

**(1934) 05 CAL CK 0026**  
**In the Calcutta High Court**

Shamsuddin Ahmed

APPELLANT

Vs

Charu Chandra Biswas and Others

RESPONDENT

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**Date of Decision :** 03-05-1934

**Acts Referred:**

Bengal General Clauses Act, 1899 — Section 15  
Calcutta Municipal Act, 1923 — Section 19, 37

**Citation :** AIR 1934 Cal 621

**Hon'ble Judges :** Roy, J

**Bench :** Division Bench

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## Judgement

Roy, J.—The plaintiff is an elected Councillor of the Calcutta Corporation and on 20th April last filed this suit on behalf of himself and other elected Councillors of the Calcutta Corporation for a declaration that the plaintiff and the other persons on whose behalf the suit has been instituted are the only Councillors entitled to attend the meeting of 21st April 1934 and subsequent meetings of the Calcutta Corporation, for a declaration that the plaintiff and the said other persons on whose behalf the suit has been brought along with the Alderman alone constitute the whole Corporation under the Calcutta Municipal Act, for a declaration that the appointment of the defendants is illegal, and that they are not entitled to take part in the proceedings of the Corporation, and for an injunction restraining the defendants from attending any meeting of the Calcutta Corporation or from acting in any way as Councillors of the Corporation.

2. On the day the plaint was filed an application was made before me by the plaintiff for a rule on the defendants to show cause why they should, not be prohibited and restrained from acting as Councillors of the Corporation of Calcutta. The plaintiff also asked for an interim injunction. I issued a rule which was made returnable on 30th April last, but did not grant any interim injunction. The rule came on for hearing before me yesterday and seven of the defendants have appeared through counsel to show cause. The defendants K.C. Roy Choudhury, Moulvi Abdul Kasim and C.V. Hingston did not appear. The plaintiff's case is that the appointment of the defendants as Councillors of the Corporation

was "ultra vires" of the Government and illegal and did not confer any right of Councillorship on the defendants, The appointment of the defendants as Councillors was made on 12th April last. It has been said that the Local Government was bound to make the appointment of Councillors for the year 1934 u/s 37, Calcutta Municipal Act, on some date prior to 29th April 1933, which was the date of the first meeting of the Corporation after the general election of 1933 and not having done so the Government had no further power to appoint Councillors for 1934 ; and it has been suggested in the petition that if the defendants are allowed to take part in the meetings of the Corporation and to administer Municipal funds the petitioner will suffer irreparable injuries. On behalf of the defendants affidavits have been filed by the defendants, Charu Chandra Biswas, Sudhanshu Kumar Mitter and the Rev. Bimal Ananda Nag. The defendants have taken various points in their affidavits.

3. It has been submitted that the suit is not maintainable in its present form and the plaintiff has no cause of action. It has been stated that the plaintiff is not entitled to institute this suit on behalf of himself and the other elected Councillors of the Corporation as it is believed that many of the elected Councillors are opposed to the plaintiff and disapprove his action in bringing this suit. It has also been stated that the suit and the petition are malafide and have been filed in consequence of a representation which the defendant, Charu ;Chandra Biswas, along with several other Councillors and Alderman submitted to the Local Government inviting them u/s 19, Calcutta Municipal Act, to annul the proceedings of the Corporation at a meeting held on 10th April last as not being in conformity with law on the ground, amongst others, that the appointed Councillors including defendant, Charu Chandra Biswas, had been wrongly excluded from taking part in the said meeting by an arbitrary and illegal ruling given by the plaintiff who happened to be the temporary Chairman of the said meeting. It has also been said that the plaintiff has not shown that either he or anybody else will suffer any injury or prejudice irreparable or other wise at all.

4. The defendants have denied that their appointment is ultra vires and it has been submitted on their behalf that the Corporation cannot be legally constituted without the appointed Councillors. The defendants have asserted that the exclusion of the appointed Councillors from the meetings of the Corporation would cause irreparable loss and prejudice to the ratepayers and to the Corporation. I do not think it would be desirable on the hearing of an interlocutory application to express any opinion on the question as to whether the appointment of the defendants is ultra vires or not or as to whether the suit is maintainable or not. Nor do I think, in the circumstances of this case, is it necessary for me to come to a finding at the present moment on the question as to whether the suit or the present application is mala fide or not, as I am clearly of opinion that this is not a case in which I should grant an injunction pending the hearing of the suit. I am not satisfied that the plaintiff will suffer any serious injury if no injunction is granted and I certainly think the likelihood of injury and inconveniencing is much greater if the defendants are not allowed to function as

Councillors until the validity or other wise of their appointment is decided by this Court. It has been admitted before me that the Local Government has been making appointments in the same way in which the present defendants have been appointed for about 10 years and that it has never been suggested prior to the institution of this suit or the making of this application that such appointments were ultra vires. On behalf of the defendants reliance has been placed on Section 15, Bengal General Clauses Act, as furnishing a complete and sufficient answer to the plaintiff's contention with regard to the appointment of the defendants being ultra vires. I do not think I should now decide whether that is so or not. I am unable to say at this stage that the appointment of the defendants is prima facie bad and as no case of irreparable injury to the plaintiff has been made out on the materials before me I must refuse this application. The rule is discharged. Costs to be costs in the cause.