

(1942) 03 CAL CK 0013
In the Calcutta High Court
Case No : L.P. Appeals Nos. 1 & 2 of 1942

Upendra Nath Mallick and Another	Vs	APPELLANT
Sashi Shekhar Bose and Others		RESPONDENT

Date of Decision : 19-03-1942

Acts Referred:

Citation : (1942) 03 CAL CK 0013

Final Decision : Dismissed

Judgement

Gentle, J.—The question which arises in these two Letters Patent Appeals is whether the appointment by the Local Government under sec. 10 of the Bengal Local Self-Government Act of 1885 of five members to the Jessore District Board was authorised by the Act. The facts are very short. The Chairman of the District Board was elected on September 30th, 1936. It then became his duty to convene a meeting for the election of members to the Board. He failed to do so. The Local Government thereupon under the powers in sec. 10 of the Act appointed April 17th, 1937, as the day upon which the election should take place. The election was held and amongst others the five members in question were elected.

2. On May 5th following, the election of these five members was declared void under sec. 18B of the Act. No step of any sort was taken thereafter until on December 2nd, 1937, the Local Government appointed the same five persons as members of the District Board, purporting to act under the provisions of sec. 10 (2) of the Act.

3. The learned Munsif before whom this matter first came held that the appointment was bad. His decision was reversed by the learned District Judge on appeal. The matter was then carried in second appeal and decided by Biswas, J., who reversed the decision of the learned District Judge and restored that of the learned Munsif.

4. These are appeals from a decision of Biswas, J., who held that the appointment by the Government under sec. 10 of the Act was not justified and

was wrong.

5. It is convenient to refer to the relevant provisions of the Act. Sec. 10 provides:-

(1) If, within the time prescribed by rules made by the Local Government under sec. 138, the prescribed proportion of elected members of any District (Board or Local Board is not duly elected, the vacancy or vacancies shall be filled by another election to be held on such date as may be appointed, by the Local Government by notification.

(2) If for any reason the prescribed proportion of elected members is not filled at such second election, the Local Government may appoint a member or members to make up that proportion; and any person so appointed shall be deemed to be a duly elected member

Sec. 19 (1) provides:

When the place of an elected member of a District Board or Local Board becomes vacant by his resignation, removal or death, (or by his failure to make an oath or affirmation of allegiance under sec. 16B, or by reason of his election having become void under sec. 18B) a new member shall be elected, in accordance with the rules made by the Local Government under this Act, to fill the place:

Provided that if, within the time prescribed by such rules, no new member is duly elected, the Commissioner may appoint a new member to fill the place.

Sub-sec. (2) of sec. 19 provides:

When the place of an appointed member of a District Board or Local Board becomes vacant as aforesaid, the Commissioner may appoint a new member to fill the place.

6. On behalf of the Appellants it is argued that the second election referred to under sec. 10 (2) is that which took place on April 17th, 1937; and that in consequence of the election having been declared void the Government was justified under the above sub-section in exercising its powers and appointing five members.

7. Reliance has been placed upon the words in sub-sec. (2) "if for any reason." Sec. 19 is quite clear in its provisions that when the place of an elected member of a District Board becomes vacant by reason of his election becoming void under sec. 18B a new member shall be elected in accordance with the rules. But if the vacancy is not filled by an election within the time prescribed, then the Commissioner may appoint. If the Government were empowered under sec. 10 to appoint in the present circumstances and if the argument "if for any reason" applies to every case there would be no need for sec. 19 of the Act, and it would have to be entirely ignored.

8. The election of the five members in question was declared void under sec. 18B

of the Act. Thereupon it is quite clear that the machinery which is provided in sec. 19 should have been put into operation. In my view, the appointment, in the circumstances of this case in which the election was declared void, by the Government under sec. 10 is wrong and if an appointment had to be made it should have been by the Commissioner under sec. 19.

9. For these reasons, in my view, the decision given by Biswas, J., is correct and these appeals must be dismissed with costs.

Derbyshire, C.J.

I agree.