
(1945) 02 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 95 of 1945

Kuer Maheshwari Prasad Singh

APPELLANT

Vs

Bhaiya Rudra Pratap Singh

RESPONDENT

Date of Decision : 19-02-1945

Acts Referred:

Uttar Pradesh District Boards Act, 1922 — Section 35C

Citation : (1945) 02 AHC CK 0003

Hon'ble Judges : Thomas, C.J

Bench : Single Bench

Advocate : Faiyas Ali, for the Appellant; Hyder Husein and H.G. Waiford, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, C.J.—This is an application u/s 24 of the CPC by Kuar Maheshwari Prasad Singh for transfer of a case pending before Mr. Avadh Behari Lal, District Judge of Gonda. The applicant, I am informed, is the heir apparent of the taluqdar of Makrahi estate, district Fyzabad, and the Opposite-party is a petty zamindar. The applicant was elected Chairman of the District Board of Fyzabad on the 9th November, 1944, and in the same month, an application was presented before the Provincial Government to set aside the petitioner's, election. The Government under the provisions of Section 35-C of the U. P. District Boards Act (U- P. Act X of 1922) referred the petition for decision to the District Judge of Gonda. Mr. V. Prakash was the District Judge when the reference was made but he went on leave and Mr. A. B. Lal took charge on the 22nd January, 1945 and he will hand over charge to Mr. Prakash on the 1st March, 1945.

2. Section 35-C sub-Section (2) lays down that

The judicial officer shall, on a date fixed by him, call upon the parties to appear before him and produce such evidence as they desire in support of their case,

and shall then proceed to pass orders on the petition.

3. 14th February was fixed for issues by Mr. Lal and now 13th and 14th March are fixed for final disposal. The first date fixed was the 30th January, 1945, but I understand nothing was done on that date and the present application for transfer was filed on the 29th January, 1945. The prayer was to stay further proceedings in view of certain allegations made in the said petition. An Hon'ble Judge of this Court before whom the petition was filed, refused to stay proceedings and observed that the election petition could not be disposed of on the 30th as there would be other hearings. A copy of this petition was sent to Mr. Lal and his explanation asked for in regard to certain allegations contained in it. The chief allegation against the learned District Judge was that he was related to one Babu Tulshi Ram, Chief reader of the Deputy Commissioner's Court, that there was a Kayesth party which was supporting the Raja of Ajodhia in this election and that Babu Tulshi Ram had completely identified himself with the party supporting the Raja of Ajodhia. In other words *it was hinted that Babu Tulshi Ram who was a supporter of the Raja of Ajodhya would influence Mr. Lal, Who was related to him. The learned Judge in his explanation has admitted that Babu Tulshi Ram was his maternal cousin (that is his deceased mother was sister of the learned Judge's mother). He further stated that he had no relations or contact with any of the persons mentioned in the transfer application. and he also did not know whether Babu Tulshi Ram was interested in the election petition and on which side. I believe every word of the explanation given by learned Judge. He has worked under me for a number of years and he is scrupulously honest. To throw mud at him or make wild allegation against him was, to say the least, uncalled for, and to cast aspersions on the judicial integrity of an officer of such long standing was mean and scandalous, and I am surprised that it should have come from a man of the position of the applicant who is, I understand a well educated gentleman. I am surprised that local politics or politics relating to the election have been introduced at all.

4. A counter-affidavit has been filed before me by the opposite-party denying all the main allegations of the petitioner. In para. 3 of the affidavit it is stated

That the applicant knew or ought to have known that the election petition was not likely to be disposed of by the (present incumbent of the post of the) District Judge Gonda and yet he made all kinds of Vanton and uncalled for remarks casting aspersions on the judicial integrity of the Presiding Officer of that Court. He did not withdraw his application for transfer even after this Hon'ble Court was pleased to refuse to stay proceedings.

5. In para. 5 it is stated

That the applicant has inflicted all the petty intrigues and stale local politics of Fyzabad on this Court by incorporating them in his transfer application which are not only irrelevant but could easily be dubbed as scandalous and defamatory.

6. In para, 7 it is stated

That the application for transfer is not only false and frivolous but also malicious and vexatious and is worthy of being dismissed with special costs to the opposite-party.

7. I shall now take up the application on its merits. A preliminary objection has been taken by Mr. Hyder Husein that this Court has no jurisdiction to maintain this application. This., objection is in my opinion, well-founded and must succeed. There is no doubt and Mr. Faiyaz AH has in my opinion rightly conceded that the decision of the District Judge is final and no revision or appeal would lie to this Court. In my opinion the District Judge of Gonda, is deciding the election petition in his capacity of persona designata selected by the Government and he was not acting in his capacity as a District Judge. I may further point out that he was not the District Judge of Fyzabad where the dispute had arisen but he was the District Judge of Gonda. It is essential to distinguish the particular officer who is presiding in the Court from the Court itself and as I have said no appeal is maintainable in this Court from the decision of the District Judge. The appeal will not be from "the Court" of the District Judge. It is clear from the words used in Section 35-C that any judicial officer might be appointed by the Local Government provided such an officer is not below the rank of a District Judge.

8. To my mind, therefore, it is clear that in the case of such an appointment, there would be no question of appeal to the High Court on the ground that the decision was a decision of a District Judge, because the officer concerned would not be a District Judge. Mr. Faiyaz Alt on behalf of the applicant has relied on several cases of the Madras High Court, namely, Rao Bahadur K.S. Venkatarama Aiyar Vs. Janab V. Hamid Sultan Maracayar Sahib Bahadur and Others, and Ahmad Thambi Maraicaire v. V. S. Basava Maracayar AIR 1923 Mad. 254 and Mt. Dirji Vs. Smt. Goalin, . The Madras cases were cases under the Madras District Municipalities Act. I have not the Madras Act before me but they are under a different Act and are u/s 115, C. P. C. The Full Bench case decided by the Patna High Court was also an application u/s 115 C. P. C. The application before me is u/s 24 C. P. C. and I have nothing to do with Section 115 C. P. C. The wordings of Section 34 are wholly different to those of Section 115 C. P. C, Section 24 lays down that

A High Court may at any stage transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it, or withdraw any suit, appeal or other proceeding pending in any Court subordinate to it.

9. The question naturally arises whether I have power to withdraw the proceedings pending in the Court of the District Judge at Gonda. I am of opinion that this power does not exist. The learned-counsel on behalf of the petitioner has not been able to cite a single case u/s 24 C.P. C.

10. The case of Joti Prasad Upadhiya v. Amba Prasad (1933) 56 All 406 : (1933) 1 A W R 664 and the other case Ghulam Nisamuddin v. Akhtar Husain Khan (1933) 55 All 1008 : (1933) 2 A W R 787 to a great extent go to support to

contention of the opposite party that the present application is not maintainable. In the case reported at page 406, the Hon''ble Judges observed that

When the Act (that is the District Boards Act) prescribes that a dispute as to the validity of the election of a Chairman is to be decided by a Tribunal appointed by the Local Government, it follows that the Tribunal's jurisdiction to determine such disputes is exclusive and the jurisdiction of the Civil Courts is entirely barred. The Legislature cannot have Intended that the Civil Courts should also have, so to 6ay, dormant jurisdiction to decide the question and that that jurisdiction is to become active the moment the Local Government refuses to appoint a Tribunal.

11. In this case the Local Government bad refused to appoint a Tribunal and the aggrieved party challenged the action of the Government by filing a civil suit. In the second case reported at page 1008, ii was held by the Hon''ble Judges that having regard to the provisions of Section 20 clauses (1) and (2) of the District Boards Act, it is clear that the District Judge, when acting as the presiding officer of an election Court, is to have powers and privileges of a Civil Court but not the status. The District Judge acts as. psrsona designata and not as a Civil Court. Therefore no revision lies to the High Court. This was an application u/s 115 C. P. C. I am therefore of opinion that this Court has no jurisdiction to maintain the application.

12. In other words I have got no power to transfer the case and even if I had the power, would never have transferred this case as the grounds were frivolous and imaginary.

13. I therefore dismiss the application.

14. With regard to the question of costs, Mr. Hyder Husein has pressed for special costs. I entirely agree with him. - There is no doubt that the object of the petitioner was to somehow get an order of stay from this Court so (bat the present Judge may not get an opportunity to try the petition of election. If the petition for transfer had not been frivolus or bad not contained uncalled for and baseless aspersions on the learned District Judge, I would, have over looked the action of the petitioner in filing the application for transfer in this Court. I ant convinced that the application was frivolous and therefore the opposite party must be allowed substantial costs. The petitioner must be taught a lesson.

15. I therefore award Rs. 1,000 as special costs to the opposite-party. If the amount is not paid, the opposite-party will be entitled to recover it as a decree of this Court.