
(1966) 07 CAL CK 0006

In the Calcutta High Court

Case No : Civil Revision Case No. 656 (w) of 1965

Mrinal Mohan Mitra

APPELLANT

Vs

Addl. District Judge, 2nd Court, Alipore and Others

RESPONDENT

Date of Decision : 28-07-1966

Acts Referred:

Bengal Municipal Act, 1932 — Section 10, 11, 12, 13, 14

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : 70 CWN 1001

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Debi Pal, Prosanta Kr. Ghosh and Miss Manisha Seal, for the Appellant; B.C. Dutt, Saradindu Chatterjee and Sanjay Kr. Bhattacharjee, for the Respondent

Judgement

D. Basu, J.—In this petition under Article 226 of the Constitution, two short questions of law have been raised which are nevertheless nice and interesting. The first question is whether section 22(1) (f) of the Bengal Municipal Act, 1932, refers to a completed contract with the Municipality or whether the disqualification may attach to persons who have made a proposal of contract with the Municipality, say for instance, by making a tender. What happened in the instant case was that respondent No. 2, who carries on a tailoring business and had some contracts with the Municipality for supply of uniforms in the previous years up to the financial year 1962-63, stood for election to the office of the Commissioners of the Panihati Municipality and filed his nomination paper on the 2nd December, 1963. This nomination was rejected by the Election Officer on the ground that he was the proprietor of a tailoring business and had submitted quotations on the 15th July 1963 for the supply of uniforms to the Municipality and was, accordingly, hit by section 22 (1) (f) of the Municipal Act. This order of the Election Officer has been set aside by the Additional District Judge, Alipore, as an authority determining the election petition u/s 36 of the Act, on the ground

that on the date of filing the nomination paper respondent No. 2 had no contract with the Municipality and therefore the disqualification was not attracted. The petitioner challenges this decision of the learned Additional District Judge. Dr. Pal on behalf of the petitioner referred to the decision of this court in *Promode Lal Moitra Vs. Additional District Magistrate, 24 Parganas and Others*, in support of the proposition that the word "interest" in section 22 (1) (f) should be liberally construed. But this decision interpreted only the word "interest" and not the word "contract". Again, his Lordship, in that case, simply decided whether members of a joint family had sufficient interest in the business carried on in the name of the father so as to bring upon them the disqualification laid down in section 22 (1) (f). There is nothing in that decision to say that even before the contract was completed the disqualification would attach to a person. No authority has been cited to show that a disabling provision in the statute should be construed liberally to widen the disqualification prescribed by the Legislature. This point taken on behalf of the petitioner must, therefore, be rejected.

2. The second point urged is that section 36 of the Act prescribed a period of 10 days to file the election petition along with a deposit of Rs. 50/. In the instant case, though the petition was filed on the 10th day, the deposit was actually made on the 11th day and, accordingly, it is contended that the District Judge had no jurisdiction to entertain the petition, so that his order on the election petition should be treated as invalid. The relevant portion of section 36 is as follows : --

If the validity of any election of a Commissioner is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time, within ten days after the date of the declaration of the result of the election file a petition before the District Judge of the district within which the election has been or should have been held and shall at the same time deposit fifty rupees in court as security for the costs likely to be incurred.

3. There is no doubt that the election petition has to accompany the deposit of Rs. 50/- and that the petition would be completed only when the deposit would be made, that the making of the deposit should be made simultaneously and that before the expiry of ten days from the date of declaration of the result of the election. But in the instant case what happened was that though respondent No. 2 brought to Court the election petition on the 20th May and also got a challan for deposit of Rs. 50/- passed by the Dist. Judge's office for making the deposit in the Collectorate Treasury, he failed to deposit the money at the Treasury because, owing to a general strike, there was no employee at the Treasury to receive the money and the opposite party No. 2 was accordingly obliged to make the deposit on the following day, that is, on the 21st May. The Additional District Judge received this deposit as valid deposit and made his decision on the election petition. He has, as a matter of fact, found that the petitioner's case of the Treasury being closed on account of a general strike was true, since the learned Additional District Judge himself could not attend court on that day owing to the

same reason. The Additional District Judge goes to the length of believing further that on his return from the Collectorate Treasury the petitioner's pleader's clerk requested the Court to give permission to deposit the amount in the office of the court, but that that was refused,--perhaps on technical grounds. The substance of the matter is that owing to no fault of the petitioner and owing to the Public Treasury being closed and to the impracticability or refusal of the District Judge to accept the money in his own office, the petitioner could not make the deposit within the time limited by the statute; but the delay was condoned by the District Judge on the grounds referred to above. The question then arises whether the District Judge had the jurisdiction to condone the delay. It is true that section 36 itself does not give the District Judge any power to condone the delay, but the situation would be otherwise if section 5 of the Limitation Act were applicable to the period of limitation prescribed by section 36. Section 29 (2) of the Limitation Act, 1963, provides as follows :-- (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in (sections 4 to 24, inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

Under the old Act of 1908, when the special period of limitation was prescribed for any proceeding by special law the provisions of section 5 of the Limitation Act were not attracted to any such period of limitation, unless expressly provided for in the special law; but the wording of this clause has been changed by the Act of 1963 to attract the general provisions from sections "4 to 24" of the Limitation Act, unless they are "expressly excluded by special or local law." Corresponding changes have been made in section 5 of the Act of 1963. Previously section 5 applied to an application under any special Act only if it was made applicable by that Act, but those words have been omitted and the new section of the Act of 1963 says--

Any appeal or application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period.....

There is nothing in the Bengal Municipal Act, 1932 to exclude the operation of the general provisions of the Limitation Act. It has, however, been contended by Dr. Pal that the provisions in section 29(2) or section 5 of the Limitation Act are applicable only to an "application", but this was an election petition u/s 36. It was held even under the old Act of 1908 that the word "application" was to be liberally construed and was not confined to an application under the Code of Civil Procedure. If it were otherwise, the question of applicability of section 5 to any special or local law, could not possibly arise. Section 5, as it now stands on the Act of 1963, makes this clear. I do not find any reason why an election petition

provided for by the Bengal Municipal Act, 1932 should not come within the words "any application" for the purpose of applying section 5. Before parting with this matter, I must also refer to the provision in Rule 2(2) of the Rules framed under the Bengal Municipal Act, 1932 which says :

If the provisions of section 36 of the Act regarding deposit of security are not complied with the Judge shall dismiss the petition.

This Rule purports to have been framed u/s 44(f) of the Act which says that--

the State Government may make such rules as it may think fit to regulate and determine-- the procedure to be followed by a Judge in inquiring into election petitions.

I have great doubts whether the State Government was authorised to make any rule to interpret section 36. Its business was to lay down the procedure of holding an inquiry, which is provided for in section 37. Apart from that, if, by way of interpreting section 36, the administrative authority goes beyond the statutory provision itself, it would become ultra vires; and if it does not, it would be meaningless, because the subordinate legislature or the rule-making body is not asked or empowered to interpret the provisions of the statute, made by the Legislature. Besides, if my conclusion that section 5 of the Limitation Act is attracted to the interpretation of section 36, be correct, nothing in the rules made u/s 44 can displace that conclusion. In my opinion, the District Judge's condonation of the delay, in the circumstances referred to above, cannot be held to be an order made without jurisdiction.

Therefore, both the points taken in support of the petition having failed, the Rule is discharged. But in the circumstances of this case, I make no order as to costs.