

(1956) 03 CAL CK 0014

In the Calcutta High Court

Case No : Civil Revision Case No. 443 of 1955

Gour Gopal Mitra and Others

APPELLANT

Vs

Commissioner, Presidency Division and Others

RESPONDENT

Date of Decision : 20-03-1956

Acts Referred:

Citation : AIR 1957 Cal 78 : 60 CWN 997

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Syama Charan Mitter, for the Appellant; Mukti Moitra, (for Nos. 3 and 4) and Nirmal Chandra Chakravorty and D.N. Basu, (for Nos. 1 and 2), for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows. The Bewa Union Board situate in the district of Murshidabad, consists of three Wards, namely, Wards Nos. 1, 2 and 3. On or about 14-12-1952 a general election was held in the said, Union Board. After the election was held, applications were made to set aside the election u/s 17B, Bengal Village Self-Government Act. The elections of members of Wards Nos. 1 and 2 were set aside. Thereafter, the electoral rolls for wards Nos. 1 and 2 were revised and nomination, papers were called for from those two wards. Ward No. 3 was entirely ignored. The electoral roll for Ward No. 3 was not revised and no nomination paper was called for, from that Ward. It is on this footing that the election was again held in Wards Nos. 1 and 2. Against the second election, objection was taken u/s 17B of the said Act. Appeals were filed by two persons Insan Ali Biswas and Sk. Ummar Ali both claiming to be residents of Ward No. 3. These two appeals were both allowed. The learned Magistrate held that the electoral roll for Ward No. 3 should have been revised together with that of Ward Nos. 1 and 2 before the second election, and that nomination papers should have also been called for, from the voters of Ward No. 3. The second election, in Wards Nos. 1 and 2 was therefore set aside. From these orders, there were revision petitions before the Commissioner, but the revision applications were dismissed as the Commissioner agreed with the findings of the

learned Magistrate. This Rule was issued on 15-2-1955 calling upon the opposite parties to show cause why a writ in the nature of Mandamus should not issue cancelling the orders dated 8-12-1954 and 12-5-1954 complained of in the petition, and/or forbearing from giving effect to the same and/or why a writ in the nature of certiorari should not issue quashing the said orders or why such further or other order or orders should not be made as to this Court may seem fit and proper.

2. Mr. Mitter appearing on behalf of the petitioners first draws my attention to Section 7(2), Bengal Village Self-Government Act, 1919. This section lays down that every person who is entitled to vote at an election of a member of a Union Board and is resident within the Union, shall be entitled to be a member of the Union Board, if duly elected thereto. He points out that by the rules, election is to be held, not of the entire Union taken as a whole, but in Wards, Under Rule 21, a voter is entitled to vote for the ward for which he is registered as a voter. Under Rule 10, the Election Officer shall, at least six weeks before the date fixed for the election, issue notice seeking for name of candidates for each ward and fixing the place and time at, and the date on, which the nomination paper will be scrutinised by him. Mr. Mitter argues that since the election is divided into wards, therefore voters of one ward have nothing to do with the election of other wards. He says that the only reasonable implication is that nomination papers have to be called for from the ward in which the election is to take place. I am afraid this argument is not sound. One must not make a confusion between the right to vote in the election of a representative in a ward, and the right to stand for election as a representative. While a voter can vote for a representative of his own ward only, he can stand for election in another ward, that is to say, in a ward other than where he resides. This is made clear by Rule 26. Therefore, the appellants who challenged the second election were plainly prejudiced because they Intended to stand as candidates from Wards Nos. 1 or 2. True, that they belonged to Ward No. 3, but that did not prevent them from standing as candidates in wards Nos. 1 or 2. If those be the rights of the appellants, then it is clear that it was incumbent upon the Union authorities to revise the electoral rolls not only of Wards Nos. 1 and 2, but also Ward No. 3, and also to call for nomination papers to be filed not only from Wards Nos. 1 and 2, but all the wards in the Union. Unless a person is in the electoral roll he cannot file a nomination paper, and indeed if he does file a nomination paper, it will be rejected because the Election Officer undoubtedly checks the nomination papers with the entries in the electoral roll. Mr. Mitter argues that the previous electoral roll was there. In my opinion, that amounts to nothing. Since the electoral roll was prepared, there might be persons who have come into the said ward or might have acquired qualifications which they did not previously possess. No election can be held upon an electoral roll previously prepared, An electoral roll must be prepared for each election according to the rules, and in conformity with the time schedule laid down. Unless this is done, omissions are likely to occur. Take the question of educational qualification. Supposing a person residing in

ward No. 3 passed the matriculation examination between the time when the last electoral roll was prepared and the newly ordered election. If the old electoral roll is to be still in force, then he is clearly left out. The learned Advocate for the petitioners has not been able to meet this situation in his argument. It seems to me that the impugned orders of the learned Magistrate and of the Commissioner are clearly right and the petitioners have failed to make out a ground for interference.

3. The result is that this application must fail and the Rule must be discharged.

4. The petitioners must pay the costs of the parties appearing, hearing fee being assessed at two gold mohurs for each party.