

(1993) 10 CAL CK 0012
In the Calcutta High Court

Case No : Appeal No. of 1993 and Suit No. 377 of 1992

Haradhan Pal and Others

APPELLANT

Vs

Amitabha Ghosh and Others

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Citation : (1993) 2 CALLT 376

Hon'ble Judges : Anandamly Bhattacharjee, C.J;Nisith Kumar Batabyal, J

Bench : Division Bench

Advocate : Anindya Kumar Mitra and Ajoy Chatterjee, for the Appellant;P.C. Sen, Saktinath Mukherjee, P.K. Das and Asok Banerjee, for the Respondent

Judgement

Anandamly Bhattacharjee, C.J.—Heard Mr. Anindya Mitra, learned Counsel appearing for the appellants, Mr. P. C. Sen, learned Counsel, Mr. Saktinath Mukherjee, learned Counsel, Mr. P. K. Das, learned Counsel and Mr. Asok Banerjee, learned Counsel appearing for various respondents and Mr. Bimal Chatterjee, learned Counsel appearing for the Special Officer, Mr. Gour Roy Chowdhury and Mr. Sanjoy Bhattacharya, learned Counsel appearing for the Special Officer, Mr. Bhabaranjan Sengupta.

2. It has not been disputed, and in fact it has also been found by the learned Trial Judge, that the ballot papers contain several errors or mistakes. The learned Judge is of the view that those errors or mistakes in the names or the surnames of the candidates are all "trial nature". We are afraid, and this we say with respect to the learned Judge, that we cannot agree. If the surname of a candidate being "Bardhan" has been printed as "Bhadra" or the surname "Deb" has been printed as "Dey", such errors or mistakes would be sufficient to mislead the electors who are" all admittedly literate persons, who would find no symbols in the ballot papers to go by.

3. The learned Judge, even though he branded the errors or mistakes to be "trivial", has nevertheless had to hold that those require rectification and has, by

the impugned order under appeal, directed the Joint Special Officers to insert or publish a notification in the form of a corrigendum in the "Statesman" and the Bengali Daily "Aajkal" notifying the errors that have crept in and the necessary rectifications. Such corrigendum appears to have been issued yesterday in the concerned Newspapers in pursuance of the impugned order of the learned Judge made the day before yesterday.

4. It is, however, not disputed that a good number of ballot papers have already been despatched by post to the electors. When the electors would have the erroneous ballot papers in their hands and would proceed to record and cast their votes, we have nothing on record to be satisfied that their attention would be duly drawn to the corrigendum published in those two Newspapers. If we could be assured that such corrigendum: would reach the hands of the electors concerned or their attention would be duly drawn thereto before they would proceed to record their votes, we might have thought that no interference is necessary from us at this stage. We are afraid that such an important thing as the ballot paper, which, in a sense, is the most important thing in a contested poll, cannot be duly and effectively corrected in the manner directed by the learned Trial Judge. We are accordingly afraid that the errors in the ballot papers will go unrectified and the purported corrigendum would not be duly adverted to by the electors and, as already stated, the errors are likely to affect the result of the election to be held on the 9th instant.

5. It is true that ordinarily once the election process has commenced in respect of, say, a Parliamentary or Assembly Election or Election to other Local Bodies, the same is not generally interfered with except for compelling reasons. Because in such case there are sufficient and effective provisions under the law to challenge the election quickly and expeditiously by some sort of Election Petition or otherwise. But we are yet to be satisfied that in the case at hand, which relates to the election of a voluntary club, such adequate and expeditious remedies to challenge the election would be available after the election is held. At any rate, we are satisfied that in a case like this where our attention has been drawn to the defective nature of the ballot papers, and the polling is yet to be held, we should not allow the poll to be held on the basis of such ballot papers. We have good reasons to believe that the defects or errors are likely to affect the result of the election.

6. It has been alleged that the appellants are only interested in delaying the election, while the counter-allegation is that the respondents are determined to have the election held with undue haste. We must note that the appellants are in no way, even remotely, responsible for the defects or errors in the ballot papers, and if those errors or defects warrant a postponement of the elections, the appellants cannot be blamed for such postponement. It should be noted, and it has not been disputed, that the present election is being held rather early and much before the expiry of the present term of the existing Executive Committee and that, still then, the Executive Committee decided to prepone the election. It

is not that the election must be held on the 9th instant as per the present schedule. In fact, we have had to postpone the date to the present date as we were satisfied that there was no reasonably sufficient time for the electors to receive the ballot papers by post and to record and cast their votes within the time then fixed. We are now of the view that the date of the election can and should again be postponed so that the election may be held on proper and correct ballot papers. Suppose, in a given case it is detected that wrong ballot papers have been made available and there is no time to have the correct set of ballot papers within the time fixed for the poll. Can there be any other alternative than to postpone the election to some other date ?

7. We, accordingly, direct that the Joint Special Officers shall reprint all the ballot papers correctly and shall hold the election not earlier than 15 days after the ballot papers have been duly sent by post. We would further direct that the Joint Special Officers shall produce before us a proof copy of the ballot papers on 13.10.93 at 10-30 A.M. and shall finally print them after our approval within seven days thereafter. And, as we have already indicated, the election shall be held on such a date to be jointly fixed by the two Joint Special Officers so that there shall be at least 15 days intervening between the last date of the transmission of the ballot papers by post and the date of poll.

8. The appeal is accordingly allowed to the extent indicated above. There will be no order as to costs.

N.K. Batabyal, J.

9. I agree.