
(1918) 03 CAL CK 0020
In the Calcutta High Court

Rai Bahadur Mani Lal Nahar

APPELLANT

Vs

Mowdad Rahaman

RESPONDENT

Date of Decision : 23-03-1918

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1919 Cal 935 : 48 Ind. Cas. 736

Hon'ble Judges : Lancelot Sanderson, C.J.; John Woodroffe, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal by Rai Bahadur Mani Lal Nahar against the judgment of my learned brother Mr. Justice Chaudhuri. The matter came before the learned Judge by way of a petition u/s 45 of the Specific Relief Act by one Mowdad Rahaman, who was a candidate for election as a Municipal Commissioner for Ward No. 14 at the Sixth Municipal Election, and upon that petition it was ordered that the Chairman of the Corporation of Calcutta and Rai Bahadur Mani Lal Nahar, another candidate for election as a Municipal Commissioner for the said ward at the said election should show cause why he should not declare the nomination paper " of the said Rai Bahadur Mani Lal Nahar invalid. The Rule was made absolute by the learned Judge, who delivered the following judgment: "This application has been made at a very late stage and I am strongly inclined to hold that it is the result of the decision of this Court in a similar matter which has been before me and the Appellate Court, but it must be said at the same time that no other remedy is open to the applicant. It has been held in a similar case that want of description of a candidate in a nomination paper is a fatal objection. The title such as Rai Bahadur which a man may hold is not his description." The learned Judge then said that he, therefore, held that the nomination paper in question ought not to have been accepted. He then referred to a decision of Mr. Justice Norris reported as Rajendra Lal Mittra. In the matter of 19 C.195 n : 9 Ind. Dec. (N.S.) 575, and following the precedent of that case be directed that the nomination of Rai Bahadur Mani Lal Nahar should be expunged from the list.

2. The facts are as follows:

The appellant sent in his nomination paper on the 4th of March in this year. The last day for sending in the nomination papers was the 5th of March 1918, and, - according to the affidavit of the appellant, it appears that he was informed by Mr. Sen, Solicitor to the Corporation, that the applicant, that is to say, Mowdad Rahaman, or any candidate for election could have seen the nomination paper at any time thereafter. On the 16th of March a list of the candidates who had been nominated was published. On the 18th of March my learned brother Mr. Justice Woodroffe and I delivered a judgment in the election case appeal between Narendra Nath Mitter v. Radha Ckaran Pal Bahadur 48 Ind. Cas. 314 : 22 C.W.N. 943 : 28 C.L.J. 289, a case, which I shall have reason to say later on, was of a very different nature from the present one. On the afternoon of the same day the applicant in this case applied to the Chairman of the Corporation to reject the nomination paper of Rai Bahadur Mani Lal Nahar, the appellant in this case. The grounds for that application were that the nomination paper did not contain any description of the said; Rai Bahadur Mani Lal Nahar, and that he had been seconded by one Rai Sahib Hara-dhan Basu who was not a voter in the said Ward No. 14, as appeared from the printed copy of the Election Roll prepared and published by the Chairman. The Chairman of the Corporation declined to entertain this application on the ground that it was too late. On the 19th, the following day, a petition was presented before my learned brother Mr. Justice Chaudhuri and the order nisi which I have already read was made, at 11 o'clock in the morning. The hearing of the Rule was fixed for 4 P. M. on the same day, and at or about that time the learned Judge made the order absolute upon the grounds which are stated in the judgment which I have already read. The next, day, the 20th, was the day for the election., On that day Mr. Avetoom, the learned Counsel for the appellant, applied to this Court for leave to serve short notice of appeal upon the respondent, and this Court granted him that leave and directed that notice should be served upon the respondent for the hearing of the appeal on the following day, namely, the 21st. On the 21st, the day after the election had taken place, this appeal was heard by my learned brother Mr. Justice Woodroffe and myself; it was adjourned for further argument until yesterday, and on that occasion we reserved judgment until this morning. These are the facts of the case.

3. Now, the section under which this application was made was Section 45 of the Specific Relief Act, I of 1877. Before I read that section it is necessary to refer to Section 30 which provides: "Neither the High Court nor any Judge thereof shall hereafter issue any writ of mandamus." But by Section 45 certain powers are given to the High Court which the High Court can exercise, subject to the conditions which are specified in the proviso. Section 45 runs as follows: "Any of the High Courts of Judicature at Fort William, Madras, and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its Ordinary Original Civil Jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any Corporation or inferior

Court of Judicature",

4. Then there are five provisos added to the section. Proviso (6) is as follows: "That such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such Corporation in its corporate character. Proviso (c) is as follows : "That in the opinion of the High Court such doing or forbearing is consonant to right and justice."

5. It is not disputed that the conditions contained in the provisos (a) to (e) in this section are cumulative; and, the effect of the section is dealt with in the decision of the Bombay High Court in *Shiva Nathaji v. Joma Kashinath* 7 B. 341 7 Ind. Jur. 656 : 4 Ind. Dec. (N.S.) 229 (F.B.), the judgment being delivered by Mr. Justice West. The passage which I desire to read is at page 370, and is as follows : "The Specific Relief Act, -I of 1877, Chapter VIII, in abolishing the writ of mandamus, enacts that the High Court may require "any specific act to be done or forborne within the limits of its Ordinary Civil Jurisdiction by any...inferior Court of Judicature" there it is not an inferior Court of Judicature, but a public officer), but the conditions are imposed (a) of a wrong to the applicant; (6) of a duty clearly incumbent on the inferior Court; (c) consistency of the order sought with justice; (d) that the applicant has no other specific and adequate legal" remedy! and (e) "that the remedy given by the order will be complete." These provisions, which express the results of an experience of centuries gained by superior Courts in England, working without statutory limits to their jurisdiction, show very clearly the proper conditions of peremptory interference even when there has been an excess of jurisdiction, or a failure to exercise it, by the lower Court." Then the learned Judge proceeded to slate certain conclusions which the Court thought might be deduced with reference to the whole subject. I need refer to one only, which is No. 6. It runs as follows: "The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretional, and subject to considerations of the importance of the particular case, or of the principle involved in it, of delay on the part of an applicant and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for, or against, the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated." The learned Counsel for the respondent did not dispute the accuracy of the conclusions which the, learned Judge's deduced in this case. Consequently we may take it that the principles there stated are the principles upon which we ought to act in this case.

6. Now, having regard to the facts of this case which I have already stated, and" having regard especially, to the delay which occurred in presenting "the petition by the respondent, and the fact that no one could possibly be misled by the description or want of description in the nomination paper, if I had been sitting as the Court of first instance, I should have had considerable doubt whether the Rule should have been made absolute. But in any event if the Rule were to be made absolute, I am of opinion that it should have been limited to a direction to

the Chairman of the Corporation to exercise his jurisdiction and to hear and determine the application which had been made to him and which he had refused to entertain on the ground that. it was too late. The application to the Court was based on the ground that the Chairman failed to perform his duty as a person holding a public office in refusing to entertain the petition, and I think that the order, if made at all, should have been confined to a direction to him to perform that duty. We, however, are not sitting as a Court of first instance but as a Court of Appeal. The order of the learned Judge was in fact made that the name of the appellant should be expunged from the list of nominated candidates, The Chairman of the Corporation was bound to give effect to that order. The result was that the Appellant's name was expunged from the list, and the name of Mowdad Rahaman was the only name appearing on the list of nominated Candidates; and, by reason of one of the rules (Rule 5) for the "conduct of election," which provides that "in the event of there being not more than one candidate for election in any ward, such candidate shall be deemed to be elected," Mowdad Rahaman, being the only nominated candidate, has been deemed to be elected as Commissioner of that Ward, Therefore, it appears to me that if we were to allow this appeal and to give a judgment on the above-mentioned ground overruling the decision of the learned Judge such a judgment would be infructuous: for the appellant's name has been expunged from the list of nominated candidates, the election has taken place without the inclusion of the appellant's name in the list of candidates, and we have now, on this appeal, no power to set that right, For this reason, I think that we should not allow this, appeal.

7. I express no opinion on the question whether the addition of the words "Rai Bahadur" to the appellant's name taken by itself, or in conjunction with the statement that the appellant is recorded as a Voter" No. 679 of Ward No. 14, is a sufficient "description" within the meaning of the rule: It is not necessary for my judgment, and as far as I am concerned, this question is left open, In the case of Narendra Nath Mitter v. Radha Charan Pal 48 Ind. Cas. 314 : 22 C.W.N. 943 : 28 C.L.J. 289 we did express the opinion that the words "who is recorded as Voter No. 1553 of Ward No. 6" by themselves were not a "description" within the meaning of Rule 2 (a). This opinion was expressed at the instance of the learned Advocate General who appeared for the appellant, but it was not necessary for our decision in that case: for, in that case, amongst other objections it appeared that the person who had signed the nomination paper as a seconder had signed as an approver also, which we held was not in order. Further, one of the names appearing as that of an approver was the name of a firm and not that of a voter and consequently there were only 16 approvers instead of 13 as required by the rate. There were other reasons to which I need not refer: It is sufficient for me to say that in the previous case there were substantial objections to the nomination paper, whereas in this case to my mind the objections are trivial and unsubstantial.

8. For these reasons the appeal, in my judgment, must be dismissed but in view

of the facts of the case I think that it should be dismissed without costs.

Woodroffe, J.

9. Had this case come before me as Judge sitting on the Original Side, it would have been a matter of considerable doubt whether the case was one in which this Court should interfere u/s 45 of the Specific Relief Act.

10. But the learned Judge has in fact made the order and directed that the appellant's name should be expunged from the published lists of candidates. As a result, the Chairman, being obliged to obey the order of the Court, has expunged the name of the appellant, with the result that the respondent has been deemed to be elected.

11. The "question, therefore, now is, will any fruitful result ensue should we reverse the learned Judge's order. It seems that any order passed without going into the merits would be of little, if any, use: And, apart from difficulties "attending under the circumstances of this case a reversal even on the merits, to go into such merits would assume that the other points in the case, such as the alleged delay and form of the learned Judge's order, had been decided against the appellant, which I am not prepared to say would have been the case. For this is involved in the doubt I entertain whether the application should have " been maintained in the Court of first instance. If, for instance (as I am disposed to think), the learned Judge instead of directing the appellant's name to be expunged should have directed the Chairman to entertain the application which he wrongly refused to entertain on the ground that it was too late, such a decision would preclude an examination into the merits, which ex hypothesi would have to be left for the Chairman to determine. But such a decision not touching the merits would probably not avail the appellant, apart from practical difficulties in asking the Chairman to consider this matter after what has followed in the previous order.

12. Under the circumstances, therefore, and without expressing an opinion on the question under appeal whether there was a sufficient description, I would not interfere with the decision under appeal and would, therefore, dismiss the appeal but without costs.

13. I should like to add with regard to our former decision cited to us that it proceeded on a different state of facts, and though we were invited to express and did express an opinion on the question whether the reference to the Electoral Roll was a sufficient description, all that we held was that in itself it was not a sufficient description, and, this was not necessary having regard to the fact that whether there was or was not in such case a description of the candidate, his case failed both for want of a legal seconder and a sufficient number of approvers.

14. This judgment of mine does not, of course, affect any other remedies which the appellant may have otherwise than by the proceedings before use.