

(1950) 11 CAL CK 0001
In the Calcutta High Court
Case No : Civil Rule No. 1099 of 1950

Kamalakar Singh and Another	Vs	APPELLANT
S.K. Gupta and Another		RESPONDENT

Date of Decision : 22-11-1950

Acts Referred:

Bengal Municipal Act, 1932 — Section 20, 44
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 102, 103

Citation : AIR 1952 Cal 147 : 55 CWN 203

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : J.C. Maitra, Ramaprasanna Bagchi and S. Basu, for the Appellant; Smriti Kr. Roy Choudhury, for the Respondent

Judgement

Sinha, J.—This is an application u/s 226 of the Constitution for the issue of a writ in the nature of mandamus and/or prohibition directing the respondents, the Secretary, Local Self-Government of the State of West Bengal, and the Commissioner, Presidency Division, to forbear from giving effect to the notification No. 1157M, published in the Calcutta Gazette on the 9th June, 1950, and for other reliefs. The application relates to the affairs of a municipality, called the Garulia Municipality situated in the 24 Parganas. There are two applicants, both of whom claim to be rate payers of the municipality and one of them appears to have held the position of Vice Chairman of the municipality before it was superseded. The notification, which is challenged, has been issued by the Commissioner of the Presidency Division under powers delegated to him by the Government u/s 544 of the Bengal Municipal Act (Apt XV of 1932) and the substantial effect of it is to divide the municipality into four wards with ten seats and to specify the boundaries of each ward.

2. The facts are briefly as follows. The Garulia Municipality is situate in the 24 Parganas. Previous to January 1949, it functioned as a municipality, divided into 5 wards. On or about the 20th January 1949 the municipality was superseded

and the S.D.O. Barrackpore was appointed as the Administrator. The administrator was asked to submit his proposals for the delimitation of the constituencies, the number and distribution of seats and similar matters, and he made his report, recommending the retention of the existing 5 wards, in which, according to him, there should be 11 seats. The Government at first agreed to the retention of the 5 wards but wanted 10 seats to which the administrator agreed. Subsequently, however, the Government considered the matter more closely and local inspections were held by the District Magistrate and the Additional District Magistrate and finally the Government decided on 4 completely new wards with 10 seats, resulting in the publication of the notification which is challenged.

3. The complaint is that the creation of the new wards has been made with the object of preventing the election of certain commissioners who had an existing majority in the superseded municipality. It is further alleged that there was a large industrial population in the municipality and under the new delimitation, they would not get proper representation. It is finally said that the proposed delimitation is mala fide and its sole purpose is to help an interested section of the public and/or oust the existing majority of Commissioners.

4. The question of mala fides may be disposed off at once. I have no evidence before me as to which section of the public it was intended to help by the notification, nor how this is the inevitable consequence of dividing the municipality into four wards instead of five, or allowing 10 seats instead of 11. No facts or figures have been placed before me to prove that the industrial population will not have adequate representation. On the other hand, there is a considered memorandum of the District Magistrate of 24 Parganas (Being Ex. "D" to the affidavit of Nirmal Kumar Mukherjee) giving facts and figures to show that the previous delimitation of the wards had been made to give the Muslims a weightage of 3:1 although the Hindu population of the municipality numbered 15410 as against 4740 Muslims. If the Government wishes to ensure a more reasonable and fair representation of all communities, it is no evidence of mala fide. As regards ousting of particular commissioners, I do not think that such a result is by itself undesirable. Knowing our municipalities as I do, I for myself would not be too terribly shocked to hear that they have ceased to be the guarded citadels of a particular group or coterie, particularly where a municipality degenerated into a condition when it had to be superseded. But I need not waste my time further on this point, because I have no evidence before me that the new delimitation was calculated to achieve such a result, or that such a result must inevitably follow the new delimitation.

5. It has been pointed out by Harries, C. J. in the unreported decision of "Sudhindra Nath v. Sailendra Nath" (AIR 1952 Cal 65), that before a Court could hold that the orders of Government are mala fide, facts must be established upon which the Court could hold affirmatively that an order was not honestly made or not made under a particular provision. It was not sufficient to place

facts which raised a suspicion that the order might not have been (made?) honestly.

6. The next question is as to the legality of the notification. Mr. Maitra who has very ably argued the case on behalf of the petitioners, places his case in the following manner. He says that the notification on the face of it purports to be u/s 20 of the Bengal Municipal Act (Act XV of 1932) and under a delegated power. According to him S. 20 only applies to the case of a municipality which had newly come into existence, or had never before been divided into wards. He refers to the rules made under the provisions of S. 44 to show that the Act does contemplate a municipality which might not have been divided into wards, or which contains a single ward (Rule 1 (2)). He urges that where existing wards have to be changed, or the "territorial boundaries altered, the appropriate (sic) Section 44, the powers under which could not be delegated. I am of opinion that this is a misconception of the scheme of the Act. Section 20 is the appropriate section which confers powers upon Government to divide a municipality into wards for the election of commissioners. There is nothing in the section to show that in the case of existing municipalities this power cannot be exercised simply because there are existing wards. All that the Government has to do is to follow the provisions of Section 20 and consider the views of the commissioners (or the Administrator as the case may be) before publishing a notification. If wards already exist then the effect of creating new wards necessarily means that the old wards cease to exist. The creation of new wards may be done in two ways. It may be done by simply enlarging or reducing the boundaries of existing wards, or by creating entirely new wards. Section 44 merely confers power upon the Government to make rules for the regulation and determination of, the alteration of, or the boundaries of, wards. In other words, Section 44 does not enable the Government to create or alter any wards but enables it to make rules whereby to determine with exactitude what alteration has been or is being made in the wards, or the boundaries of any ward, existing or altered. Similarly the number of commissioners to be elected from each ward is determined by Section 20. It is somewhat difficult to understand what is exactly meant by the expression "...make such rules as it may think fit to regulate and determine the number of commissioners apportioned to any ward of a municipality", as appearing in Section 44. It is, however, quite clear that the apportionment itself is made u/s 20 and not u/s 44.

7. In the present case, I am of the opinion that there is no alteration of the boundaries of any ward at all. If the original 5 wards had been, retained but the boundaries were reduced or enlarged, that would be a different matter. But here we have 4 new wards and the 5 old wards have ceased to exist. There is nothing in Section 44 which would enable the Government to create new wards as it has purported to do. It is neither determining the boundaries of an existing ward nor altering the boundaries of any existing ward. Hence in any view of the matter, Section 44 has no application. u/s 20, the Government has power to create wards and apportion the number of commissioners and this is exactly what it has

done by the notification in question. Nothing is shown why the Government should not exercise such a power or why such power has ceased to exist and why the Court should interfere with the exercise of a power conferred by statute and legitimately exercised.

8. It was lastly argued that the Administrator never consented to the delimitation of the constituencies as notified. But that is not necessary. All that Section 20 requires is that his views should be considered. I am satisfied that the views of the Administrator were duly considered and the notification also recites this fact. The final authority for deciding the delimitation of constituencies and apportionment of commissioners is the Government and not the Administrator (or the Commissioner as the case may be).

9. Under the circumstances it is not necessary for me to deal with the facts in any further detail. The only point of law raised fails, and the application must be dismissed. The Rule is discharged.

10. The petitioners will pay one set of costs, hearing fee being assessed at five gold mohurs.