

(1914) 07 CAL CK 0002
In the Calcutta High Court

Narendar Nath Basu

APPELLANT

Vs

H.L. Stephenson

RESPONDENT

Date of Decision : 31-07-1914

Acts Referred:

Citation : 31 Ind. Cas. 618

Hon'ble Judges : Woodroffe, J;Coxe, J

Bench : Division Bench

Judgement

Woodroffe, J.—It has been pointed out to us on behalf of the appellant that the rules were published u/s 33(2)(a), and it has been argued that Clause (a) refers to the election after the Medical Council has come to existence, and not to the election for the purpose of bringing the Council into existence. Therefore, it has been argued that the rules were "ultra vires," although it is conceded that they would have been valid, had the notification purported to proceed under the first Clause of Section 33. This argument was not raised in the first Court. But if we assume without deciding that the rules were ultra vires as is contended, then the application must fail; for it is clearly based on the assumption that the rules were not ultra vires, but that they were valid rules which had not been given effect to in one particular by the Returning Officer; for, what the application asked for is an order on the Returning Officer to publish, by notification in the Calcutta Gazette as a part of the Election Roll published in the Calcutta Gazette on the 15th July 1914, the name of the applicant as a person qualified to vote and to do all acts and things necessary in that behalf. Whereas, if there were no valid rules under which the election took place, the remedy would not be mandamus, but if there were a remedy at all, it would be in the nature of an injunction staying proceedings which were challenged on the ground of their invalidity. It is quite obvious to me that, when this notice of the applicant was issued on the 24th July 1914, it was not intended to dispute the validity of these rules, but to proceed upon the assumption that valid rules had not been given effect to. I need not further consider this matter, because it was not argued in the Court, of first instance, and the Local Government who would be affected by any decision as to

the validity of the rules which they have published are not before the Court. This argument, in my opinion, fails. I do not wish to express any opinion upon the argument itself as to whether the rules are or are not ultra vires, for it is not necessary to do so. I may note, however, that it is pointed out on behalf of the respondent that these rules in the Bengal Medical Act are in the same terms which govern the election in the Council of the Government of India. Assuming then that the rules are valid, the question is whether the applicant has made out a case. Now under Rule 16, the decision of the Local Government on any question that may arise as to the intention, construction or application of these rules shall be final, and u/s 27 of the Act, no suit or other legal proceedings shall lie in respect of any Act done in the exercise of any power conferred by the Act on the Local Government, or the Council or the Registrar. The act which is there referred to is not one done by the Local Government, but done in exercise of any power conferred by this Act on the Local Government. Moreover, what is referred to in the notice is not an omission, even if there is any force in the contention which distinguishes between the words "act" and "omission." It has been conceded on behalf of the applicant that the object of the Act was to oust the jurisdiction of the Court. But it has been submitted to us that this was the intention of the Act when and after the Bengal Medical Council was constituted and that the Courts were to exercise jurisdiction up to that point. I cannot myself believe that this was the intention. I need not dwell upon this part of the case, because I agree with Mr. Justice Chaudhuri who would have been, as he says, willing to have acceded to the application, if he thought that he could under the law possibly do so. I agree with him that it is not open for us to interfere. On the facts, it has been conceded that the case is a hard one, because there is no doubt that the applicant is a person who is qualified to be registered under the Act. It is admitted that he is a Licentiate in Medicine and Surgery of the University of Calcutta. The fact that he was a Licentiate in Medicine and Surgery of the University of Calcutta was not considered, with the result that his name was excluded from the list. As Mr. Justice Chaudhuri has pointed out, it was owing to inadvertence that the name of the applicant had been omitted from the list. I think, however, that there is much force in the contention that after the list had been published under Rule 4, it was final and conclusive, and the Returning Officer was functus officio.

2. Mr. Mitter, who appeared on behalf of the respondent, pointed out to us that under Rule 16, the Local Government has power to decide questions arising as to the intention, construction or application of these rules, and certainly it is a question of construction of these rules as to whether or not there can be said to be a final and conclusive publication under Rule (4), so far as the applicant is concerned, seeing that there has been no consideration of his case, as I have already described, under Clause (3). For, it may be reasonably contended that Clause (4) is to be read as subject to Clause (3), if effect is to be given to both provisions. The only remedy which appears to me to be open to the applicant is to represent his case to the Local Government. So far as we are concerned, we

have no jurisdiction to interfere. The result is that this appeal must be dismissed.
No costs are asked for.

Coxe, J.

3. I agree.