
(1956) 03 CAL CK 0021
In the Calcutta High Court
Case No : Civil Revn. No. 633 of 1955

Saradish Ray

APPELLANT

Vs

Municipal Commissioners of Suri and Others

RESPONDENT

Date of Decision : 16-03-1956

Acts Referred:

Bengal Municipal Act, 1932 — Section 44, 529A
Bengal Municipal Rules, 1932 — Rule 8
Constitution of India, 1950 — Article 226

Citation : AIR 1956 Cal 456

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.K. Acharjya, Arun Prokash Chatterjee and Amar Prosad Chakravarty, for the Appellant; S. Banerjee and Anil Kumar Das Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application which relates to the election of the Municipal Commissioners of the Suri Municipality in the district of Birbhum. This election is scheduled to be held on 19-3-1955. The petitioner is a voter residing within the precincts of the said Municipality. It is admitted that his name is in the electoral roll. This Eule was-issued at his instance on 7-3-1956 upon the opposite parties to show cause why a Writ in the nature of Mandamus should not issue directing the opposite-parties Nos. 1 to 4 to cancel, withdraw and/or forbear from giving effect to the electoral roll of the said Municipality and to prepare the preliminary electoral roll afresh and/or why a Writ in the nature of Certiorari should not be issued setting aside the said electoral roll already prepared or why such further or other order or orders should not be made as to this Court may seem fit and proper.

2. As I have just now stated, the election has been fixed on Monday, the 19th March 1956, and the final electoral roll was published as far ago as on

19-12-1955 preceded by the preliminary electoral roll. The petitioner states that the preliminary electoral roll was compiled perfunctorily and with serious irregularity. According to him, whole categories of person qualified to vote have been left out, and about five thousand persons entitled to be enrolled on the ground of educational qualifications, and a further number of persons who are tax-payers, have been left out. It is said that the Rikshaw pullers, and owners of rikshaws, who are considerable in number have been excluded. The only step that the petitioner took before coming to this Court for relief was an alleged representation, which is stated to have been sent to the Minister, Local Self Government, Government of West Bengal, and mentioned in para 11 of the petition.

A copy of the same is stated to be annexed, to the petition but unfortunately it is not. The grounds as made out for interfering" with the conduct of the election, which has been fixed as aforesaid, are that the preliminary electoral roll has been prepared with serious irregularity and that the total exclusion of categories of persons having educational qualification proves mala fides on the part of the registering authority. It is also said that dead persons and also minors have been included in the preliminary roll. A copy of the preliminary roll has been annexed to the petition and a copy of the final electoral roll has been produced at the hearing. I direct that the final electoral roll be also marked as an exhibit and filed as a part of record. "The position therefore in short is as follows.

3. The petitioner is a voter and he is certainly interested in the conduct of the ensuing election. He has not taken any steps for rectifying the preliminary or the final electoral roll in accordance with the rules which have been framed under powers granted by the Bengal Municipal Act. The only demand for justice which he has made is an alleged representation which has been made to the Minister, for Local Self Government, Government of West Bengal. The question is whether under these circumstances, it is possible for him to get relief in this application. Apart from this, the learned Standing Counsel on behalf of the respondents has taken a preliminary objection that this application is misconceived because, taken as an application for a Writ of Mandamus there is no prior demand for justice and taken as a Writ of Certiorari it does not lie because the impugned acts of the respondents were purely in an administrative capacity. He has taken a further point that this petition is defective, firstly because it has not been signed by the petitioner, and secondly because the affidavit of verification has been affirmed not by the petitioner but by a "friend" of his and he says that in an application for a high prerogative Writ such an affidavit is not permissible.

4. I shall first deal with the merits before going into the preliminary points. It has by now been well-established by authority that elections are creatures of statute. The right of franchise is neither a natural right, nor a right that exists apart from the statute creating it. The Statute we are dealing with is the Bengal Municipal Act, 1932, under which Rules have been framed, in exercise of power contained in Section 44 of the Act. The Act and Rules lay down with great care the

programme which is to be followed in the holding of an election. An election affects a large number of people and, consequently it would be impossible to conduct it unless a time schedule has been laid down and strictly adhered to. The Act and the Rules themselves provide remedies, and where such remedies are available, it is not permissible to go beyond them and to approach this Court under its extra-ordinary jurisdiction for interference in the course of an election. Let us see what the Rules provide. Section 23 of the Act lays down the qualifications of the Commissioners & voters. It prescribes qualifications dependent on payment of tax as also educational qualification. Coming to Rule 3 of the Rules, the Registering Authority must prepare in the prescribed form a preliminary "electoral roll containing the names of all persons qualified¹ to vote under the Act. Under R. 4, certain persons so qualified have to inform the authorities by letter stating their respective qualifications. Any person entitled to vote under clause (b) and (c) of Section 23(2) (iii), which includes the qualification based on education, is required to send a letter to the registering authority stating the qualification. The reason for this is easy to comprehend. Where a person is a tax-payer of the municipality, that fact can be ascertained from looking into the records. Where however a person has only an educational qualification, it would not be possible or easy to trace his existence within the municipal area. That is why it has been prescribed that such persons should send an intimation to the registering authority stating their qualifications. Then the preliminary roll is prepared. Next comes Rule 8 which is very important. Any claim for insertion of a name in the electoral roll or any objection against any entry therein, is to be preferred to the registering authority within 15 days of the publication of the preliminary roll. Upon an objection being preferred, the registering authority considers the claim or objection. After considering the claim and objection, the final electoral roll is published. From the final electoral roll there is an appeal to the District Magistrate u/s 529A of the Act. If such an appeal is successful, the learned Magistrate can direct the registering authority to amend the final electoral roll. It is only after such amendment has been published that the election can be held. It will thus be seen that the rules provide for any commissions or omissions that might arise during the whole course of an election.

5. The complaint before me is that in the previous final electoral roll there existed a number of names having educational qualifications, but they have all been removed without exception from the preliminary electoral roll. Further, it is pointed out and it appears to be a fact, that on the face of the preliminary electoral roll the names of minors have been included. If the matter stood there, then there would certainly be a ground for interference. But, I have stated above, elaborate provisions have been made for challenging the correctness of the preliminary electoral roll. In the exercise of such safeguards, a number of persons preferred objections and such objections were duly heard and the final electoral roll was prepared after considering the objections. While the preliminary roll included 1096 voters, the final electoral roll consists of 1542 voters. There

were also 11 persons enlisted! after appeals u/s 529-A of the Act. Thus the preliminary electoral roll which was defective, has been set right. It is true, and no satisfactory explanation has been given, why the preliminary electoral roll did not contain the names of any voters having educational qualifications. A possible explanation may be found in Rule 4. Unless the persons having such qualifications send information in terms thereof, the registering authority is not bound to include such names in the electoral roll. There is no evidence here that any person had sent such a communication, and yet his name had been kept out. In fact, although the petitioner has taken up the cause of thousands of other voters whose names according to him, have been kept out of the list, he has not been unable to get the support of even one of them. There is a significant absence of any supporting affidavit by any person so injured. The argument of Mr. Acharyya appearing on behalf of the petitioner is substantially this. He argues that under Rule 3 it was the duty of the registering authority to make a proper electoral roll, which, it is to be presumed, should contain the names of all persons duly qualified. He then says-that it was impossible to contemplate a whole class of voters vanishing into thin air since the last final electoral roll was prepared. He says this clearly shows mala fides in the entire proceedings". Plausible as this argument seems, I am unable to give effect to it. Before the petitioner succeeds in having a high prerogative" writ issued stopping or impeding the election, it must be shown that the provisions of the law relating to the election have not been followed. It is not open to a voter who has some grievance, to omit to take the steps as provided for in " the Act, and the Rules, and to come straight to this Court for relief. In any event, I am not in a position in this application to grant any relief to the applicant. He has made allegations that the names of a large number of persons have been omitted from the electoral rolls. There is no satisfactory evidence of this fact before me. The persons excluded have not come forward, nor have they supported the petitioner in this application. The petitioner has given some instances. For example, he says that Sri Sunil Kumar Chatterjee from Anandapur ward has not been included. This is a mistake, for he has been included in the final electoral roll, against serial No. 102, Next, the petitioner complains that some-names have been arbitrarily put into wards-in which they do not reside, so that some particular candidate would be benefited. He gives as an example that Sri Gurupada Nandan, a resident of Khotta Bazar has been shown as a voter from ward Harrietganj. The fact is that Sri Gurupada Nandan pays no rates or taxes, so his name did not appear in the preliminary electoral roll. He then filed a claim under R. 8, upon educational qualification and in his own application, stated that he was a resident of Holding No. 83 in Harrietganj. The same is the case with Sri Rabindra Kumar Chakrabarti. It is clear that the petitioner has based his application upon untrue facts.

6. I next come to the preliminary points taken in this application. With regard to the signing of the petition, whatever be the rules obtaining in the Original Side of this Court, it seems that in the Appellate Side it is not necessary for the

petitioner to sign the petition provided that the proper vakalatnama is there on record. Secondly, with regard to the affidavit, it has been held by Das, J., in Krishna Khandelwal and Another Vs. Director of Land Hiring and Disposal Eastern Command and Others, (A) that the petitioner need not himself make an affidavit in support of the petition, because the rules in the appellate side do not require it. This however is quite a different matter from the exact point which has been raised. The learned Standing Counsel has raised the objection not that the affidavit must be made by the petitioner, but that in high prerogative Writs, the affidavit supporting the petition should be by the petitioner. I think that this is a principle well-established. After all, high prerogative writs are matters of discretion, and if the petitioner has not the courage to verify his own petition, then, the Court should be extremely reluctant to grant relief. In this case, the person who has affirmed the affidavit describes himself as "a friend". It is not easy to ascertain how he came to have personal knowledge of the facts, and of course the petition does not disclose the particulars. But apart from this, the great barrier in the way of the petitioner is the frame of the petition itself. Taken as a Writ of Mandamus there is a significant absence of any demand for justice. The authority which can amend the electoral roll is the registering authority. There has however been no demand of justice from the registering authority. No appeal has been filed before the Magistrate. If it is taken as a Writ of Certiorari, then of course no previous demand is necessary. I fail to understand however how this matter can be the subject-matter of a Writ of Certiorari. While the actual proceedings before the registering authority under Rule 8 or the Magistrate u/s 529A may be said to be of a quasi-judicial nature, the publication of the preliminary or the final electoral roll is a purely administrative affair, and I do not see how any such publication can be quashed by a Writ of Certiorari.

7. The result is that this application fails and must be dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will be no order for costs.

8. A copy of the final electoral roll, handed over to Court should be kept on record as an exhibit.