
(1918) 04 CAL CK 0014
In the Calcutta High Court

Monoranjan Mukerjee

APPELLANT

Vs

Brojo Gopal Goswami

RESPONDENT

Date of Decision : 24-04-1918

Acts Referred:

Citation : (1918) 04 CAL CK 0014

Judgement

Chaudhuri, J.—This is an application under seo. 56 of the Calcutta Municipal Act for setting aside the election of one Brojo Gopal Goswami who was elected Municipal Commissioner at the election held on the 20th March this year in Ward No. 25. The rival candidate was Mr. Tarapada Ghosh. Before dealing with the merits of the application the following facts, which are practically undisputed, ought to be mentioned. In that Ward there are 743 voters having 1,573 votes. Eighty-one voters possessing 116 votes are dead. Forty-one voters having 121 votes were absent, and therefore the total number of votes available at that election was 1,336, out of which 1,139 votes were polled, that is to say, 197 votes only were not recorded. It appears that 608 votes were registered for Brojo Gopal Goswami and 451 for Tarapada Ghosh, giving the former a majority of 237 votes. Brojo Gopal says that he had in addition to the majority 52 more votes in hand which were not recorded, but whether that is so or not, is immaterial. The election is contested on these grounds; (1) that certain grog-shop owners had been dissuaded and did not vote through fear. They are said to have been dissuaded by Hem Chandra Lahiry, Inspector of Police, stated to be a relative of Brojo Gopal. Goswami and a friend of his. It is said by the Applicant that the Inspector threatened these people that if they voted he would interfere with their business. The Applicant is a person of the name of Monoranjan Mukherjee. He is an enrolled voter and says that he acted on behalf of Mr. Tarapada Ghosh. He was his election agent, although that is not stated in the petition. The Applicant states that he believes and charges that Hem Chandra Lahiry acted in manner aforesaid under instructions from and with the knowledge and approval of the said Brojo Gopal Goswami. The Applicant further states (2) that one Jugal Kissore Mandal was coerced to vote for Brojo Gopal by Ramtaran

Bannerjee who is described in one of the affidavits as an eminent and influential member of the Alipore Vakils' Bar and also by a person of the name of Akhil Chandra Bannerjee. Jugal Kishore Mandal is said to have promised to vote for Tarapada Ghosh. (3) The Petitioner further alleges that five persons were impersonated, four of them being dead and one absent from Calcutta, all these five votes being in favour of Brojo Gopal Goswami. Three of them, namely, Narain Shaw, Bachu Shaw and Bhagwan Shaw, are said to have been falsely identified by Brojo Gopal Goswami, the first two being said to have died long ago and the last being said to have been absent and that, by such false identification, it is charged that Brojo Gopal induced the polling officer to record those votes. It is alleged that Ramdhan Nag, Voter No. 317, and Lal Mahammad, Voter No. 238, are dead. It is not said that Brojo Gopal or his agents caused them to be impersonated. (4) Then there is a further charge that Inspector Hem Chandra Lahiry had interfered with the election, that he had freely canvassed for Brojo Gopal Goswami, that he intimidated and hustled voters wearing white badges which indicated that they were supporting Tarapada Ghosh, and abused and insulted persons canvassing for him, and ordered Paharawallas to obstruct and keep away persons wearing such badges, so that in many cases such persons from fear were persuaded to vote for the rival candidate. Interference of this Court is sought on the above allegations. The petition was supported by nine affidavits. The application is under sec. 56 of the Calcutta Municipal Act which is a stupendous "Act consisting of a very large number of sections, schedules, bye-laws; but there is nothing relating to the matter now before me except the solitary section above mentioned. It is curious that in an elaborate compendium of Municipal law the matter of corrupt practices in elections has not been provided for. It was somewhat of a relief to hear during the argument that this Act was going to be remodelled and recast. It is quite time it was. I feel it necessary to say that it has unduly burdened our work in this Court. Sec. 56 speaks of improper reception or rejection of votes and adds that a person may apply to a Judge of this Court if he questions the validity of an election " for any other cause." How much that expression includes, is difficult to say and unnecessary to consider having regard to the charges I have to deal with in this case. I shall first deal with the case made about impersonation. The persons who are said to have improperly voted are Narain Shaw, Voter No. 224, Bachu Shaw, Voter No. 646, and Bhagwan Shaw, Voter No. 236, Ramdhan Nag, Voter No. 317, and Lal Mahammad, Voter No. 238. So far as the last two are concerned, there is no contest that they are both dead, and some persons must have impersonated them; but nothing is said about Brojo Gopal Goswami or his agents having procured their impersonation. So far as the first three are concerned, a person of the name of Narain Shaw has appeared and filed an affidavit in which he says he voted at this election and denies that he died long ago or that his sradh ceremony was ever performed. He says that he is still carrying on business in Kali Bazar. Several affidavits were filed by the applicant stating that Narain Shaw had died about five years ago. A person of the name of Bachu Shaw has also appeared and says that he is alive and voted as he was entitled to vote. On

the electorate roll there are two Bachu Shaws, one Voter No. 219 and the other Voter No. 646. A very large number of affidavits are forthcoming from the applicant's side stating that Bachu Shaw, Voter No. 646, is dead. Nothing, however, is said, so far as Bachu Shaw, Voter No. 219, is concerned; but the vote which was recorded, was recorded as that of Bachu Shaw, Voter No. 646. In both these instances objection was taken on behalf of Tarapada Ghosh before the Polling Officer who enquired from Brojo Lal Goswami if he knew them, and Brojo Lal Goswami saying he did, their votes were recorded. So far as Bachu Shaw is concerned, his voting paper was produced before me and it appeared that No. 646 was written in blue pencil against the name apparently by the same person who signed that document in blue pencil, that is to say, the Polling Officer. With regard to Bhagwan Shaw, it is alleged on behalf of the applicant, that he was not in Calcutta on the 20th March and that, a person of the name of Bamprosad, his brother, voted for him. Bhagwan Shaw has appeared and filed an affidavit and states that he voted in person, and Ramprosad has also filed an affidavit stating that he did not vote for his brother. With regard to Bhagwan Shaw there are three affidavits which were procured by Tarapada Ghosh from Chapra, sworn to by the affirmants named Earn Ashis Ahir, Mangal Mahato and Bamdhan Raut. In answer to the above allegations made by the applicant, and in support of Brojo Gopal Goswami's answer to the charge, certain affidavits have been filed on his behalf. Some traders of the same Bazar, namely, Bam Charan Shaw, Ram Nath Marwari and Ram Nibash Marwari, as also a person of the name of Panchu Gopal Tikari who had business dealings with Narain Shaw and Bachu Shaw, support Brojo Gopal and say the real men voted. The applicant, however, has filed 13 more affidavits by way of reply. He has thus 22 affidavits as against eleven of Brojo Gopal Goswami. Now, in cases of impersonation the accepted law in England is that mens rea is an essential ingredient. Upon a careful consideration of all the affidavits, I am quite satisfied that Brojo Gopal Goswami did not falsely identify these persons. He believed that the persons who had come to vote were the persons Narain Shaw, Bachu Shaw and Bhagwan Shaw, that he knew them as Narain Shaw, Bachu Shaw and Bhugwan Shaw. Upon the affidavits before me, I am of opinion that Bachu Shaw, Voter No. 646, is dead; but that Bachu Shaw, who voted, came with a post-card from the Municipality, which had been delivered to him as a voter, and that he produced that post-card and voted. The number was taken by the officer from the post-card. I also accept Bachu Shaw's statement that he had also voted at the previous election. I hold that Brojo Gopal knew this man Bachu Shaw as a voter and that he identified him as such. I do not think he identified him as Voter No. 646. Two affidavits in reply have been put in by two Vakils of this Court who were agents of Tarapada Ghosh at the election, who say that Brojo Gopal Goswami identified Bachu and Narain as Voters Nos. 646 and 224. No such statement appeared in the original petition. If that was the case there is no reason why such affidavits were not filed in the first instance. It is not right that in matters of serious charges of this kind persons making them should be allowed to supplement the evidence after the charges have been answered. I hold that Brojo Gopal knew Bhagwan Dass who

voted, and that Bhagwan Dass was not impersonated by his brother. Amongst the affidavits in reply there is one from one Gobindram that Bhagwan Dass's brother Ramprosad gave out before he voted that his brother was absent and that he would vote on his behalf, which is difficult to believe. I hold that Narain Shaw who voted is recorded as Voter No. 224. He is supported by, amongst other things, the rent-receipt in his name annexed to his affidavit. So far as the two other persons are concerned, Lal Mahammad and Earn Dhan Nag, the inmost that can be asked is, that their votes should be struck off. If the person whose name is on the is shown not to have voted and it is also shown that the vote has been given Register in his name and nothing more is shown, the vote is only struck off on scrutiny. That is the law in England which one ought to follow in matters of election. With regard to all these five votes the utmost that can be contended is, that they should be rejected, nothing more, which still leaves Brojo Gopal with a very large majority. This is not a case of general impersonation but of individual personification and I do not think that Brojo Gopal can be charged with having wrongfully or fraudulently caused these votes to be entered in his favour. I accept his statement which has not been contradicted, that from the very early stages of the election he was leading by a large number of votes, almost throughout by about 100 votes. I was invited to hold an enquiry and have all these persons brought before this Court, including the Chapra men, to be examined. The suggestion was, that I should treat this as a suit and take such evidence as might be given by the parties. That has never been done, so far as I know, although in certain cases this Court has allowed the cross-examination of witnesses, upon their affidavits; but I do not think that this is a case in which I ought to allow it. Although some voters are alleged to be dead, or one of them absent, yet there is nothing to show that Brojo Gopal Goswami or his agent fraudulently or wrongfully caused improper personification.

2. I shall next deal with Jugal Kishore Mandal. Jugal Kishore Mandal has appeared and filed an affidavit stating that he was not coerced. This is a sufficient answer. It is difficult to believe that a person of his position could have been coerced, and, that, by such a person as Ramtaran Bannerjee, who is described as a leading and influential pleader of Alipore. There is no such person as Akhil Chunder Bannerjee. There is one person of the name of Akhil Chatterjee. Therefore, so far as Jugal is concerned the charge about him may be dismissed from consideration.

3. The next I shall deal with are the grogshops. It appears from the affidavit of Brojo Gopal Goswami, to which there is no answer, that there are 16 grog-shop owners who have votes; that six out of them voted, three in favour of Brojo Gopal and three in favour of the rival candidate. Now, so far as intimidation is concerned, treating the grog-shop owners as a community which is rather difficult to do, the fact that voters from amongst them have come and voted dispels the suggestions that they were intimidated. These grog-shop dealers must be presumed to be persons of ordinary mental strength; that they should have been so frightened by the appearance of Hem Chandra Lahiry or on account

of his interference as to refrain from voting altogether is inconceivable and unworthy of credit. Now, so far as Hem Chandra Lahiry's connection in this matter is concerned, I hold that it is untrue that he is a relative or a friend of Brojo Gopal Goswami's. The allegation has been contradicted by Brojo Gopal Goswami and Hem Chandra Lahiry, and there are no affidavits in support of the allegation of the Petitioner except his own statement in his petition. I think he was drawing upon his imagination when he said that he believed that Hem Chandra was interfering in the election in the interest of Brojo ? Gopal and at his instance. There is hardly any evidence to speak of with regard to this matter. In one of the affidavits in reply, one person has been named by one Jiban Kristo Mukherjee who is said to have expressed his desire to vote for Tarapada, but did not vote. Jiban Kristo Mukherjee says that Bhola Nath Shaw, owner of one of the wine shops, Baid to him that he could not vote as Hem Chandra Lahiry had asked him to vote for Brojo Gopal Goswami. Nothing further is stated to have been said by Bhola Nath Shaw, but Jiban Kristo adds to his affidavit a sentence to this effect "and the result was that he (Bhola Nath) did not come to the polling station at all to exercise his franchise for fear," which is an inference and not a statement which was made by Bhola Nath, and this, as I have said, is contained in an affidavit in reply, and therefore by itself of doubtful value. Bhola Nath has not made an affidavit. I cannot hold that the grog-shop dealers or the wine shopkeepers were as a community prevented from voting by the exercise of undue influence by Hem Chandra Lahiry. I am also unable to hold that any general intimidation was exercised by Hem Chandra Lahiry. It is untrue that voters supporting Tarapada wore white badges, only his canvassers did so. Hem Chandra is a police officer of position. The election was being held in Calcutta in the presence of a very large number of people, an election in which persons of position were taking part, and I find it difficult to believe that a person of the position of Hem Chandra Lahiry, who is the Inspector of that Ward, should have come forward and openly abused people, insulted them, intimidated them and pushed them with a big stick and generally publicly misbehaved himself. There is no such statement made by the two learned Vakils who acted as agents on behalf of Tarapada Ghosh in this election. There is nothing in their affidavits about the conduct of Hem Chandra Lahiry. Having regard to the nature of the charges made against a police officer of position, and pressed during argument, at one stage I thought it might perhaps be necessary to have him examined and cross-examined in Court; but after consideration I did not think that course should be adopted. Tarapada Ghosh has already instituted a complaint against him before the police authorities and it is under enquiry, and I do not think it would have been right to have him examined here pending the enquiry.

4. In the Thornbury's case ((1886) 4 O'M. & H. 66) referred to in Eogers on Elections, Vol. 3, 7th Ed., p. 333, Justice Field is reported to have said : " Again we must consider not whether any particular person or particularly nervous person was affected by it. We must take the elector as an average of ordinary men." I fail to find that there was any general intimidation in this case. In fact

from the numbers above given a very large proportion of the voters did vote; and even if it be taken that all the other voters did not vote through intimidation and would have voted for Tarapada Ghosh, that even would have left Brojo Gopal Goswami with a large majority. Influencing of individual voters avoids an election only when committed by a candidate or his agents, not otherwise. In the Staleybridgr's case ((1869) 1 O'M. & H. 66, 72) the law is thus summed up:-" In order to avoid an election on the ground of intimidation and undue influence it must be shown either that ((1886) 4 O'M. & H. 66) the rioting or violence was instigated by the candidate or his agents, for whom he is responsible, or that ((1869) 1 O'M. & H. 66, 72) it prevailed to such an extent as to prevent the election from being an entirely free election." "There is nothing to show that this was the case in this instance. I hold that Brojo Gopal Goswami was elected by the majority in this case voting in accordance with the law, and therefore his election ought to be upheld, and this application ought to be dismissed with costs. There is one matter to which I ought to refer. In the affidavit in reply filed by Mr. Tarapada Ghosh, he says in the fourteenth paragraph that a statement was made to a superior police officer by Mr. J. N. Sen, who was the Superintending Polling Officer, to the effect that he had not made any request to Hem Chandra Lahiry to see that no breach of the peace took place. As this statement was made in an affidavit in reply, the other side was not ready with an affidavit in answer, but learned Counsel stated that they had received a letter from Mr. Sen in answer to an enquiry made by his attorney. I thought it only fair under the circumstances that they should have an opportunity of meeting that allegation by an affidavit, and an affidavit was filed by Mr. Sen, copy of which was given to the other side. He says that he did make a representation to Lahiry, which does not bear out the statement made by Mr. Tarapada Ghosh. It is rather a curious feature of this election that a large number of Sikhs, Darwans, were-employed by Mr. Tarapada Ghosh. From the affidavit of Hem Chandra Lahiry and Brojo Gopal Goswami it is quite clear that a breach of the peace was apprehended by "their presence, and in fact their conduct was such that it necessitated police surveillance. Mr. Tarapada Ghosh's explanation is, that the Sikhs were present to protect his motor-cars so that they might not be used by Brojo Gopal Goswami or his agents, which is not quite satisfactory. I am disposed to think that the matter has been fought out in this way by Mr. Tarapada Ghosh at the instigation of some persons interested in contesting Brojo Gopal Goswami. He has also started criminal proceedings against Brojo Gopal Goswami for wrongful identification, which are still pending in the Criminal Court. It is regrettable that election matters are fought out in this way, and one feels that statutory provision should be made for the purpose of keeping matters of elections free from corruption and undue influence.