
(1944) 09 CAL CK 0001
In the Calcutta High Court
Case No : Civil Appeal No. 63 of 1944

Haridas Majumdar and others

APPELLANT

Vs

Sir Bejoy Prosad Singha Roy and another

RESPONDENT

Date of Decision : 07-09-1944

Acts Referred:

Citation : (1944) 09 CAL CK 0001

Final Decision : Dismissed

Judgement

Henderson, J.—This is an appeal against an order of Ormond J. by which he refused an application made by the appellants for an order on respondent 1 directing him to act upon a declaration which he had made, as President of the Bengal Legislative Council and for an order on respondent 2 directing him to proceed with a certain bill on the basis that a certain amendment was carried. The facts are really very simple. A certain amendment was proposed in the Bengal Legislative Council of which the three appellants are members. The President expressed the opinion that the Ayes had it. According to the President, and we have no hesitation in accepting what he says, this was really a mistake. He thought that the Noes had it. He then corrected this mistake. The appellants raised a point of order to the effect that when once the President had said the Ayes had it there was an end of the matter and it must be taken that the amendment was carried. At the hearing before Ormond J. an objection was taken to the effect that he ought not to dispose of the matter but should make a report to the Chief Justice in accordance with one of the rules of this Court. So far as the appellants' case was concerned, no question of the interpretation of the Government of India Act, 1935, could possibly arise. The respondents, however, did raise such a point in their defence. Now, eventually Ormond J. dismissed the application. Clearly, we cannot refuse to hear this appeal. No useful purpose would be served by our setting aside the order of Ormond J. and directing him to make a report to the Chief Justice. We are quite clear that it is for the learned Judge who deals with the case to decide whether it appears to him that there is any matter which requires a report to the Chief Justice and, inasmuch as the

learned Judge has himself disposed of the case, we can Only assume that he was satisfied that there was no such question before him.

2. Respondent 1 raised a defence under S. 87, Government of India Act. His contention was that he was absolutely protected and that this Court could not interfere with anything that he did. There are, of course, very weighty reasons why the Legislature should be independent of other branches of the administration and it was not disputed that this section does protect the President from interference by this Court when he is acting, in accordance with powers conferred upon him. But we entirely agree with the learned Judge that it would not protect him if he was acting in defiance of the provisions of the statute and the rules made thereunder or if he were exercising some power which he does not possess. On the merits, the contention made by Mr. Chatterji is that the President had no power to alter his original announcement. the learned Judge thought that such a power was conferred by R. 38 of the rules made by the Legislative Council for its procedure. Under that rule "the question on a motion shall be put in such manner as the President may, by orders made in this behalf, determine." In our opinion, a mere ad hoc decision is not an order regulating the procedure. No doubt, the President might make an order dealing with this particular matter but in fact he has not done so. Now, it is clearly necessary to distinguish between a case in which the President thinks that the "Ayes have it" and then alters his opinion and a case in which he always thinks that the "Ayes have it" but by mistake or slip of the tongue says "no" instead of "Aye." In view of the affidavit filed by the President, this case comes within the latter category. In our opinion, standing order No. 8 made by the President means that he must give his real opinion. In the present case he has given his real opinion and, therefore, he was complying with the standing orders as they are. Even, however, if the President was not acting strictly in accordance with the rules and standing orders, we are clearly of opinion that this is a case in which the Court ought not to interfere. In the first place, it would merely mean that there was a lacuna in the rules. It is quite absurd that a mere verbal mistake should lead to the insertion of a clause in an Act. Where the President is doing a thoroughly sensible thing, there is no reason why this Court should interfere with him.

3. Then; in the second place, I am not satisfied with the bona fides of the appellants. If the President made a verbal mistake, obviously anybody who wished to challenge the opinion of the President could not be deprived of his right to do so by this verbal mistake. I wonder why the appellants instead of raising a point of order to the effect that the matter was final, did not raise a point of order to the effect that as a result of the real opinion of the President they were entitled to demand a division. I have no doubt whatever that the President would have acceded to that demand. I suspect that the reason was that they were a small party of loud shouters who knew that they would be defeated on a division Nothing would induce me to make an order which might have the possible effect of allowing the will of the minority to prevail over the will of the majority. Then, in the third place, the matter is absolutely trumpery. The

amendment was merely for an insertion of a comma. Whether it was carried or defeated, the legal effect would be absolutely nil. It is quite obvious that the appellants do not bother about this common. They are really hoping to derive, some advantage from the effect that will flow from the passing of an amendment. Where there is no real objection to the amendment itself, we should certainly not make an order to enable the appellants to attain some other end. The appeal is accordingly dismissed with costs including the reserved costs. Certified for two counsel.

Das J.

4. I agree with the order proposed by my learned brother and the reasons in support thereof. I desire only to add that I wholly dissociate myself with the reasonings adopted by the learned Judge in the Court below in his interpretation of chap. V, R. 3. I do not consider that it is permissible, in interpreting a statute or a rule of Court, to introduce considerations which are rather for the rule-making authority to consider. I, however, am prepared to proceed on the basis that it appeared to the learned Judge that no serious question of interpretation of the Government of India Act, 1935, was involved in this application.

Sharpe J.

5. I agree.