

(1942) 12 CAL CK 0006
In the Calcutta High Court

Moulavi Asimuddin Ahmed and Others	APPELLANT
Vs	
Md. Maizuddin Khan and Others	RESPONDENT

Date of Decision : 22-12-1942

Acts Referred:

Bengal Village Self-Government Act, 1919 — Section 6(1)

Citation : AIR 1943 Cal 189

Hon'ble Judges : Biswas, J; B.K. Mukherjea, J

Bench : Full Bench

Judgement

Biswas, J.—This is an appeal arising out of certain proceedings connected with the reconstitution of a Union Board at village Itail in the Jamalpur Sub-division of the district of Mymensingh. The appellants are four out of nine defendants against whom the suit had been instituted. Under Sub-section (1) of Section 6, Bengal Village Self. Government Act (Bengal Act 5 of 1919) the number of members of this Union Board had been fixed at nine, and by an order in writing under Sub-section (3) of the section, the Provincial Government had directed that one-third of this number should be appointed by the District Magistrate, leaving the remaining six seats to be filled up by election. The last general election took place on 12th January 1940, and defendants 4 to 9 were the persons returned at this election. Thereafter, the District Magistrate proceeded to appoint the three members required to complete the constitution of the board, namely, the two plaintiffs and defendant 3. In due course, under Rule 28 of the rules framed by the Provincial Government in this behalf under Clause (a) and (b) of Sub-section (2) of Section 101 of the Act, he caused a notification dated 12th April 1940, to be published in the Calcutta Gazette on 18th April following, containing the names of all the members, both elected and appointed. Following this publication, the District Magistrate also took the further step, under Rule 29, of directing the Sub-divisional Officer to issue an order on the Circle Officer to convene a meeting of the members for the purpose of electing a President from among them.

2. It appears, however, that before this meeting could be held, the District Magistrate thought it fit to issue a fresh notification revoking the appointment he had previously made of plaintiffs 1 and 2, and appointing two other persons in their places, namely, defendants 1 and 2. This notification was dated 22nd May 1940, and was published in the Calcutta Gazette on the 30th of that month. So far as defendant 3 was concerned, his appointment was left undisturbed. It is the propriety of this cancellation of the plaintiffs' appointment that is challenged in this suit. No reasons were assigned by the District Magistrate for the action he took, and the plaintiffs petitioned the Local Government for the reversal of the order. Pending the consideration of their representation, the Local Government adjourned the meeting for election of the President. Without however waiting for the ultimate decision of the Local Government, the plaintiffs commenced the present suit on 24th September 1940, in which they asked for a declaration that they had been validly appointed by the first notification of 12th April 1940, and that the cancellation of their appointment and the consequent appointment of defendants 1 and 2 were illegal and ultra vires. The District Magistrate was not made a party to the suit, but the plaintiffs prayed for a permanent injunction against defendants 1 and 2 restraining them from functioning as members of the Union Board, and they also sought to restrain the other defendants from attending or taking part in any meeting for the election of the President. Pending the hearing of the suit, the plaintiffs applied for a temporary injunction, and this was granted. But before the injunction matter was finally disposed of, the District Magistrate issued yet another notification dated 23rd December 1940 which was gazetted on 2nd January 1941, making a further change in the personnel of the appointed members. By this notification, he purported to cancel the appointment of defendant 2 on the ground that it was illegal, and restored the original appointment of plaintiff 2 in his place. No change was made regarding defendants 1 and 3.

3. The District Magistrate thereafter made a fresh order under Rule 29 for the election of the President, and acting under the directions of the Sub-Divisional Officer in this behalf, the Circle Officer issued a notice on 19th January 1941 calling a meeting for the purpose on the 30th. The fact of the temporary injunction which the Court had issued was brought to the notice of the District Magistrate : but he did not stay his hands, and the Circle Officer actually held the meeting on the date notified. Among others, defendants 1, 8, 4, 5 and 9 attended this meeting, and defendant 1 was elected the President. Thereupon the plaintiffs moved the Court for taking proceedings in contempt against the said defendants, and the learned Munsif found all of them guilty, and committed them to civil gaol for a term of six weeks. The order was upheld in appeal, but the appellate Court reduced the period of imprisonment to one week. It is against this order that the defendants have obtained Rule No. 990 of 1941, which was heard along with the appeal. Both the Courts below decreed the suit. They took the view that in the absence of any express provision in the statute the District Magistrate, having made an appointment u/s 6(3), Bengal Village

Self. Government Act, and published the name of the appointed member in the Calcutta Gazette as such, had no authority to cancel such appointment. Once an appointment had been made and notified, it could be cancelled only in the manner laid down in Section 12 of the Act, that is to say, by the District Board alone and on the conditions specified therein. In this view of the matter, the Courts gave the plaintiffs the declaration they had asked for, and also granted a perpetual injunction against the defendants. Hence the present appeal by four of the defendants as stated above.

4. In support of the appeal, Dr. Sen Gupta argued that the Courts below were wrong in holding that there was no statutory authority empowering the District Magistrate to cancel the appointment of the plaintiffs, and he relied on the provisions of Sections 17 and 22, Bengal General Clauses Act (Bengal Act 1 of 1899) which according to him conferred the necessary authority on the District Magistrate in this behalf. On behalf of the plaintiffs, on the other hand, it was strenuously urged by Mr. Abdul Ali that in so far as the plaintiffs were admittedly qualified to be appointed and had been validly appointed by the District Magistrate, it was not open to that authority to revoke the appointment by a subsequent notification. The learned advocate adopted the view taken in this respect by the Courts below and maintained that Section 12 laid down the only conditions on which a member could be removed after appointment, and this section made it clear that the only authority competent to take action in this direction was the District Board which was the supervising authority over all Union Boards under the Act. Mr. Ali stoutly resisted the suggestion that there was any inherent authority in the District Magistrate to cancel an appointment by virtue of the fact that he was the appointing authority. It was pointed out that this was not a case of the District Magistrate seeking to revoke an appointment on the ground that it had been illegally made, or made under a mistake, in the first instance. Cancellation of an appointment after it had been made and notified in the Gazette amounted to removal of the appointed member, and this would attract the provisions of Section 12 of the Act. It is not necessary for our present purposes to express any final opinion on the question, though we are inclined to think that there is a good deal of force in Dr. Sen Gupta's argument. Section 17, Bengal General Clauses Act, expressly provides that:

Where, by any Bengal Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

5. Section 22 again states:

Where, by any Bengal Act, a power to make orders, rules, by-laws or notifications is conferred, then, that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any orders, rules, by-laws or notifications so made.

6. It seems to be fairly obvious, as Dr. Sen Gupta contends, that if Section 17 does not apply to the present case, Section 22 will, but there is no reason why the matter will not come u/s 17. Mr. Abdul Ali argues that Section 17 will not apply because the power to make the appointment here is not conferred "by any Bengal Act" within the meaning of the section, and he relies on the terms of Sub-section (8) of Section 6, Village Self-Government Act, which says that the Provincial Government may direct by an order in writing that a certain proportion of the members of a Union Board shall be appointed by the District Magistrate. The suggestion is that the power to appoint is conferred on the District Magistrate, not by the Act, but by the order of the Provincial Government which is doubtless made under the Act. It is difficult to accept the subtle distinction which is sought to be made. The language used does not certainly mean that the appointing authority is the Provincial Government, and not the District Magistrate. It is quite true that the power to appoint cannot be exercised by the District Magistrate unless there has been an order by the Provincial Government, but all the same, the District Magistrate cannot but be said to derive his power to appoint from the Act itself.

7. There is, again, very little to be said in support of the other contention that Section 17 contemplates the suspension or dismissal only of a person whose appointment has become effective, and not of a person in the position of any one of the plaintiffs whose appointments were only notified in the Gazette, but who had not yet entered upon the discharge of their duties. It is sufficient to state that the notification was enough to clothe the plaintiffs with the full status of members, and in point of fact they had actually been served by the Circle Officer with notice of the meeting for the election of the President, which clearly amounted to recognition of their status as such. Even supposing that the appointing authority has power to suspend or dismiss a person appointed in the sense contended for by Mr. Abdul Ali, it is difficult to see why the appointing authority should not in that case have also the power of cancel an appointment before the stage is reached when the question of suspension or dismissal can be strictly said to arise. It is the express purpose of Section 17, Bengal General Clauses Act, to give the power of revocation to the appointing authority, unless of course a different intention appears. As to whether in the present case, a different intention may be found in the Act or in the rules made thereunder, all that we need say is that neither Section 12 nor any of the rules to which our attention has been drawn seems to afford any such indication. Section 12 merely specifies the conditions under which the District Board may remove a member of a Union Board, but that is a mere enabling provision, and does not take away the power which the District Magistrate may have as the appointing authority to act in this respect.

8. As I have said, however, it is not necessary for us to express any final opinion on these interesting questions which have been canvassed at great length before us. Suffice it to say that the present appeal may be disposed of on a shorter ground which was also urged on behalf of the appellants, namely, that the relief

sought for by the plaintiffs in the suit is hit by Section 17A, Bengal Village Self Government Act. This section which was inserted by the Amending Act, 8 of 1935, provides, in the first place, that no election of a member of a Union Board shall be called in question in any Court, and then goes on to say that no Court shall grant an injunction either (i) to postpone the election of a member, or (ii) to prohibit a person declared to have been duly elected from taking part in the proceedings of the Union Board, or (iii) to prohibit the members formally elected or appointed for a Union Board from entering upon their duties. It will be seen that Clause (iii) refers to appointed members as well as to elected members, whereas the other two clauses and the first part of the section deal only with elected members. Dr. Sen Gupta's contention is that Clause (iii) by its terms is expressly applicable to the present case in so far as the suit is one for a perpetual injunction against the defendants seeking to restrain them from functioning as appointed members. Mr. Abdul Ali contends, on the other hand, that taking the section as a whole, it should be read so as to bar interference by a civil Court only in respect of elected members and in election matters. He seeks to explain away the effect of clause (iii) by suggesting that the word "formally" therein must mean "validly" or "legally" so that according to him the jurisdiction of the civil Court to issue an injunction is ousted only where the appointment or election of the members is valid or legal, and not where the legality or validity of such appointments or elections is called in question. We do not think that such an interpretation is justified on the wording of the section.

9. It may be that the section deals more fully with the case of elected members than with that of appointed members. But, at the same time, it will not do to overlook the express provision contained in the last clause regarding appointed members, and we are not prepared to hold that the word "formally" occurring in this clause is meant to exclude cases where the injunction is sought for on the ground that the appointment is illegal or invalid. If effect were given to this view, it would obviously be for the civil Court itself to decide whether the appointment was valid or not before it could decline jurisdiction to interfere by means of an injunction. In our opinion, the proper interpretation to put upon Clause (iii) is to hold that the jurisdiction to issue an injunction is ousted as much in the case of disputed appointments as in that of disputed elections. It is no answer to point out that elaborate rules have been framed under the Act for the decision of all disputes regarding elections by the District Magistrate or other executive authorities, and not by the civil Courts, whereas there is no such provision made in the Act or in rules framed thereunder regarding disputes in connection with appointments. The reason may well be that the terms of the General Clauses Act read with Section 17A, Village Self-Government Act, were considered by the Legislature to be sufficient for the purpose of dealing with the case of appointed members. So far as we can see, the policy of the Act seems to be to oust the jurisdiction of civil Courts in all matters relating to the constitution of Union Boards, and not merely in election matters only, and this appears to be emphasised by the insertion of Section 17A. Reference may, in this connexion, be

made to Sajani Kanta Ghosal Vs. Bistoopada Meyur and Others, in which it was held that the civil Court had no jurisdiction even to entertain a suit for a declaration that a person was not validly appointed as a member of a Union Board because he was disqualified to be so appointed.

10. We must hold accordingly that the relief by way of injunction sought for by the plaintiffs in the present suit is not maintainable. It follows that if this relief cannot be granted, the Court will not make a mere declaration of the plaintiffs' legal right which it will not be able to enforce. It is not necessary for us to consider whether an injunction might have been granted against the District Magistrate. The fact remains, as already stated, that the District Magistrate was not a party to the suit. It is sufficient to hold that the plaintiffs are not entitled to the injunction they have asked for in the suit, and as the suit is practically rendered in fructuous unless there is an injunction, the suit, in our opinion, must fail. The result is that the decree made by the Courts below must be set aside, and the suit dismissed.

11. As regards the other matter arising out of the contempt proceedings, Dr. Sen Gupta did not press the point that as the injunction was without jurisdiction, his clients could not be held to have been in contempt for disobeying the same. He was prepared to accept the position that his clients were guilty of technical contempt, and offered an unconditional apology before us on their behalf for their action. By way of extenuation, however, it was pointed out that the defendants found themselves on the horns of a dilemma in so far as the question of their attending the meeting for the election of the President was concerned. The District Magistrate had been apprised of the temporary injunction, but still did not recall the order directing the meeting to be held for the election of the President, and the defendants felt that if they did not attend the meeting and the meeting was not held, the Board might effectively lose the right of electing a President. Taking all the facts and circumstances into consideration, we think that the ends of justice would be fully met by the apology offered by Dr. Sen Gupta on behalf of his clients, and we accordingly set aside the order which was made by the Courts below committing the defendants to civil gaol. In the circumstances of the case, we make no order as to costs either in the appeal or in the rule. No order is necessary in the other Rule No. 991(s).

B.K. Mukherjea, J.

12. I agree.