
(1961) 02 CAL CK 0003
In the Calcutta High Court
Case No : Civil Revision Case No. 573 of 1959

Sudhamoy Bandopadhyay	Vs	APPELLANT
Bhabani Prosad Sarkar and Others		RESPONDENT

Date of Decision : 20-02-1961

Acts Referred:

Bengal Municipal Act, 1932 — Section 22, 22(1), 22(1)(e), 3, 36

Citation : 65 CWN 1085

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.K. Das, Dwijendra Nath Bose and Manishi Kumar Das, for the Appellant; Manindra Nath Ghosh for Opposite Party No. 1 and Satya Charan Pain for Opposite Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The petitioner in this case is an Advocate, and a qualified voter in Ward No. 2 of the Midnapore Municipality. In Ward No. 1 of the said Municipality, there are two seats for commissioners. At the last election for commissioners of the said Municipality, the petitioner filed his nomination paper from Ward No. 1. Two other persons also filed nomination papers. They are opposite parties Nos. 1 and 2 in this application. The opposite party No. 1 is a whole-time paid employee of the Kharagpore Municipality, the exact designation being the Secretary of the said Municipality. The petitioner objected to the nomination paper of opposite party No. 1 and this objection was rejected. Against this decision, the petitioner filed an appeal before the Additional District Magistrate of Midnapore under Rule 20(1) of the Rules framed under the Bengal Municipal Act, 1932. The said appeal also was dismissed. Thereafter the petitioner has come up here. A preliminary objection has been taken to the maintainability of this application on the ground that the petitioner has an alternative legal remedy against the said order u/s 36 of the said Act. Section 36 is the relevant section for proceedings to set aside an election. If the validity of any election of a commissioner is brought into

question, then such an election case may be instituted. It is argued that in this case the petitioner should have filed such an election case and should not have come up straight to this Court. Mr. Das pointed out that this matter is concluded by a Divisional Bench decision of this Court in *Nam Narayan Mondal v. Aghore Chandra Ganguly and another* (1) 39 C.W.N. 971. It has been laid down there that if the person contesting the election is not objecting to the election in his own Ward but in some other Ward, then section 36 does not apply. With respect, I must not be taken to agree with this decision, but I find it to be binding upon me. That being so, this preliminary objection fails.

2. I now come to the merits of the case. The short point taken is that under the provisions of clause (e) of section 22(1), the opposite party No. 1 was not eligible to be elected as a commissioner. That provision runs as follows :-

22 (1) A person shall not be eligible for election or appointment as a Commissioner if such person-

.. . . .

(e) is a municipal officer or servant or holds any office of profit under the Commissioners;

3. The word "commissioner" is defined in sub-section 53 of section 3 as follows:

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

4. The argument is that we must apply this definition to section 22(1) (e), and therefore, if a person holds any office of profit under the Commissioners of any municipality, wherever it may be situated, then that person would be disqualified from standing in an election of any other municipality in West Bengal. In my opinion, this argument is without any substance. The Bengal Municipal Act, 1932 is applicable to the whole of West Bengal except Calcutta. The provisions thereof, including the definitions, are in a general form, which means that they are applicable and have to be applied to all municipalities within that jurisdiction. It does not mean however, that the provisions are to be applied cumulatively. They are to be applied to each municipality, and the provisions must be taken to be applicable to that particular municipality, unless of course it is made clear that by the express terms of the provision, the affairs of some other municipality was also to be taken into account. In this sense, the word "any" is not necessarily to be taken in a cumulative sense. Any other interpretation would give rise to an absurd situation. For example, in clause (f) of sub-section (1) of section 22, a person is disqualified from standing in an election for being a commissioner of a municipality if he has any interest in any contract with "the commissioners" which, according to the definition, which is sought to be applied, would mean the commissioners of any other municipality. Suppose a person is interested in a contract with a municipality situated in Kerala, what would be [the underlying principle to disqualify him from standing as a commissioner in Midnapore, which

may be his native town? In my opinion, that was never the intention of the Legislature, and I interpret section 22(1) (e) as applying to the particular municipality in which a person is standing for election as a commissioner. In other words, one who is employed under the commissioners of a particular municipality or holds any office of profit in it, may not stand in an election for being a commissioner of that municipality. It does not mean that if he is employed in one municipality or holds an office of profit in that municipality, he cannot stand for election as a member of another municipality. That being so, I must hold that the decisions below are correct and this application must fail and must be dismissed. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.