
(1912) 03 CAL CK 0047
In the Calcutta High Court

Rash Behary Ghoshal and Another

APPELLANT

Vs

J.C. Stalkart

RESPONDENT

Date of Decision : 13-03-1912

Acts Referred:

Bengal Municipal Act, 1884 — Section 15, 69

Citation : 14 Ind. Cas. 166

Hon'ble Judges : Carnduff, J; Brett, J

Bench : Division Bench

Judgement

1. The plaintiff, respondent in this appeal, Mr. J.C. Stalkart, was a candidate for election as a Municipal Commissioner in Ward No. 1 of the Howrah Municipality in 1909 and in compliance with Rule 14 of the Election Rules framed by the Local Government under Sections 15 and 69 of the Bengal Municipal Act, III of 1884, as amended by Act IV of 1894 and Act II of 1896, submitted 5 nomination forms to the Chairman in Form B. These were numbered 3, 4, 5, 6 and 7 and of these all but No. 5 were rejected as failing to comply with the provisions of the law. The nomination form No. 5 was in due course placed before the returning officer. In column 2 of the form the name of the candidate was entered as J.C. Stalkart and in column 4, in which the particulars of qualification as a voter have to be stated, the entry was "representing W.H. Horton & Co., Rate payers." This information was required as Rule 13 of the Rules provides that "any person qualified to vote under these rules and not disqualified u/s 57 of the Act shall be qualified to be elected as a Commissioner." The returning officer held that Mr. J.C. Stalkart was not qualified for election as a Commissioner because the ground on which he claimed to be entitled to a vote was that under Rule 8 of the Rules he had been authorised to vote on behalf of a corporation, i.e., the firm of Messrs. W.H. Horton & Co. The returning officer held that a person authorised to vote under Rule 8 was not a qualified voter as required by Rule 2 and Rule 13.

2. Rule 2 provides, every male person shall be eligible to vote who has attained the age of 21 years, has been resident within the limits of the Municipality for not

less than 12 months immediately preceding the election, has been duly registered as provided in Rules 4 to 12 inclusive and has paid rates and taxes up to a certain amount during the year preceding the election. Mr. J.C. Stalkart represented that he was the same person who was entered in the Rate payers' roll as Mr. C. Stalkart, that he had paid rates and taxes aggregating some thousands of rupees and was fully qualified under Rule 2 of the Rules. The returning officer in his order recorded that he was not satisfied that Mr. J.C. Stalkart was the same person as Mr. C. Stalkart, and being of opinion that on that account Mr. Stalkart was not qualified in his personal capacity as a voter, he held that he was not entitled to stand as a candidate for election as a Commissioner of the Howrah Municipality. Mr. Stalkart applied against this order under Rule 29 of Rules to the Chairman of the Municipality who was also the District Magistrate. The Chairman upheld the order of the returning officer on two main grounds, first, that a person authorised under Rule 8 to vote for a Corporation could not be considered on that account a qualified voter, and secondly, that from the Vice-Chairman's report it is clear that he had ample grounds for his belief that C. Stalkart was not a mere clerical error for J.C. Stalkart but that the names referred to different persons. The Chairman went on to say that in his opinion the Vice-Chairman's action in the matter was perfectly regular, and that he had acted throughout in good faith. He, therefore, rejected the application. It is to be noticed that in dealing with the question under Rule 8 read with Rule 2, the Chairman appears to have questioned the legality of the rules passed by the Local Government and in dealing with the second question he expressed no opinion at all of his own on Mr. Stalkart's representation.

3. Mr. Stalkart having been rejected as a candidate for election, the election was duly held with regard to the other candidates who were held to be qualified for election and defendants Nos. 2 and 3 in the present suit were duly elected as Commissioners for Ward No. 1.

4. Mr. Stalkart then instituted a suit in the Court of the Munsif of Howrah against the Chairman of the Howrah Municipality as defendant No. 1 and the two elected Commissioners as defendants Nos. 2 and 3, to have it declared that he was a qualified voter in the Municipality of Howrah and as such entitled to stand for election as a Municipal Commissioner for Ward No. 1 of the Municipality, and to obtain a perpetual injunction restraining defendant No. 1, the Chairman of the Municipality, from declaring defendants Nos. 2 and 3 to be duly elected as Commissioners under Rule 16 of the Election Rules and allowing them to act as Commissioners of the Municipality of Howrah, and also to obtain a perpetual injunction against defendants Nos. 2 and 3 restraining them from acting as duly elected Commissioners of the Municipality of Howrah.

5. The Munsif found that the plaintiff, Mr. J.C. Stalkart, was the same person as Mr. C. Stalkart who was entered in the register of Rate-payers, and that in fact from the records in the Municipal office there could not be a shadow of doubt that he was so. He further held that the Vice-Chairman who was acting as

returning officer at the election must have known that Mr. J. O. Stalkart and Mr. C. Stalkart were the same person, and he further found that Mr. Stalkart was a qualified voter in his personal capacity, as he fulfilled all the requirements of Rule 2 of the Election Rules. He held accordingly that the Vice-Chairman was not justified in rejecting the nomination form put in by Mr. Stalkart. He held that the Chairman of the Municipality had before him the same information as the returning officer and that he was not justified in rejecting the application made to him by Mr. Stalkart under Rule 29 of the Election Rules. He further held that the construction put on Rule 8 by the Chairman was not correct. He held that Rules 2 and 8 must be read together and that Mr. Stalkart was a qualified voter and, therefore, eligible for election as a Commissioner under Rule 13 and gave him a declaratory decree to that effect. He further held that no injunction could issue against defendant No. 1, the Chairman of the Municipality, as prayed for, but he granted an injunction against defendants Nos. 2 and 3 restraining them from acting as Commissioners of the Municipality.

6. Defendants Nos. 2 and 3 appealed, and a cross-appeal was preferred by the plaintiff against the judgment and decree of the Munsif so far as he refused to grant an injunction against the Chairman of the Howrah Municipality. The lower Appellate Court confirmed the judgment and decree of the Munsif granting Mr. Stalkart a declaratory decree that he was a qualified voter of the Municipality and so eligible for election as a Commissioner and granting an injunction against defendants Nos. 2 and 3. He decreed the cross-appeal, set aside the decision refusing to grant an injunction against the Chairman of the Municipality and granted the injunction prayed for by the plaintiff.

7. Defendants Nos. 2 and 3 have appealed to this Court and the appeal was admitted on the 5th September 1911. On the same date, the same defendants obtained a Rule from this Court on the plaintiff and defendant No. 1 to show cause why the operation of the injunction should not be suspended or stayed during the hearing of the appeal. This Rule came on for hearing before us on the 26th February last and as it was then represented to us that the period for which the election of the Commissioners would hold good would expire on the 1st April last, we directed that the appeal and Rule should be brought on for hearing before us as soon as possible. We have now heard the appeal.

8. The substance of the arguments which have been advanced before us on the appeal is that Rule 8 of the Rules for Election passed by the Government is ultra vires, having regard to Section 15. of the Municipal Act; that a person authorised to vote for a Corporation under Rule 8 need not necessarily be a voter qualified in his personal capacity under Rule 2, and that Mr. Stalkart as he entered in his nomination roll that his qualification was that he was authorised to vote under Rule 8, could not be regarded as a qualified voter. On the facts, as found by both the lower Courts, the argument is, in our opinion, futile. Obviously, Rules 2 and 8 must be read together and we see no ground to accept as reasonable the hypothesis suggested by the Chairman of the Municipality in his order that under

Rule 8 a Corporation might authorise a female or a minor to vote for it. The Munsif has dealt with this argument very properly in his judgment and we do not think it necessary to add anything to what he has recorded.

9. It was the duty of the returning officer and of the Chairman to apply the rules to the facts before them and it was no part of their duty to criticise the rules.

10. The facts, as disclosed by the Munsif's judgment, are perfectly clear. Mr. Stalkart fulfilled all the conditions required by Rule 2 and we agree with the Munsif that it is at least surprising that the Vice-Chairman and Chairman should have disregarded information that was before them to identify Mr. J. C. Stalkart with Mr. C. Stalkart, the registered Rate-payer.

11. Rule 2 is, in our opinion, perfectly clear. Any one possessing the qualifications set out in that rule, which in fact embodies the provisions of Section 15 of the Act, and having been duly registered as provided by Rules 4 to 12, is a qualified voter and as such eligible under Rule 13 for election as a Municipal Commissioner. It is idle to argue that registration under Rule 8 in fact amounted to a disqualification.

12. We agree, therefore, in the findings and decree of the lower Appellate Court and confirm them and dismiss the appeal with special costs including 5 gold mohurs hearing fee and interest at 6 per cent. up to date of realisation. The Rule will also stand discharged with costs 2 gold mohurs. At the same time, we feel bound to express our regret that it should have been necessary to waste so much time and money over a matter which was perfectly simple on the facts.