

(1934) 08 CAL CK 0030
In the Calcutta High Court

Hiralal Chakrabarti and Others

APPELLANT

Vs

Lalit Mohan Banik and Others

RESPONDENT

Date of Decision : 15-08-1934

Acts Referred:

Bengal Village Self-Government Act, 1919 — Section 107

Citation : 163 Ind. Cas. 362

Hon'ble Judges : Edgley, J;D.N. Mitter, J

Bench : Division Bench

Judgement

D.N. Mitter, J.—This is an appeal from a judgment and decree of the Subordinate Judge, 1st Court, Faridpur, by which he reversed the judgment and decree of the Munsif of Faridpur, dated January 26, 1933. The suit in which this appeal arises was commenced by the plaintiffs, now respondents, for several declarations. The reliefs asked for were (a) that the plaintiffs and original pro forma defendants Nos. 3 (now pro forma defendant No. 9} were duly and legally elected on August 3, 1930, as members of the Panchar Union Board, (c) that the fresh election of the members of that Board on November 8 and 9, 1930, was without jurisdiction and is so a nullity and (c) that the election of defendants Nos. 6, 9 and 11 to 14 as such members at the said fresh election is invalid and that they were not duly elected. It appears that the plaintiffs were elected as members of the Union Board at the election held on August 3, 1930. The District Magistrate set aside that election. The present suit was consequently brought by the plaintiffs for the declarations which have already been stated. The trial Court dismissed the plaintiffs' suit. On appeal the Subordinate Judge has allowed the appeal and has modified the decree of the Court of first instance in the following manner. The plaintiffs' suit in so far as the first relief sought by them is concerned, is decreed with costs but is dismissed in so far as the other two reliefs claimed by them are concerned.

2. Against this decree of the Subordinate Judge the present, appeal has been brought and it is contended on behalf of defendants Nos. 1, 2 and 6 who are the

appellants before us the decision of the Subordinate Judge is wrong. The Subordinate Judge came to the conclusion that the District Magistrate had no jurisdiction to set aside the first election of the plaintiffs. On the ground that under Rule 25 of the Rules made under the Village Self-Government Act no election held under the rule shall be held to be invalidated on any ground whatever except those provided by Rules 22 and 23. The ground on which the election was set aside was that the nomination paper was signed by a voter who was not a voter at all having regard to the provisions of Rule No. 8 of the Rules made under the Village Self-Government Act. Rule No. 8 as it stood originally runs as follows:

The Circle Officer shall at least six weeks before the date fixed for the election, issue notices calling for names of candidates for each ward. Such notices shall be published at every village within the ward. Within four weeks from the date of the publication of notices, every person who is a candidate for election shall send his name to the Circle Officer in writing supported by his own signature and the signature of five voters.

3. By the amendment which was effected on March 20, 1929, after the words "signature of five voters" the following words are to be added: "when names appear on the Register of Voters on the date on which the nomination is sent." Now it is conceded that none of the grounds which are mentioned in Rules 22 and 23 of the Rules made under the Village Self-Government Act were contravened in the present case and the question which arises before us really turn on the construction of Rule 25 of the said Act. Rule 25 as already stated shows that except as provided by the Rules 22 and 23 no election held under those Rules should be invalidated on any ground whatever. It is contended before us by Mr. Atul Chandra Gupta who appears for the appellants that rule 25 is not exhaustive. These Rules are framed under the rule making power which is given to the Local Government u/s 107 of the Act, and the Local Government is to determine as to who is to be the authority to decide the questions of dispute in the matter of election. There is no question that the District Magistrate is such an authority who shall decide disputes of election. It is contended that if there is any contravention of the provisions of the rules it will be open to District Magistrate to interfere with the previous election. We are unable to agree with the learned Advocate in this contention. Rule 25 is explicit in its terms and the District Magistrate could not set aside the previous election except as provided by Rules 22 and 23. It seems the Subordinate Judge in dealing with this question has stated the law somewhat broadly. He says:

I am of opinion that there is considerable force in the contention advanced by the learned Pleader for the appellants that an election held under the aforesaid Act cannot be invalidated by the District Magistrate or by the Civil Court on any ground other than these mentioned in Rules 22 v and 23 quoted above.

4. It is sufficient for our present purposes to say the election cannot be invalidated by the District Magistrate on grounds other than those mentioned in

Rules Nos. 22 and 23. It is not in our opinion true that the District Magistrate has jurisdiction to set aside the election held under this rule on grounds other than those provided by Rules 22 and 23. Specific instances have been mentioned before us and it is said that if the Civil Courts be not held competent to interfere with the election held under Rule 25 cases of bribery and corruption would also be outside the jurisdiction of these Courts. We do not think it necessary to decide that question in the present case. That question is left open to be considered when occasion arises.

5. The next point taken is that the plaintiffs are not entitled to the declaration which they have asked for in prayer (a) quoted in the beginning of the judgment of the Subordinate Judge and to which we have already referred. The relief (a) was to the effect that the plaintiffs and the original pro forma defendant were duly and legally elected on August 3, 1930, as members of the Panchar Union Board. It is said that there has been some irregularity in the election as Rule 8, as amended, has been contravened. It is sufficient for our present proposes, if we say this: that the election of the plaintiffs will stand as the District Magistrate's order setting aside the same is without jurisdiction. The result, therefore, is that the grounds which have been taken in this appeal fail and for the reasons given the judgment of the lower Appellate Court is affirmed. This appeal is dismissed with costs.

Edgley, J.

6. I agree.