

(1932) 08 CAL CK 0011
In the Calcutta High Court

Mahomed Maijaddin Khan

APPELLANT

Vs

Janakiballav Dutta and Others

RESPONDENT

Date of Decision : 16-08-1932

Acts Referred:

Bengal Municipal Act, 1932 — Section 15
Civil Procedure Code, 1908 (CPC) — Section 9
Penal Code, 1860 (IPC) — Section 171E, 171F
Specific Relief Act, 1877 — Section 42

Citation : AIR 1933 Cal 492 : 145 Ind. Cas. 248

Judgement

1. This is an appeal by defendant 2 in a suit for a declaration that the plaintiff's election as a Commissioner of the Dacca Municipality was valid. At the Municipal election held on 19th July 1928, for Ward No. 2 of the Dacca. Municipality, the plaintiff obtained 1484 votes, Sita Nath De secured 1311 votes, Mahomed Maijaddin Khan obtained 825 votes. Of the total number of five candidates for election, the other two were able to secure seven and two votes respectively. The first two candidates named above were the successful candidates, so far as the election held on 19th July 1928, was concerned, as there were only two seats of Municipal Commissioners to be filled up, and for which purpose the election was held. After the election was over, Mahomed Maijaddin Khan, defendant 2 in the suit, appellant in this Court, filed a petition before the District Magistrate of Dacca, purporting to be one under Rule 40 of the Bengal Election Rules (1930), for declaring the election of the plaintiff void, on the ground that he had bribed the voters of the Ward concerned. An inquiry was held by the District Magistrate, and by his order passed on 29th September 1928, the District Magistrate declared the election of the plaintiff void. The suit out of which this appeal has arisen, was then instituted by the plaintiff for the purpose already mentioned; and as has been pointed out by the trial Court, the plaintiff wanted to have a declaration that he had the right and the legal character he got by being elected a Commissioner of the Dacca Municipality, which have been interfered with by the District Magistrate at the instance of the defendants. The decision of the trial Court was in favour of the plaintiff; the learned Munsif held that the whole story

regarding corrupt practice alleged to have been committed by the plaintiff was false and concocted, and that from all points of view the plaintiff's election was good, valid and regular, and that it was not liable to be declared void, as was done by the District Magistrate, on the application by defendant 2. The trial Court declared

the plaintiff's election as a Commissioner for Ward No. 2 of the Dacca Municipality was good and valid,

and that the plaintiff had

acquired good right to sit as a Commissioner on the Board of Dacca Municipality and do the function of that office.

2. On appeal by defendant 2, the real contesting defendant in the suit, the learned District Judge of Dacca affirmed the decree passed by the trial Court, after setting aside the finding of the Munsif on the question of corrupt practice, as irrelevant. According to the District Judge, it was unnecessary to deal with the question whether there was corrupt practice or not, as the District Magistrate had no jurisdiction under the Bengal Municipal Rules, to declare an election void, on the ground of corrupt practice. The question whether a civil Court had jurisdiction to try a suit of the present description, and the further question whether the suit was barred u/s 42, Specific Relief Act, appear to have been argued before the trial Court, but they do not appear to have been agitated before the learned District Judge on appeal. We have no hesitation in holding that in view of the provisions contained in Section 9, Civil P.C., and Section 15, Bengal Municipal Act, civil Courts have jurisdiction to try suits of the present nature. In our judgment, there can be no doubt that the suit is one of a civil nature; and there can be no reason why a civil Court should not have the jurisdiction to determine a question arising for consideration in the matter of maintaining or establishing a civil right of vital importance. As to the applicability or otherwise of Section 42, Specific Relief Act, it need only be mentioned that the section allows a suit by a plaintiff entitled to any legal character, against any person denying or interested to deny the right of the plaintiff, to any such legal character. The plaintiff claimed in the suit, to be entitled to be elected a Commissioner of the Dacca Municipality. Defendant 2 denied that right, and filed a petition to the District Magistrate, and the other defendants supported that defendant, so far as the denial of the plaintiff's right and his legal character were concerned. We are in agreement with the view expressed by the trial Court on this point, that it could not be the case that the plaintiff had no right of any sort or had no legal character by virtue of his having obtained the largest number of votes at the election of Municipal Commissioners. The plaintiff having secured the largest number of votes, instead of being a bar, Section 42, Specific Relief Act, entitled the plaintiff to pray for the declaration that his election was valid, and that he has acquired the right to sit as a Commissioner of the Dacca Municipality, and discharge the functions of that office. The main question raised in the case, a question of real importance—though a simple one—is the interpretation of Rule 40, Bengal Municipal Election

Rules (1930), which is quoted below:

40. All disputes arising under these Rules shall be decided by the Magistrate, and his decision shall be final. If he finds any material irregularity prejudicing the election he may declare the election void and order fresh election.

Note.-The offence of personation, of undue influence and of bribery at an election is punishable under Sections 171-E and 171-F, I.P.C., 1860, as amended by the Elections Offences and Inquiries Act 1920 (39 of 1920).

3. Had the District Magistrate, jurisdiction under this rule, to declare the plaintiff's election void on the ground of bribery, as he did by his order passed on 29th September 1928, on the application of defendant 2 ? There can be no doubt that elections can be declared to be void on the ground of corrupt practice by means of election petitions filed before tribunals appointed for the purpose; and there is the jurisdiction of Courts of Civil Judicature to give relief, where no such special tribunals are appointed. It is worthy of notice in this connexion, that municipal authorities in England, used for merely to deal with their own questions of disputed elections, but the jurisdiction is transferred now, to Commissioners appointed under Acts of the Legislature, and as it has been observed, whatever abuses or defects may have existed in the past, elections are now dealt with on sound and equitable principles, and that, even-handed justice administered by the Courts of law, is a guaranteed protection against all disturbing influences. Following the rule now prevailing in England, so far as municipal election petitions go, it may safely be laid down that neither any action on the part of the municipal authorities themselves, nor any action by the District Magistrate in whom is vested, as a controlling authority, certain powers under the Bengal Municipal Act, and the power to decide disputes arising under the Bengal Municipal Election Rules and declare an election void, in case of any material irregularity prejudicing the election can affect the rights of parties by having an election declared void in the case of corrupt practice in elections. As it stands, it is the function of the civil Court, on an election petition properly filed, to investigate the charge of corrupt practice alleged in the petition, and to declare an election void, and the general jurisdiction of the Court to give relief, has not been taken away by anything contained in Rule 40, Bengal Municipal Election Rules.

4. The rule is expressed in clear and simple language; and it cannot, in our judgment, be argued upon the rule as it stands, that the District Magistrate was the supreme authority to inquire into a charge of bribery, and decide whether one's election was valid, or that after the District Magistrate's decision under the rule that an election was void owing to corrupt practice, the civil Court had no jurisdiction to try the question of the validity or otherwise of the election. The dispute to be decided by the District Magistrate under Rule 40, must be one arising under the rules, and the District Magistrate was not authorized to decide the question of any irregularity not coming within the purview of those rules. Bribery as alleged in the case before us, and corrupt practice generally, are not

covered by the expression "material irregularity" as used in Rule 40; and corrupt practice was a subject which was according to the tenor of the rules, left wholly outside the scope of these rules framed u/s 15, Bengal Municipal Act, regarding five specified subjects: the division of the Municipality into Wards, the number of Commissioners to be elected for each Ward, the qualifications required to entitle persons, to vote for Commissioners, the mode of election, and the authority who shall dispute at elections. It may also be pointed out that Section 15 itself provides that nothing contained in the section nor in any rules made under the authority, of the Act, shall be deemed to affect the jurisdiction of the civil Courts. The argument advanced on behalf of the appellant based upon the note added to Rule 40, has no substance in it. The offence of bribery at an election is according to the note punishable under the Indian Penal Code, as amended by the Elections Offences and Inquiries Act 1920; and the reason for adding the note was simply this, that at the time of the publication of the Elections Rules in force before the Elections Offences and Inquiries Act 1920, came into force, there was no definite or specific provision in law, under which bribery at an election was punishable as an offence under the Indian Penal Code.

5. The intention of the Government in adding the note to Rule 40 could not have been the one suggested on-behalf of the appellant before us, that the decision of the District Magistrate on the question of bribery or corrupt practice was made final, so as to oust(SIC) the jurisdiction of the civil Court; in any view of the matter that intention has not been clearly expressed by the language of Rule 40 or of the note added to the rule. As indicated above, we are clearly of opinion that the District Magistrate had no jurisdiction under the Bengal Municipal Rules to declare the election of the plaintiff in the suit, void, on the ground of corrupt practice, and the decision of the District Magistrate was, in the case before us, ultra vires and without jurisdiction.

6. It remains to mention that we agree with the learned District Judge in holding that it was unnecessary to deal with the question whether there was corrupt practice or not, in the case before us. In the result, the decision of the Court of appeal below, affirming the decree passed by the trial Court, in favour of the plaintiff in the suit, respondent in this appeal, is affirmed, and this appeal is dismissed with costs to the plaintiff-respondent. The cross objection is not pressed and it is dismissed without costs.