

(1951) 01 CAL CK 0035
In the Calcutta High Court
Case No : Civil Rule No. 1551 of 1950

Shyamapada Ganguly

APPELLANT

Vs

Abani Mohan Mukherjee

RESPONDENT

Date of Decision : 22-01-1951

Acts Referred:

Bengal Municipal Act, 1932 — Section 61(2)
Constitution of India, 1950 — Article 223, 226

Citation : AIR 1951 Cal 420 : 55 CWN 326 : (1952) 1 ILR (Cal) 282

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : H. Sanyal and Asoke Chandra Sen, for the Appellant; Chandra Sekhar Sen and Ranjit Kumar Banerjee, for the Respondent

Judgement

Bose, J.—This is as appln. under Article 226, Const. Ind., for a writ in the nature of Mandamus or in the nature of Quo Warranto or for such further or other order as to this Ct. may seem fit & proper.

2. A Rule nisi was issued by B. K. Guha J. on 10-10-1950 & the matter has now come up before me for the hearing of that Rule.

3. The facts are that in February 1950 eleven out of the 17 elected Comrs. of the Bally Municipality including the petnr. made a representation to the Secretary, Dept. of Local Self-Government, West Bengal, making serious allegations against the opposite party, the Chairman of the Municipality in relation to the management of the affairs of the Municipality. In the enquiry started by the Govt. as a result of such representation the majority of the charges brought against the opposite party were proved & the Govt. was of the opinion that the only course left was to remove the opposite party from the office of Chairman.

4. One of the Comrs. having left for Pakistan, the Govt. announced his removal from office on 14-7-1950 & declared his seat as vacant.

5. At a special meeting convened upon the requisition of the said eleven Comrs.

to consider a resolution for removal of the opposite party from the office of the Chairman eleven Comrs. voted for the resolution, three voted against & two were absent. The meeting was held on 2-9-1950.

6. The opposite party has challenged the validity of the resolution as according to him the resolution was not passed by a majority of two-thirds as required u/s 61(2), Bengal Municipal Act, 1932.

7. u/s 15 (1), Bengal Municipal Act, (XV [15] of 1932) the then Provincial Govt. specified that the body of Comrs. should consist of twenty-two Comrs.

8. By virtue of Section 16, Bengal Municipal Act, seventeen Comrs. of the Municipality were to be elected & five Comrs. were to be appointed by the Provincial Govt.

9. This Section 16 was amended by the Bengal Municipal (West Bengal) Amendment Act (XI [11] of 1947) which came into force on 5-1-1948 & provided as follows: "The Comrs. of the Municipality shall be deemed to be constituted of the elected Comrs. only."

10. In the amending Act there is also the following provision:

"Section 13 (d): The number of Comrs. of the Municipality shall be deemed to be the total number of elected seats on the municipality as fixed by the existing orders of the Provincial Govt. until the number is altered by the Provincial Govt."

11. Section 61 (2), Bengal Municipal Act, 1932, provides as follows:

"An elected chairman & a Vice chairman may at any time be removed from his office by a resolution of the comrs. in favour of which not less than two-thirds of the whole number of the comrs. have given their votes at a meeting specially convened for the purpose."

12. The contention of Mr. Sen, the Senior Govt. pleader, who appears for the opposite party is that the "whole number" in Section 61 (2) means the total number of elected seats on the Municipality as fixed by the orders of the Govt. In other words the "whole number of the Comrs." of the Bally Municipality is 17.

13. Two-thirds of this number is $11\frac{1}{3}$ & as only 11 Comrs, that is, less than two thirds of the whole number of Comrs. voted for the resolution the resolution was ineffective & so the opposite party is still functioning & is entitled to function as chairman of the municipality.

14. Mr. H. N. Sanyal, the learned counsel appearing for the petnr. contends that Section 61 (2) has to be read with Section 3 (53) of the Act. Section 3 (53) is as follows:

" "The Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under the Act."

15. According to Mr. Sanyal the "whole number" in Section 61 (2) means the

number of Comrs. who were functioning at the material time as Comrs & who were capable of voting & were entitled to receive notices about any meeting to be convened. Mr. Sanyal's contention is that the "whole number" was at the material time 16 as one Comr. had ceased to function & his seat was declared vacant.

16. It is true that the expression "for the time being" means "at the present time" but it is a well known rule of interpretation that this expression has to be construed with reference to the context in which it occurs.

17. The real question is what is the true construction of Section 61 (2). The words "the Comrs," occurring in Section 61 (2) have to be interpreted with reference to the context in which they occur. It is clear that "whole number" in Section 61 (2) means the total number. Section 13 (d) of the Amending Act states in clear & unambiguous language that the expression "number of Comrs. of the Municipality" means the total number of elected seats on the municipality. In the case of Bally Municipality the Govt. has only declared one seat as vacant. In other words the seat has not been done away with but it still exists & Mr. Sen has stated before me that this seat is intended to be filled up in the near future.

18. Mr. Sanyal's argument lays stress on the words "the Comrs."" in Section 61 (2) but completely ignores the words "whole number" in that section. When words are introduced in the vocabulary of a Statute they are so introduced with a purpose. It is a well-known proposition that words are not used in a Statute without a meaning & effect must be given to all the words used for the Legislature is deemed not to waste its words or say anything in vain.

19. I have no hesitation in holding that the words "whole number of the Comrs." in Section 61 (2) has reference to the total number of elected seats in the municipality & such number in the Bally municipality is & was at all material times 17.

20. The next question is as to whether the voting by 11 Comrs. was sufficient compliance with the requirements of Section 61 (2). In my view the answer must be in the negative. The Section requires that not less than two-thirds of the whole number of the Comrs. must vote before a chairman or a Vice-chairman can be removed. The Section is mandatory. The number of votes must not be less than two-thirds in any event but it may be more. Two-thirds of 17 is 11. $1/3$. Mr. Sanyal's argument is that the fraction should be ignored & the next whole number below it should be accepted as the number. Mr. Sanyal argued that as compliance is impossible in the nature of things & fraction of a person capable of voting is an impossibility the compliance should be dispensed with. In my view, however, the requirement of two-third majority in Section 61 (2) is a condition precedent which must be fulfilled before the Comrs. can derive power or jurisdiction to remove a chairman or a vice chairman from office. I am clearly of the opinion that voting by 11 Comrs. was not sufficient compliance with the sanction, & the resolution for removal of the opposite party was ineffective &

must be deemed to have been lost.

21. Mr. Sen has also contended before me that this appln. under Article 226 of the Constitution is not maintainable as it was open to the petnr. to have recourse to an ordinary suit for declaration that the opposite party was no longer in his office of chairman & was not entitled to function as such & also for injunction restraining him from functioning as such. He submits that when there is another adequate & specific remedy Court will not issue writs in the nature of mandamus nor make any order or give any direction under Article 226 of the Constitution.

22. It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy when it is not really needed, & a mandamus will never be granted to enforce the general law of the land which may be enforced by action. See *Kesho Prosad v. Board of Revenue* 38 Cal 553 : (10 I. C. 253).

23. In the case of *In re Nathan*, the Ct. of Appeal in England has also affirmed the proposition stated above. At p. 471 (1884) 12 Q. B. D. 461: (58 L. J. Q. B. 229) Brett M. R. observed as follows:

"If an action will lie then a mandamus cannot issue. That is admitted by everybody. Therefore the foundation of the application is that no such action will lie... "

24. Banerjee J. has followed this principle in the case of *Nani Lal v. Satyendra* 54 C. W. N. 42.

25. In the case of Informations or Writs in the nature of a Quo Warranto such Informations or Writs are not issued as a matter of course where there is an alternative remedy which is equally appropriated effective. (Halsbury Vol. 9, para 1380).

26. It is true that under Article 226 of the Constitution the power of the Ct. is not confined to the power to issue Writs in the nature of mandamus & other Writs mentioned therein. Under the Article, the Ct. has wider powers. But the power of the Ct. is discretionary & as has been pointed out by the Allahabad H. C. the proceedings under Article 226 being of a summary & coercive nature the powers under the Article should be sparingly used & only in those clear cases where the rights of person have been seriously infringed & he has no other adequate & specific remedy available to him. See *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*,

27. In an earlier case in the Patna H. C. in interpreting Article 226 of the Constitution Meredith C. J. observed:

"It could never have been intended that resort could be had to this extraordinary procedure where an adequate remedy is available by ordinary legal process, for example, by suit; otherwise, the ordinary legal procedure including the payment of court fees would be abrogated. An appln. under Article 226, in my judgment, is & must remain an extraordinary remedy to be used where ordinary legal

process cannot give adequate & prompt relief." (Bagaram Tuloule Vs. The State of Bihar,

28. In my view the contention of Mr. Sen is well founded & the appln. must fail on this ground also.

29. In the result the petn. fails & the Rule is discharged with costs. The hearing fee is assessed at three gold mohurs.