
(1965) 01 CAL CK 0005

In the Calcutta High Court

Case No : Civil Revision Case No. 268 (w) of 1964

Phanindra Nath Lahiri and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-01-1965

Acts Referred:

Bengal Municipal Act, 1932 — Section 123, 15, 20, 23, 6

Citation : 69 CWN 410

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Mukul Gopal Mukherjee and Gautam Prosad Chatterjee, for the Appellant; A.C. Mitra, Ajoy Basu, Ambica Charan Bhattacharjee and Nani Gopal Das, for the Respondent

Judgement

Banerjee, J.—The petitioners, who are four in number, claim to be rate payers of Serampore Municipality. The petitioner No. 1, claims to have his permanent residential house within the limits of the municipality but says that he resides, for the present, at Kanpur, in Uttar Pradesh. The petitioner No. 2 carries on business within the municipality, but does not ordinarily reside there. Petitioners Nos. 3 and 4 have their house properties within the limits of the municipality but they reside at Calcutta. Their names, it is alleged, used to appear in the electoral roll for election of commissioners of the municipality but was omitted therefrom in the general election of the municipality, held on February 23, 1964. The petitioners say that their names were omitted by operation of certain amendments introduced in sub-sections (2) and (3) of section 23 of the Bengal Municipal Act, 1932, which according to them, was un-constitutional. They also feel aggrieved by a notification dated August 26, 1962, made u/s 20 of the Bengal Municipal Act, 1932, by which the municipality was divided into 28 wards representing a single member constituency each. The said notification is quoted below:- No 1486M-26th August, 1962-In exercise of the power conferred by section 20 of the Bengal Municipal Act, 1932 (Bengal Act XV of 1932) delegated to the Commissioners of Divisions under Government notification No. 4394M.,

dated the 18th May, 1956, I hereby determine, after considering the views of the Commissioners of the Serampore Municipality at a meeting, that the Serampore Municipality in the district of Hooghly shall, for the purpose of election of commissioners, be divided into 28 Wards, each representing a single member constituency.

The description of the boundary of each ward is given below:-

The petitioners say that as far back as the year 1958 the State Government had decided to fix the number of commissioners of a municipality on population basis. The said decision (Annexure E to the petition) is quoted below:-

The undersigned is directed to invite a reference to the Government orders on the above subject noted in the margin, copies of which are enclosed for ready reference. In the said Government orders, the main criterion laid down for determining the number of Commissioners of a municipality, was the voting strength, which is, however, a variable factor and changes at the time of each general election. As a result, proposals are received for altering the number of commissioner on the basis of the voting strength shortly before a general election and difficulties often arise in holding the election on the due date in cases where such proposals are found to deserve consideration. In the opinion of Government there should not be too frequent changes in the number of commissioners of a municipality and the number once fixed should remain constant for a period of at least 10 years. In their view, population, according to the last census, offers a more constant and satisfactory criterion for fixing the number of commissioners. After due consideration and with a view to avoiding too great an increase in the number of commisioners of municipalities, which is not always conducive to their-efficient functioning, Government have decided that the number of commissioners to which a municipality is entitled should first, be calculated on the basis of its population as per the last census according to the following scale and it should then be considered whether any variation of that number should be made having regard to the other factors mentioned in clause (i) of sub-section (1) of section C of the Bengal Municipal Act, 1932.

Population.

Number of Seats.

10,000 and below

9

10,001 to 12,500

10

12,501 to 15,000

11

15,001 to 17,500

12

17,501 to 20,000

13

20,001 to 25,000

14

25,001 to 30,000

15

30,001 to 48,000

16

48,001 to 50,000

17

50,001 to 58,000

18

58,001 to 66,000

19

66,001 to 75,000

20

75,001 to 83,000

21

83,001 to 91,000

22

91,001 to 1,00,000

23

Above 1,00,000 (except in the case of the Howrah Municipality)

25

The Howrah Municipality

30

It is requested that proposal for alteration of the number of Commissioners of municipality may in future be examined in the light of the principle indicated above and submitted to Government at least six months before the date on which their general election is due.

The petitioners allege that the Serampore Municipality, having a population of about 91,500, should not have been allotted more than 23 commissioners, in violation of the Government decision.

2. The sub-sections (2) and (3) of section 23 of the Bengal Municipal Act, 1932, as it stood prior to the amendment of the West Bengal Act XXII of 1962, provided:

(2) A person shall not be entitled to vote at an election of Commissioners in any municipality unless such person,

(i) has attained the age of twenty-one years, and

(ii) is citizen of India or being an alien has been exempted from the disabilities imposed by the Bengal (Aliens) Disqualification Act, 1918, and

(iii) has, for a period of not less than twelve months immediately preceding such election, been resident within the limits of the municipality, or has for the said period immediately preceding such election been in occupation of a holding and carrying on any trade or profession, within the said limits, and either.

(a) has, during the financial year immediately preceding the year in which such election is held, paid, for such financial year, any sum in respect of the municipal rates specified in clause (a), (b), (c) or (d) of sub-section (i) of section 123 or in the case of the Municipality of Howrah, any sum as consolidated rate under the provisions of the Calcutta Municipal Act, 1923, as extended to that Municipality or paid, in respect of municipal fees and taxes for such financial year, an aggregate amount not less than the sum prescribed by the State Government in this behalf as a minimum for the municipality:

Provided that any person shall be entitled to vote at the first election held under this Act who has, during the financial year immediately preceding the year in which such election is held, paid, for such financial year, any sum in respect of rates as defined in section 15 of the Bengal Municipal Act, 1954,

or

(b) has, during the said financial year, been assessed to income tax,

or

(c) being a graduate or licentiate of any University, or having passed the Matriculation Examination of the Calcutta University, or a corresponding standard of the same or any other University, or the High School Examination of the Board of Intermediate and Secondary Education, Dacca, or the Senior Madrasah Examination under the old or the reformed scheme, or the Sanskrit Title Examination of the Calcutta Sanskrit Association, or being a registered medical practitioner under the Bengal Medical Act, 1914, or holding a certificate authorising him to practise as a pleader or as a mukhtear or as a revenue agent, lives in a holding, or part of a holding in respect of which there has been paid

during the said financial year, any sum as municipal rates for such financial year.

(3) No person shall be entitled to vote at an election of Commissioners in any municipality who has been adjudged by a competent court to be of unsound mind.

3. The sub-sections were amended by section 5 of the West Bengal Act XXII of 1962 in the following manner:

5. In section 23 of the said Act,-

(1) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Save as otherwise provided in this Act, a person who resides in a ward of the municipality and whose name is included in the electoral roll for the time being in force for election of members to the West Bengal Legislative Assembly from an area which includes the area comprised in the municipality shall be qualified to be an elector of that ward." The amendment came into force on January 24, 1963. The petitioners feel aggrieved by the amendment because for want of residential qualifications their names were omitted from the electoral roll of the municipality.

4. The amendment to the Act and the notification, dated August, 26, 1962, were challenged by the petitioners on various grounds but at the time of issuing the Rule, Sinha, J. limited the Rule to grounds (a), (e), (g) and (h) which I set out below:

(a) For that the provisions of the Bengal Municipal Amendment Act (XXII of 1962) is wholly unconstitutional in that it tends to put unreasonable restrictions upon the petitioners' fundamental rights to hold property by depriving them of their right to participate in the Municipal Administration including taxation in spite of being rate payers and as such the election on the basis of such amendment is entirely illegal and invalid.

(e) For that the said amendment is wholly inconsistent and/or contrary to and/or ultra vires the provisions of ss. 6, 7, and 8 of the Bengal Municipal Act (XV of 1932) in that while rate payers in the aforesaid provisions have been given the right to participate in the matter of constitution and/or alteration and/or division and/or reconstitution of the Municipality and/or the alteration of the number of Commissioners of the Municipality they have been denied the right to be a voter in the election of such Commissioners.

(g) For that the State Government having decided to alter the number of Commissioners of the Municipality within the State according to the population of such Municipality the election held prior to such alteration of the number of Commissioners is entirely illegal, invalid and void.

(h) For that in any case it being clearly incumbent upon the State Government to alter the number of Commissioners of the said Municipality in view of their own order the election held prior to such alteration is entirely illegal, invalid and void.

The petitioners proved for a writ of Mandamus directing the respondent authorities to recall, cancel and withdraw the amendment to the Bengal Municipal Act and also the notification, dated August 26, 1962, for a Writ of Certiorari quashing the amendment to the Act and also the impugned notification and for Writ of quo Warranto restraining the commissioners (respondents 5 to 321 of the municipality from usurping the powers and obtained this Rule.

5. The first ground, in my opinion, is wholly misconceived. The right of the petitioners to hold property has not in any way been affected or restrained by reason of the amendment. The amendment has merely introduced material alteration in franchise law. Municipal elections must now be held on the basis of adult franchise. On this basis, a person must be an adult and must be resident within the jurisdiction of the municipality concerned. Both these qualifications existed under the old law but there were other qualifications also. Now, if the name of an adult resident in a Ward of a municipality be borne in the electoral roll, for the time being in force, for election of members to the West Bengal Legislative Assembly, for an area which is comprised in the municipality, he becomes a voter. Now, right to vote is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it (vide N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,). Regard being had to the limited scope of the Rule, the amendment cannot be challenged as ultra vires the Constitution or an enactment beyond the legislative competence. That being so, if the law has limited the right of property owners or business men in the matter of voting, the petitioners cannot claim any right to vote unless they become qualified under the law as it now stands after the amendment.

6. I now turn to grounds (d) of the petition. Sections 6, 7, and 8 are in part II, Chapter II of the Bengal Municipal Act, which chapter deals with creating of municipalities. How can an amendment to section 23 be ultra vires those sections is difficult to understand. Be that as it may, even if the law requires consideration of objections by local inhabitants or rate payers in the matter of constitution, abolition or alteration of limits of a municipality, it is no argument that right to vote must be conferred on all of them. Franchise must be regulated by statute and nobody can otherwise claim it.

7. I now take up for consideration grounds (g) and (h) together. The circular, dated October 30, 1958, contains expression of an opinion by the State Government. But because the State Government expressed an opinion at one stage, it must not be irretrievably bound thereby. The notification dated August 26, 1962, was published under powers conferred upon the State Government by section 20 of the Bengal Municipal Act, which reads as (sic):

"The State Government may, in case of new municipalities of its own motion, and in case of municipalities already in existence at the time the notification is made, after consideration of the views of the Commissioners at a meeting, by notification, divide any municipality into wards for the purpose of the election of

Commissioners and determine the number of Commissioners to be elected from each such ward." The expression of the opinion in the circular did not delimit the exercise of the power of the State Government u/s 20, if that power was exercised according to law.

8. I, therefore, find no substance in these grounds. In the view that I take I discharge this Rule.

9. There will be no order as to costs. All interim orders stand vacated.