
(1943) 07 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No's. 578 and 579 of 1942

Hifzurraheeman Ansarsaheb

APPELLANT

Vs

Hasansaheb Abansaheb Fulmandi

RESPONDENT

Date of Decision : 07-07-1943

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 15

Citation : AIR 1944 Bom 203 : (1944) 46 BOMLR 371

Hon'ble Judges : Macklin, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Macklin, J.—These applications must be allowed. The point at issue in all of them is the same, namely, the power of the Judge holding an election enquiry u/s 15 of the Bombay Municipal Boroughs Act, 1925, to unseat a candidate on the ground that the candidate was disqualified for election by reason of Section 12 of the Act. Whether the candidates in question were or were not qualified is a matter with which we are not concerned. The Judge has held, rightly or wrongly, that Section 12 disqualified them, and he accordingly set aside the election of these persons. In doing so he purports to act u/s 15 of the Act. The unseated candidates have come in revision to this Court on the ground that the Judge has gone beyond the powers given to him by the Legislature; and if it is a fact that he has done so, then his action, though the action of a persona designata, is subject to revision by this Court.

2. The Assistant Judge who heard the cases was of the opinion that Section 15 empowered the Judge to interfere with an election in cases not in terms covered by the wording of Section 15; and in support of that view he refers to the decision of the Judicial Commissioner of Sind sitting alone in Dayaram v. Keshawji AIR [1933] Sind 416 where a person disqualified by reason of Section 22 of the Bombay District Municipal Act, a section corresponding in many ways with Section 15 of the Bombay Municipal Boroughs Act, was unseated on the

ground that he was not qualified for election. With respect, I am not altogether convinced by the reasoning in this case ; in particular I do not think that the argument derived from the wording of Sections 15 and 22 of the Municipal Act can apply to a case like the present under the Municipal Boroughs Act, since Sub-section (4) of Section 12 of the Boroughs Act finds no place in the corresponding section of the Municipal Act; but apart from the reasoning given in that case, the matter has been fully argued before me on the wording of the relevant sections, which are Section 15 and Section 12 of the Municipal Boroughs Act.

3. The scheme of Section 15 is this. By Sub-section (1) any one qualified to vote can question the validity of an election by going before the District Judge within ten days and asking that the validity of the election shall be decided. Thereupon the Judge holds an enquiry and " subject to the provisions of Sub-section (3)" passes an order confirming or amending the declared result of the election or setting the election aside. The words " subject to the provisions of Sub-section (3)" are important. Though the exact meaning of the words " subject to " is not perhaps obvious, it is clear that in passing orders confirming or amending the result or setting the election aside the Judge must not lose sight of the provisions of Sub-section (3). Sub-section (3) is in two parts; it provides that a candidate guilty of corrupt practices as defined later on shall be unseated, and that in every other case where the validity of an election is in dispute between two or more candidates, the Judge shall scrutinize and count the votes and declare elected that candidate who has the greatest number of valid votes. No other specific power is given in terms to the Judge making an order u/s 15. There is however a provision in Sub-section (5). that a Judge shall not set aside an election of which the validity is questioned only on the ground of an error in carrying out the election rules or any irregularity or informality not corruptly caused ; and the sub-section has an explanation to the effect that "error" does not include any breach "of the Act or rules which has materially affected the result of the election. The Assistant Judge has spelt out of Sub-section (5) read with the explanation a positive permission to a Judge to set aside an election on grounds other than the grounds for which he is by Sub-section (5) expressly prohibited from setting aside an election. In other words from a provision which in terms is purely negative from beginning to end the learned Judge has inferred a positive permission to do something which in terms the entire section nowhere authorises him to do. I do not think that this method of interpretation is legitimate. It is true that the beginning of the section is in general terms and does not restrict the power of a voter to question an election on any grounds, but I am not prepared to hold that this implies that the enquiring authority has a right to pass orders except in accordance with the express terms of Sub-section (3).

4. Moreover I find it impossible to reconcile the so called implied permission given in Sub-section (5) to deal with matters falling outside Sub-section (3) with the provisions of Sub-section (3)(b). By Sub-section (3)(a) the Judge is bound to unseat a candidate who has been guilty of corrupt practices. But " in any case to which Clause (a) does not apply" the Judge simply scrutinises the votes and

awards the election to the candidate who has the greatest number of valid votes. If there is corrupt practice, the candidate is unseated. If there is no corrupt practice, the Judge simply scrutinises the votes, decides which votes are valid, counts up, and declares the result accordingly. I do not see any room for setting aside an election on the ground that the candidate was never qualified to be elected. Even if he was not qualified to be elected, it cannot be said that votes otherwise valid are invalidly recorded merely for that reason.

5. I think therefore that on the wording of the section itself a Judge ought not to be deemed to have powers other than those expressly specified in the section ; and the section has gone out of its way in Sub-section (3) to specify what his powers are, and prima facie the powers so specified are exhaustive. But quite apart from the wording of Section 15, there is another aspect of the case which does not seem to have been put before the learned Assistant Judge. Sub-section (4) of Section 12 says that if any person is elected or nominated as a councillor in contravention of the provisions of Section 12 (the section dealing with disqualifications), his seat subject to the provisions of Sub-section (5) will be deemed to be vacant; and Sub-section (5) says that in every case the authority competent to decide whether a vacancy has occurred under this section shall be the Collector. There is obviously a reference back to Sub-section (4), so that in every case the authority competent to decide, whether a person was disqualified before his election and that the election was therefore invalid so far as he is concerned is the Collector and no one else. Sub-section (5) goes on to say that until the Collector decides that a vacancy has arisen, the seat of the person elected or nominated shall not under Sub-section (4) be deemed to have become vacant. In other words the orders of the learned Assistant Judge in this case are nugatory until the Collector himself decides that the seat is vacant.

6. It is argued that although it is possible for an elector to approach both the Collector and the District Judge within ten days of the election and get contradictory orders on his two petitions on the interpretation put upon Section 15 by the opponents to the present applications, still that is no reason for not interpreting Section 15 in the way I am asked to interpret it, and that it is my duty to reconcile, if I possibly can, these two inconsistent sections. In my view there is only one way to reconcile them, and that is to give to each the meaning which it prima facie carries. It is true that Sub-section (5) of Section 12, as the learned Judge seems to point out (although his language is not quite clear), does not in terms affect the provisions of Section 15 ; but that in my view is because Section 15 does not provide anything which can be affected by the provisions of Section 12.

7. I have omitted to mention one argument derived from Sub-section (5) of Section 15. It is that Sub-section (5) does not in any way govern the provisions of Sub-section (3) and must be regarded as quite independent of Sub-section (3). So far I am inclined to agree. It is then pointed out with a good deal of truth that Sub-section (5) is otiose unless it implies that the Judge has powers outside

those specified in Sub-section (3) and for this reason should be deemed to imply that the Judge has in fact powers outside those specified in Sub-section (3). I prefer to take it that Sub-section (5) is in fact otiose, which it appears to be.

8. The rules are made absolute in all cases. The petitioner will get his costs in this Court from the opponents in C.R.A. Nos. 578 and 579; and in the trial Court he will get his costs in all the cases.