

(1937) 06 CAL CK 0021
In the Calcutta High Court

Subodh Chandra Chakravarty

APPELLANT

Vs

Jnanendra Nath Chakravarti and Others

RESPONDENT

Date of Decision : 02-06-1937

Acts Referred:

Bengal Local Self-Government Act, 1885 — Section 18B

Citation : AIR 1937 Cal 718 : 173 Ind. Cas. 846

Hon'ble Judges : Remfry, J; Nasim Ali, J

Bench : Full Bench

Judgement

Nasim Ali, J.—This is an appeal from the decision of the District Judge of Faridpur, dated 30th April 1936 affirming a decision of the Subordinate Judge of that place dated 5th August 1935. The suit out of which this appeal arises was for a declaration that the decision of Mr. R.L. Dey, the Senior Deputy Magistrate, Faridpur, u/s 18-B, Bengal Local Self-Government Act setting aside the election of the plaintiff and the proforma defendant as members of the Madaripur Local Board is without jurisdiction and void. The Courts below have dismissed the suit on the ground that the Civil Court has no jurisdiction to entertain it. Hence this second appeal by the plaintiff. It appears that after the polling was over a petition was submitted by the principal defendant to the Sub-Divisional Officer of Madaripur who was invested with powers to decide election disputes arising out of the Election Rules praying for the postponement of the declaration of the result of the election on the ground that there were certain irregularities and illegalities in the recording of votes. This prayer was disallowed by the Sub-Divisional Officer. He then called for a report from the polling officer against whom the allegations were made and on receipt of the report intimated to the District Magistrate of Faridpur that the allegations of the defendant were unfounded. Thereafter the defendant filed an application before the District Magistrate of Faridpur u/s 18-B, Bengal Local Self-Government Act, for setting aside the election of the plaintiff and the pro forma defendant. This petition was transferred by the District Magistrate to Mr. R.L. Dey who was also empowered to decide election dispute for disposal. Mr. Dey heard this petition and set aside the

election. Plaintiff thereupon instituted the present suit for reliefs mentioned above.

2. The first point urged in support of this appeal is that the District Magistrate of Faridpur after having delegated his powers to decide election disputes to the Sub-Divisional Officer of Madaripur had no jurisdiction to entertain the application of the defendant u/s 18-B of the Act. By Rule 1-A of the Election Rules framed by the Local Government u/s 138-A, Bengal Local Self-Government Act, the authority to decide disputes relating to elections arising under Election Rules is the "Magistrate of the District". The expression "Magistrate of the District" has not been defined in the rules. By Section 5 of the Act however, "Magistrate of the District" includes any Magistrate subordinate to the Magistrate of the District to whom he may delegate all or any of his powers under the Act. The word "includes" in the definition indicates that the District Magistrate is not divested of his authority after he has delegated his powers. The District Magistrate therefore had jurisdiction to entertain the application u/s 18-B, Bengal Local Self-Government Act, and transfer it to Mr. Dey for disposal. This contention therefore fails.

3. The next contention on behalf of the appellant is that the District Magistrate of Faridpur had no jurisdiction to entertain a fresh application u/s 18-B of the Act after the Sub. Divisional Officer of Madaripur had decided the matter and the order of Mr. Dey setting aside the election based on this application is therefore void. This argument assumes that there was previous application before the Sub-Divisional Officer of Madaripur u/s 18-B and that on the basis of that petition he gave a decision. It has been already pointed out that the petition of the defendant before the Sub-Divisional Officer of Madaripur was for the postponement of the declaration of the result of the election and the allegations contained in the said petition were made in connexion with this prayer. No petition was or could have been filed before him u/s 18-B at that stage as the question of the validity of the election did not and could not arise before the declaration of the result. It is not disputed that the Sub-Divisional Officer of Madaripur did not fix any date for hearing the matter in presence of the parties and did not take any evidence. This clearly indicates that he did not decide the matter at all. There were certain allegations made against the polling officer. He therefore thought it proper to call for a report from him and to communicate his opinion about these allegations to the District Magistrate, There had been no decision at all therefore by the Sub-Divisional Officer of Madaripur regarding the validity of the election. The District Magistrate had therefore jurisdiction to entertain an application u/s 18-B and transfer it to Mr. Dey for disposal. Under Rule 1-A of the Election Rules and Section 148, Bengal Local Self-Government Act, the decision of Mr. Dey setting aside the election is final and cannot be questioned in any Court. The Courts below were therefore right in dismissing the suit. The appeal is accordingly dismissed with costs.

Remfry, J.

4. I agree. In my opinion the Magistrate of the District u/s 5 has a continuing authority to delegate his powers under Rule 1-A, and can alter, amend or recall any order made under Section 5. His powers are the same as those u/s 21, General Clauses Act. Doubtless the regular course would be to set aside an order delegating his powers to a named Magistrate before authorizing another in respect of the same matter, but the omission to do so is in my opinion a mere irregularity which does not render the second order invalid.