the Constitution with the result that no election could be held as directed by the State Government on the 31st of May, 1952. An order was passed by the District Magistrate requiring the appellant to have the cheques drawn by Chairman countersigned by the District Magistrate. Against this order an application under Article 226 of the Constitution had been moved in this Court and a Rule has been obtained, In the circumstances set forth in the resolution and borne out by the materials on record it cannot be said that the State Government did not exercise Its discretion properly in this matter or that the resolution passed by the State Government under the circumstances detailed in it was made without jurisdiction.

9. In this view it is not necessary to deal with the question which was agitated before Bose J. and which found favour with him as to whether the action of the State Government in superseding the Commissioners of the Municipality is justiciable or not, nor it is necessary to deal with the question whether the action of the State Government in superseding a municipality is a purely administrative act or whether it is a quasi judicial act which may call for interference of this Court in appropriate cases.

10. This finding concludes the present appeal which must accordingly fail and is dismissed. In, view of certain complexities which have arisen in this case not entirely due to the activities of the appellant, we do not propose to make an order for costs in this appeal.

11. It remains for us to deal with an order recorded by the Chief Justice and Sarkar J. on the 3rd of February, 1953 while directing the registration of the present appeal. This appeal is directed against the judgment of Bose J. passed on an application under Article 226 of the Constitution. The appeal was filed by the appellant in person. It was not accompanied either by a, copy of the Judgment of Bose J. or of the formal order for costs. The order of the Chief Justice and Sarkar J. directs that at the time of the-hearing of the appeal "the correct practice with regard to appeals presented on the Appellate Side should be gone into by the Bench hearing the appeal."

12. We have, therefore, to record our opinion on this point. We have heard Mr. Chakravarti for the appellant and the learned Senior Government Pleader for the respondent in this matter.

13. In the case of -- " Chairman, Budge Budge Municipality Vs. Mongru Mia and Others, (A) it was observed that

"the issue of writs contemplated by Article 226 is exercise of original jurisdiction. It is not. original in the limited and technical sense of. ordinary original civil Jurisdiction of the Letters Patent which carries certain territorial limits but it is

original as distinguished from appellate."

An order passed on the application under Article: 226 of the Constitution is, therefore, an order made in exercise of the Court's original Jurisdiction as distinguished from appellate.

14. By a Notification No. 6155 G, dated the 1st September, 1950 and published in the Calcutta Gazette, Part V, page 1829, rule 8 was added to Chapter II of the Appellate Side Rules. That rule provided "inter alia" that an application under Article 226 of the Constitution

"shall, subject to any direction of the Chief Justice, be made before the Judge on the Original Side taking interlocutory applications or such other Judge as the Chief Justice may appoint, "and" heard and disposed of by him as a Judge sitting on the Appellate Side as matters appertaining to that Side."

15. The question, therefore, is whether when an application under Article 226 of the Constitution in matters arising outside the original jurisdiction of this Court is disposed of by a Judge sitting singly and an appeal is preferred against his Judgment, it is necessary for the appellant to annex to the memorandum of appeal certified copy of the judgment appealed from or of the formal order made therein or of both. Chapter VIII of the Rules of the Appellate Side which deals with appeals under Clause 15 of the Letters Patent does not obviously deal with such appeals because these appeals were unknown when the rules contained in Chapter VIII were framed. It is, therefore, difficult to suppose, as was pointed out by the Chief Justice in *Chairman, Budge Budge Municipality Vs. Mongru Mia and Others, (A)*, that these rules would govern the procedure for presentation of an appeal against an order under Article 226 of the Constitution in a matter arising outside the original jurisdiction of this Court. Order XLI, rule 1 of the CPC which deals with appeals from original decrees cannot apply. There is no statutory provision which prescribes the formalities to be complied with or the procedure to be adopted in dealing with such appeals. On the Original Side of this Court in similar cases provision is made in Chapter XXXI of the Rules of the High Court, Original Side. Rule 2 of that chapter provides that every memorandum of appeal from the Original Side shall be in form No. 1 and shall be drawn up in the man-ner prescribed by Order XLI, rule 1 of the CPC and shall be presented to the Registrar, accompanied by a copy of the "decree or order" appealed from.

16. This rule cannot apply, because an application under Article 226 of the Constitution is a matter arising outside the limits of the ordinary original Civil Jurisdiction of this Court, is, as pointed out by the Special Bench decision referred to above, is not dealt with in the exercise of Original Civil Jurisdiction in its limited and technical sense.

17. The rules which were framed by this Court and which have been referred to above dealing with applications under Article 226 of the Constitution do not specifically prescribe the practice to be followed in such cases.

18. Mr. Chakravarti, who has appeared on behalf of the appellant, very fairly drew our attention to rules 10 and 17 of Chapter V of the Appellate Side Rules and to amendments made in rule 17 of Chapter V bringing Article 226 of the Constitution within the purview of rule 17. No assistance can, in my opinion, be derived from these rules. They are not clear enough to require an appellant to annex to the memorandum of appeal certified copy of the Judgment passed in an appeal under Article 226 of the Constitution or of a formal order made therein. In the absence of any statutory provision or any rule framed by this Court specifically dealing with the question, it is, in my opinion, not incumbent on the appellant to attach to the memorandum of appeal either a certified copy of the judgment appealed from or of the formal order which may be drawn up in such cases.

19. My conclusion, therefore, is that an appellant who seeks to file an appeal against an order of a single Judge disposing of an application under Article 226 of the Constitution in a matter arising outside the Ordinary Original Civil Jurisdiction of this Court, need not annex to the memorandum of appeal either a certified copy of the judgment appealed from or of the formal order which may have been or be drawn up in such cases. This appeal was therefore duly registered by this Court. I may add that a similar view was taken by a Bench of this Court on an office report in P. M. A. T. No. 121 of 1952 (B). The order of this Court is dated the 13th February, 1952.

Debabrata Mookerjee, J.

20. I agree.