

(1923) 06 AHC CK 0024
In the Allahabad High Court

Sultan Bakhsh and Others

APPELLANT

Vs

Abdul Hamid

RESPONDENT

Date of Decision : 01-06-1923

Acts Referred:

Citation : (1923) ILR (All) 685

Hon'ble Judges : Grimwood Mears, C.J.;Piggott, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Grimwood Mears, C.J. and Piggott, J.—This is a reference to the High Court under Order XI/VT of the CPC read with Section 23(c) of the Municipalities Act No. II of 1916. In Ward No. 4 of the Fatehgarh municipal elections five candidates were nominated for the Moslem constituency. Three of them withdrew before the polling day. On that day two candidates were opposed to each other, by name Umrao Khan and Abdul Hamid. There being only one seat, the poll was duly opened and voters commenced to record their votes in favour of one or the other candidate. At some time whilst the polling was open and continuing Umrao Khan went to the returning officer and told him that he no longer desired to contest the seat. Thereupon the returning officer closed the poll and declared that the one remaining candidate, Abdul Hamid, was duly elected to the one vacancy. It is suggested in the petition that the withdrawal of Umrao Khan was due to some political manoeuvring: but be that as it may, we can only deal with what were the facts relating to the procedure. The fact was that the poll opened with two candidates for one vacancy, and before the time came for the poll to close and votes to be counted and the returning officer to declare who was elected--before that time arrived there was only one candidate and that one candidate a candidate for the one vacancy. We think, in the circumstances, the returning officer acted with propriety and common sense, and that he acted quite reasonably. Rule 36(1) of the Municipal rules and by-laws of this particular municipality provides that a poll shall be taken on the day for the election, when

the number of duly nominated candidates who are entered in the schedule and who have not withdrawn their candidature before the time fixed for the poll exceeds that of the vacancies. When you have got duly nominated candidates in excess of vacancies, you have got to have an election. Rule 36(2) provides: If the number of such candidates is equal to the number of vacancies, all such candidates shall be deemed to be elected. Therefore, if there are three candidates and three vacancies, all such candidates shall be deemed to be elected: similarly two; similarly one. Now it is true that in terms Rule 36(2) does not contemplate, nor is there anywhere any provision which contemplates, the withdrawal of a candidate during the few hours during which the polling is in progress; but by analogy to the duties of the returning officer before the opening of the poll, we have no doubt that it was the proper course for the returning officer to act in conformity with Rule 36(2), and, on finding only one candidate left for the one vacancy, to declare that man duly elected.

2. Dr. Sen, voicing no doubt to some extent the suggestion thrown out by the Commissioner, said that the poll ought to remain open and in the end the returning officer should declare the remaining candidate duly elected. The difficulty about that is that if the poll remains open, votes are being recorded for a candidate who has withdrawn his candidature and is no longer one of the contestants. It is quite clear that just as a candidate can withdraw before the time for polling arrives, so he can withdraw during the polling, so also can he withdraw as soon as he is elected or he can withdraw at any time after his election. A man does not bind himself that he will not withdraw either as a candidate or as a member of a municipality. He is entitled to withdraw at any moment. In the circumstances we are of opinion that the returning officer acted in the circumstances legally and properly and rightly in accordance with his duties and dealt with the matter in a proper way. We are of opinion that his declaration that Abdul Hamid was duly elected was a proper decision and in accordance with the law. This is our answer to the reference. The costs of this hearing, including fees actually certified by counsel on both sides, will be dealt with by the Commissioner in his discretion in disposing of the election petition.