

(1961) 03 CAL CK 0009

In the Calcutta High Court

Case No : Appeal from Original Order No. 177 of 19960

Kamala Charan Bhattacharyya and Others

APPELLANT

Vs

Om Prokash Gupta and Others

RESPONDENT

Date of Decision : 16-03-1961

Acts Referred:

Bengal Municipal Act, 1932 — Section 24(2), 24(3), 45(1), 552, 553
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Constitution of India, 1950 — Article 226

Citation : (1962) 1 ILR (Cal) 222

Hon'ble Judges : Niyogi, J; Banerjee, J

Bench : Division Bench

Advocate : Ram Mohan, Bhattacharya, s Nos. 1 to 9 and N.C. Chakrabartty, Government Pleader No. 10, for the Appellant; Nirmal Chandra Sen and Shyamapada Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—The Appellants were opposite parties Nos. 1 to 3, 4, 6, 7, 8, 9, 16 and 20 before the trial court. The Commissioners of the Municipality of Bhatpara were opposite party No. 16, the State of West Bengal was the opposite party No. 20 and the other opposite parties Appellants were, the ratepayers. The Petitioners before the trial court, who are Respondents Nos. 1 to 5 in this appeal, challenged the authority of opposite parties Nos. 1 to 15, before the trial court, to function as Commissioners of the Bhatpara Municipality. The case with which the Petitioners, before the trial court, came to Court was as stated hereunder.

2. The opposite parties Nos. 1 to 15 were elected Commissioners of the Bhatpara Municipality at a general election, held on March 20, 1955, under the provisions of the Bengal Municipal Act, 1932. The first meeting of the said Commissioners was held on May 21, 1955. On June 13, 1958, the District Magistrate fixed March 22, 1959, as the date for holding the next general election. Before the election could be held, on the application of the some of the rate-payers of the

Municipality, a Rule was issued by this Court, being Civil. Rule No. 369 of 1959, for quashing the electoral rolls of the Municipality, on the ground of alleged irregularity in their preparation.

3. On March 18, 1959, on the application of certain persons, there was another Rule issued by this Court, being Civil Rule No. 825 of 1959, and in that Rule there was an interim injunction made on the State of West Bengal restraining it from publishing the result of the forthcoming election of the Bhatpara Municipality in the Calcutta Gazette. The election of the Commissioners of the Municipality took place on March 22, 1959, in which the opposite parties Nos. 1. to 15, before the trial court, came out successful. On September 14, 1959.. Civil Rule No. 369 of 1959 was made absolute by Sinha, J. and Civil Rule No. 825 of 1959 was discharged. The result was that the electoral rolls of Bhatpara Municipality being quashed, the election that had taken place on March 22, 1959, became bad and of no effect. Thereafter there was some correspondence exchanged between the District Magistrate and the Chairman of the Municipality, between September 18 and December 1, 1959, which goes to show that some persons were of the opinion that the old Commissioners of the Municipality were continuing or must be deemed to be continuing in office and accordingly an ordinary meeting of the Commissioners of the Municipality was held on December 30, 1959. On January 4, 1960, one of the Commissioners, elected in the 1955 election, wrote a letter to the Chairman of the Municipality to the effect that the terms of the office of the Commissioners elected in 1955 had expired and they could no longer function as such. The question whether the Commissioners elected in 1955 could any further function. thus became important and required an authoritative decision.

4. With that end in view the Petitioners before the trial court moved an application under Article 226 of the Constitution inter alia praying:

(a) A Rule Nisi on the Respondents to show cause why a writ of or in the nature of quo warranto should not be issued against the Respondents Nos. 1 to 15 both inclusive jointly and severally commanding them to exhibit before the Court by what power or authority they were holding or continuing in the office of, or functioning as, the Commissioners of Bhatpara, Municipality;

(b) A Rule Nisi on the Respondents to show cause why a writ of or in the nature of quo warranto should not be issued against the Respondent No. 1: commanding him to exhibit before the Court by what power or authority he is holding or continuing in the office of, or functioning as, the Chairman of Bhatpara Municipality;

(c) A Rule Nisi on the Respondents to show cause why a writ of or in the nature; of quo warranto should not be issued against the Respondent No. 2 commanding him to exhibit before the court by what power or authority he is holding or continuing in the office of, or functioning as, the Vice Chairman of Bhatpara Municipality;

(d) A Rule Nisi on the Respondents to show cause why a writ of or in the nature of quo warranto should not be issued against the Respondents Nos. 1, 2 and 3 commanding them to exhibit before the Court by what power or authority they are functioning or continuing to function as the Registering Authority of the Municipality;

(e) A Rule Nisi on the Respondents to show cause why a writ of or in the nature of mandamus should not be issued against the Respondents Nos. 1 to 15 commanding them to forbear from functioning as the Commissioners, Bhatpara Municipality.

5. With the other prayers we are not concerned in this appeal. On the aforesaid application there was a Rule issued by this Court on January 5, 1960. The Rule came up for hearing before G.K. Mitter, J. and after an elaborate examination of the provisions of the Bengal Municipal Act His Lordship came to the following finding:

(a) u/s 24, Sub-section (3) the District Magistrate has to fix dates for a general election of Commissioners every four years unless their term of office is extended by the State Government under Sub-section (5) of Section 56 in which case such elections are, to take place as early as possible fixed before the expiration of such term. Section 56, Sub-section (1) provides that a Commissioner is to hold office for four years commencing from the date of the first meeting of the newly formed body of Commissioners after a general election at which a quorum, is present. The purpose of the first meeting is to elect a Chairman of the Commissioners of the Municipality and ordinarily such election ought to take place at a meeting to be held within thirty days from the date of the publication in the Official Gazette of the result of a general election of Commissioners in the Municipality. The legislature was alive to the possibility of the absence of a quorum at a meeting convened u/s 45, Sub-section (1) in which case unless there was some saving provision, the old body of Commissioners would cease to hold office even before the new body had met effectively for the purpose of the Act. It was to obviate such a contingency that Section 56, Sub-section (2) was included in the statute. Under this Sub-section the term of four years may mean something more than a span of four successive periods of 365 days each. This Sub-section provides that the term of four years referred to in Sub-section (1) of" Section 56 must be held to include any period which may elapse between expiry of the said four years and the date of the first meeting of a newly formed body of Commissioners at which a quorum is present. Although general elections are to be held within four years from the date of the first meeting of the newly formed body of Commissioners after a general election, the State Government has the power to extend their term of office for one year. The outside limit of the term of office of the Commissioners can therefore be only five years from the date of first meeting of the newly formed body of Commissioners after a general election. The Act does not seem to me to contemplate the possibility of the term of office of the Commissioners spreading over a period of

more than five years. It was contended on behalf of the Respondents that this is not so if full meaning is to be given to Sub-section (2) of Section 56. It was argued that if for any reason a general election produces no result the term of office of four years mentioned in Sub-section (1) of Section 56 will include any period beyond the expiry of four years so as to take it up to the date of the first meeting of the newly formed body of Commissioners, who may be elected at the next election validly held. I see no reason to hold that Section 56, Sub-section (2) must be given this uncalled for construction.

(b) We are not concerned with the question, as to whether that election (meaning the forthcoming election) can be held on the date fixed but the question whether the old Commissioners can still be treated as being in office u/s 56, Sub-section (2) of the Act.

6. It was strenuously argued that the plain meaning of Section 56, Sub-section (2) is that if for any reason no valid election is held within four years as envisaged by the Act in normal circumstances, or if the newly elected Commissioners cannot meet effectively within that time this Sub-section would secure the tenure of the Commissioners so long as the new body was not elected and an effective meeting of that body held. It was argued that the expression "shall be held to include" occurring in that Sub-section is one of wide import and is not necessarily limited to a space of three or four months but that it may be even extend to year or more. This to my mind would be an absurd interpretation in the light of what I have said above. Under Sub-section (5) of Section 56 even the State Government cannot extend the term of office of the Commissioners of a municipality for more than a year beyond four years. Such term of office can therefore never exceed five years but the interpretation suggested might lead to the term of "office being enlarged to six or seven years or even longer. In my view, this certainly was not the intention of the legislature and the term of four years was never intended to spread over six or seven years as suggested.

7. In the view taken, the trial court made the Rule absolute in terms of prayers (a), (b), (c), (d) and (e) quoted hereinbefore. The propriety of the order is being challenged in this appeal.

8. Mr. Rammohan Rhattacharjee, learned Advocate for the Appellants Nos. 1 to 9, contended that the provisions of Section 24(3) read with Section 56(2) of the West Bengal Municipal Act were directory and not mandatory. Sub-section (2) of Section 24 and Sub-section (2) of Section 56 are set out below:

24(3). General elections of Commissioners shall take place before the expiration of the term of office of the Commissioners under Sub-section (1) or Sub-section (5) of Section 56, as the case may, and on such days as the District Magistrate may fix for each municipality in his district.

56(2). The term of four years referred to in Sub-section (1) shall be held to include any period which may elapse between the expiry of the said four years and the date of the first meeting of the newly formed body of Commissioners at

which a quorum is present.

9. Mr. Bhattacharjee strongly relied on the language of Section 56(c) and contended that the aforesaid Sub-section gave clear indication of the scheme behind Bengal Municipal Act and went to support his contention that Commissioners once elected in office must not go out of the office until a newly formed body of Commissioners held its first meeting.

10. In Our opinion this argument cannot be accepted. Section 56(1)(a). read with Section 56(5) lays down the outside limit of the terms of office of Commissioners. u/s 56(1)(a), "a Commissioner shall hold office for four years commencing from the date "of the first meeting of the newly formed body of Commissioners "after a general election of Commissioners in the Municipality "at which a quorum is present." u/s 56(5) the period fixed u/s 56(1),(a) can be extended by the State Government for a period not exceeding one year (under the recent amendment two years) beyond the term of four years provided by Clause (a) of Sub-section (1), if in the special circumstances (to be specified in a notification) it so thinks fit.

11. The general election must be held before the period envisaged either u/s 56(1)(a) or u/s 56(5). That is what Section 24(3) provides.

12. Section 56(2) contemplates a case where the election takes place before the expiry of the period stated in Section 56(1)(a). or Section 56(5) of the Act. In such a case only the outgoing body of the Commissioners may continue until the newly formed body takes over in first meeting. Section 56(2) has no application where, as in the instant case, a general election did not or could not take place within the time as envisaged in Section 24(3) of the Act. We, therefore, repeal the first branch of contention advanced by Mr. Bhattacharjee.

13. Mr. Bhattacharjee next contended that the interpretation that we propose would create an impossible situation. There would be nobody in charge of the Municipality and a Municipality will not function without its Commissioners. Mr. Bhattacharjee strongly contended that we must give such an interpretation of the statutory provisions as will not lead, to disastrous consequences to a Municipality seeking to function. There: are two answers to the contention made by Mr. Bhattacharjee. Law is an objective thing and it stands, where the Legislature has made it stand. The courts, of law can take a reasonable view of its provisions and will try to interpret its provisions in such a manner as will not make the very purpose of the Act infructuous, but it is none of the functions of a court of law to fill up "or rectify legislative gaps and lacunae where under the terms of the Statute some difficulties or hardship may ensue. If a Statute" fixes an outside limit of the tenure of Commissioners once elected but fails to make provision as to what will happen if the successor body does not Come to be before the expiry of the life of office fixed for Commissioners once elected, courts have no power to extend the life of the old body of Commissioners, if the law makes no provision therefor. In the next place we are not sure whether" the affairs of the

Municipality will arrive at such a stand still as Mr. Bhattacharjee is afraid. Although the Commissioners may go out still there may be permanent officers of the Municipality who may administer as a some sort of care-taker of the Municipality, until a lawful body of Commissioners comes into office.

14. In this appeal we are not concerned with what will happen after the expiry of the life of the Commissioners. All that we have to decide is whether the Commissioners elected in 1955 may still continue in office. We are of the opinion that they cannot. What will happen thereafter need not concern us in this appeal.

15. Mr. Nirmal Chandra Sen, learned Advocate for some of the Respondents, contended before us that the new election, as directed to take place, was a fraud on the "Statute. He. contended that in the circumstances, as in the instant case, the Government might have better either withdrawn the Municipality u/s 8(a) or dissolved it u/s 552 or superseded the same tinder Section 553 of the Act. We are not concerned with that question in this appeal and we do not propose to express any opinion.

16. We now turn to the cross-objection preferred by some of the as to how best the State Government might have otherwise acted or reacted. We, therefore, do not feel concerned with the argument advanced by Mr. Sen. Respondents who were some of the opposite parties in the trial court. On two preliminary grounds we are not inclined to entertain the cross-objection. This is a Letters Patent appeal.

17. We doubt whether a Letters Patent appeal, under Clause (15) of the Letters Patent, attract the provisions of Order 41, Rule 22 of the Code of Civil Procedure. There is a direct decision on this point by a Division Bench of this Court reported in the case of Brojendra Chandra Sarma v. Prosanna Kumar Dhat (1920) 4 OWN. 1016 in which Mookerjee, C.J. and Fletcher, J., observed as follows:

We are of opinion, that the memorandum of cross-objection cannot be entertained Rule 22, Order XLI of the CPC is not applicable to an appeal under clause 15 of the Letters Patent. Kausala v. Gulab Kuar ILR 21 All. 297. 1899. The cross-objection must, therefore be dismissed.

18. That Bench decision is binding on this Court.

19. Mr. Sen very strongly argued that we should differ from that Bench decision and his reasons were that Order 41, Rule 22 of the CPC merely provided for a period of limitation for cross-objections and was not the substantive provisions under which the cross-objections could be made. He contended that in all appeals, including an appeal under the Letters Patent, the Respondent had a right to prefer a cross-objection although there was no provision either in the Letters Patent or in the CPC Code, which expressly gave a right of cross-objection. We are unable to accept this argument. Further, it appears from the judgment of the trial court that the subject matter of the cross-objection, namely, introduction of a system of single member constituency in the same

Municipality was not seriously pressed before the trial court. Mr. Sen contended that the trial court did not really appreciate the position taken by him before it and therefore we should not attach any importance over the observation made by the trial court in this aspect. Assuming for the sake of argument that we need not over emphasize that statement of the trial court, even then the cross-objection is bound to fail on the other ground hereinbefore mentioned by us.

20. For the reasons aforesaid, we dismiss the cross-objection. In the result both the appeal and the cross-objection are dismissed. There will be no order as to costs either in the appeal or in the cross-objection.

Niyogi, J.

21. I agree.