
(1954) 01 CAL CK 0028

In the Calcutta High Court

Case No : Civil Revision Case No. 3544 of 1953

Santosh Kumar Chatterjee

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 12-01-1954

Acts Referred:

Bengal General Clauses Act, 1899 — Section 22
Bengal Municipal Act, 1932 — Section 20, 24(3), 51, 51(1), 56(5)
Bengal Municipal Rules, 1932 — Rule 17, 17(1), 17(3), 17(4), 17(5)
General Clauses Act, 1897 — Section 22

Citation : (1955) 2 ILR (Cal) 477

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee and Dwijendra Nath Mukherjee, for the Appellant; Hemendra Kumar Das and Smriti Kumar Rai Choudhury for State, Sudhir Kumar Basu, for Opposite Party No. 3 and Purnendu Sekhar Bose, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is a Rule issued at the instance of two ratepayers of the Konnagore Municipality situated in the district of Hooghly. The first Respondent is the State of West Bengal, the second Respondent is the District Magistrate of Hooghly, the third Respondent is the chairman of the municipality and the fourth Respondent is the body of commissioners of the municipality. The rule directs the Respondents to show cause why a writ in the nature of mandamus should not be issued directing the Respondent Nos. 2 and 3 to cancel, revoke and withdraw the alteration of the date for filing of nomination papers of the candidates in the general election of the said municipality and to stick and conform to the dates as originally fixed by the commissioners and/or the chairman and/or why such further order should not be made as to the Court seems fit and proper.

2. The facts involved in this case are shortly as follows:

The Konnagore Municipality is a municipality constituted by the Bengal Municipal Act (hereinafter referred to as the Act). At present it consists of two wards and nine commissioners. It appears that the Government of West Bengal has laid down a policy (without actually framing a rule to that effect) that the number of commissioners in a municipality should be on the basis of one commissioner for every 250 voters, subject to the limits laid down in the Act, and also to the condition that the number so arrived at should be increased or diminished in consideration of the increase and decrease of the population, income and commercial and general importance of the place as laid down in Clause (i) of Sub-section (1) of Section 6 of the Act.

3. On March 30, 1953, the Respondent No. 2, by virtue of the powers conferred upon him under Sub-section (3) of Section 24 of the Act, read with Rule 2(1)(a) (2) of the rules framed under it (hereinafter referred to as the rules) fixed November 15, 1953, as the date for holding the general election in all the wards for the municipality. In communicating this order to the chairman (Respondent No. 3) the District Magistrate intimated the fact that a revision of the number of commissioners to be elected in the general election was under contemplation on the foot of the principles laid down by the Government as stated above. He asked for the suggestion of the commissioners and also for a statement of the number of voters in each ward.

4. On June 24, 1953, the Government by a notification No. M.1M-89/53, raised the number of commissioners to be elected, from nine to ten and called for objections from ratepayers.

5. Rule 17(1) of the rules runs as follows:

Not less than forty-five days before the election day the commissioners shall fix for the nomination of candidates a date which shall not be less than thirty-five days before the election day. On or before the date of nomination so fixed every candidate for election shall cause to be delivered to the chairman a nomination paper in Form B annexed to these rules.

6. After the nomination papers are filed, a date is fixed for scrutiny which must not be less than thirty-two days before the election day. After scrutiny, the candidates whose nominations are valid are registered and a list of registered candidates published, not less than twenty-five days before the election day.

7. On September 27, 1953, the chairman fixed October 9, 1953, as the last date for filing of nomination papers. The Petitioners have filed their nomination papers by that date as candidates from ward No. 1.

8. On September 28, 1953, the District Magistrate made an order purporting to be under Rule 2(1)(i) of the rules, in modification of his previous order, dated March 30, fixing the date of general election for January 17, 1954, instead of November 15, 1953.

9. On October 9, 1953, the chairman (Respondent No. 3) prepared a revised

time-chart whereby he extended the last date for filing nomination papers from October 9, 1953, to December 11, 1953. It appears that the commissioners pressed for a further increase of the numbers to be put up for election, suggesting six seats to be allotted to each ward. Finally on November 12, 1953, the Commissioner, Burdwan Division (by virtue of power delegated to him u/s 20 of the Act) issued a notification increasing the seats from ten as previously announced, to twelve (i.e., six seats in each ward).

10. By October 9, 1953, five nominations had been received in respect of the six seats in ward No. I, including those of the Petitioners.

11. By December 11, 1953, however, a number of further nominations were received. The list of registered nominations appears to have been published on December 16, 1953. Several of the intending candidates who have been so nominated have been allowed to appear in this Rule and contest the same. Mr. Banerjee appearing on behalf of the Petitioners takes the point that the fixation of the last date for filing nomination papers by the chairman or the extension thereof is invalid. He states that this power is to be exercised by the commissioners under Rule 17(1); and not by the chairman. But this objection is completely answered by Section 51(1) of the Act which runs as follows:

The chairman shall for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the commissioners*****.

12. In answer, Mr. Banerjee argues that the scheme of Rule 17 shows that separate powers and functions had been allotted in the matter of nomination and registration of candidates to the commissioners and the chairman. Rule 17(1) requires the commissioners to fix the last date for nomination; Rule 17(3) requires the chairman to fix and publish the date for scrutiny. The chairman is also required to scrutinise the nominations and register and publish the list [Rule 17(4)(a)(b) and 17(5)]. From this he argues that the general power of the chairman to act for the commissioners as conferred by Section 51 of the Act cannot be exercised in this particular case, since the rules have specifically allotted the tasks to be executed by them respectively. I am afraid I have been unable to appreciate this reasoning. Both the Act and the rules have allotted tasks to the commissioners as well as the chairman. The Act lays down generally that the chairman can act for the commissioners. When the rules are framed under a power given in a statute, the rules so framed have the same force as the statute itself. If there is a power in the chairman to do the acts performable by the commissioners under the Act, that power can be equally exercised in doing acts to be performed under the rules. Besides, the rules cannot take away a power expressly granted by the Act itself. This argument has therefore no substance.

13. Mr. Banerjee next raises another point. He says that the District Magistrate had no power to postpone the date of the general election from November 15,

1953, to January 17, 1954. It has been rightly pointed out that this does not form the subject-matter of this rule which is concerned only with the postponement of the date for filing nomination papers. But Mr. Banerjee says that he is raising it because the postponement of the election date necessarily affects the validity of the postponement of the date for filing nomination papers from October 9, 1953, to December 11, 1953. Let me consider the point.

14. Section 24(3) of the Act runs as follows:

General elections of commissioners shall take place every fourth year on such days as the District Magistrate may fix for each municipality in his district.

15. (The proviso is not necessary to be stated.)

16. The four years' term of this municipality ends in March 1954.

17. The rules provide as follows:

2(1) The District Magistrate shall issue an order in writing fixing the date-

(a)(i) for a general election u/s 24(3), at least seven months before the expiration of the fourth year referred to in Sub-section (3) of Section 24 of the Act or of the term of office of the commissioners if it has been extended under Sub-section (5) of Section 56 of the Act.

18. Thus it will be seen that under the Act, there is no time-limit fixed for the making of the order fixing a general election, such a time-limit has been fixed by the rules. Mr. Banerjee points out that the order made on March 30, 1953, satisfies the rule but the order made on September 28, 1953, does not. It certainly does not, if the date of the making of the order is taken to be September 28, 1953 and not March 30, 1953. If the order postponing the general election to January 17, 1954, be invalid then of course the postponement of the last date for filing nomination papers, from October 9, 1953, to December 11, 1953, would be bad, because it would be absurd to fix the last date for filing nomination papers after the date fixed for the election (i.e., November 15, 1953). But the obvious answer to this contention is Section 22 of the Bengal General Clauses Act (Ben. I of 1899), which runs as follows:

Where, by any Bengal Act a power to make orders, rules, by-laws or notifications is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, by-laws or notifications so made.

19. It has been held that under this section the power to fix a date for election under the Act must be taken to include the power to postpone any date so fixed and the Commissioner of the Division has the power to postpone an election [Bhuban Mohan Basak v. Chairman, Dacca Municipality (1927) 31 C.W.N. 926]. Mr. Banerjee does not seriously contest this position but he says that any exercise of power u/s 22 of the General Clauses Act is subject "to the like conditions", which means that when an order for extension is made that order

must itself be made seven months prior to the expiration of four years. In the case above-mentioned, it was argued that when an order for extension has been made, the whole series of conditions to be complied with, in case of the original order, has to be repeated. This argument was repelled. Graham, J. said as follows:

It is argued, however, for the Appellants that the election was not postponed but that a date was fixed for a new election, and that therefore all the necessary formalities should have been complied with over again. I do not think this contention can be allowed to prevail.

20. Section 22 of the General Clauses Act gives power to amend, vary, etc., the original order. All amendments or variations are not of the same category. Where the amendment or variation consists of a mere postponement of the date of an election, the order fixing the date must necessarily relate back to the original order. It is an extension of that order and not a new order for fixing the date of election. An amendment is ordinarily prospective unless there is a contrary intention when it may be retrospective. Such is clearly the intention when an order for the extension of a date is made.

21. Mr. Banerjee argues that in the case abovementioned, what was held was that conditions subsequent like the preparations of the electoral rolls, etc., need not be performed once again, but that nothing was said as to the performance of conditions precedent. I do not think that there is any substance in the argument. The whole point is as to whether the order extending the date is a separate order or must relate back to the old order. If it relates back to the old order then no question arises about the repetition of either a condition precedent or a condition subsequent. If in the original order, the condition precedent had been satisfied, that would be quite enough. The amendment will be subject to that condition in the sense that it will not get rid of it, but a repetition will not be necessary. If a repetition was necessary, there would be no point in making it relate back, nor do I see why in that case, both the conditions precedent and subsequent should not have to be repeated.

22. But all this argument rather overlooks the fact that the time-limit laid down in Rule 2(1)(a)(i) of the rules is by itself merely directory and not mandatory. In the analogous case of Rule 2(1)(b), I have held that the time-limit of fifty days was merely directory and not mandatory. [See my judgment, dated March 27, 1953 in Sambhu Charan Paul v. District Magistrate, Howrah C.R. 661 of 1953 (unreported).] That principle would apply here *mutatis mutandis*. If the time-limit is directory then the extension of the final date of the general election to January 17, 1954, is not necessarily bad because it offends against the time-limit imposed by Rule 2(1)(a)(i). Consequently the extension of the last day to file nomination papers from October 9, 1953, to December 11, 1953, would not be bad [see also *Ajit Kumar Sen v. State of West Bengal* (1952) 57 C.W.N. 613].

23. Finally, Mr. Banerjee argues that as a matter of fact, the election which was

fixed by order, dated March 30, 1953, to be held on November 15, 1953, was an election for the purpose of filling nine seats and this cannot be the same election as the one that is now going to be held on January 17, 1954, which is an election to fill twelve seats.

24. Mr. Banerjee relies on certain observations which I made in my judgment, dated August 13, 1953, in *Narayan Chandra Mukherjee and Ors. v. District Magistrate of Hooghly and Ors.* Civil Revision No. 316 of 1953 (unreported). That was a case in which the Uttarpara Municipality had originally four wards and eight seats. A general election was notified on that footing and nomination papers were actually received for the eight seats. The Government then increased the seats to ten but no further nominations were called for or accepted, and yet the election took place with the candidates who had filed their nomination papers already. What I said there was as follows:

Now, take the case of ward No. I or IV. Originally, there were two seats in each ward. Candidates were nominated for one of the two seats. When an additional seat was created, what is the result? Either it may be said that no one has been nominated for that extra seat, or else it may be said that the election which was then going to take place is not the same election as originally contemplated.

25. These observations have to be taken in their context and not divorced from it. When the date of an election is notified, nothing is said in the notice as to the number of candidates that are going to be put up for election. People undoubtedly presume that the existing number of seats will be retained, but it is also known that the Government has the power to increase or decrease the number of commissioners, and therefore if it chooses to exercise that power, then the election will be held for the seats as altered. If the number of seats are altered, then it is not necessarily a different election to that which has been notified. In the case mentioned above, the seats were increased and yet the election was held on the footing of the persons who were nominated on the basis of the old number of seats. It is from that point of view that I made the observations quoted above. I did not intend to lay down that if the seats are increased and all necessary steps taken, still the election will be a different election. I do not think that on the facts of this case, it can be said that the election that is now going to be held is a different general election to that which has been originally notified on March 30, 1953.

26. For the reasons stated above, this application must fail and the Rule is accordingly discharged. I make no order as to costs.