

ORIGINAL CIVIL.

Before Chaudhuri J.

1918

In the matter of AMULYADHAN ADDY.*

March 19.

Municipal Election—Preparation, revision and publication of list of voters—Election Roll, finality of—Nomination paper—Sitting Commissioner as candidate for election—Objection to rival candidate's nomination—Qualifications of voters—Application to declare nomination paper inoperative—Power of High Court to interfere—Calcutta Municipal Act (Beng. III of 1899), ss. 36, 37 (2) (e), 47, 54; Schedules IV, V.

Persons objecting to the final publication of the Election Roll should take steps to prevent the publication before the Election Roll is finally published according to the rules.

In an application to have it declared that the nomination paper of a rival candidate for election as Commissioner be rejected and declared inoperative on the ground that some of the approvers to the nomination were not entitled to vote :

Held, that the Court could not alter the Election Roll at that stage.

The Queen v. Tugwell (1) relied upon.

Nundo Lal Bose v. The Corporation for the Town of Calcutta (2) and *Chairman of Giridih Municipality v. Suresh Chandra Mozumdar* (3) referred to.

RULE on behalf of Amulyadhan Addy, the applicant.

Amulyadhan Addy, the sitting Commissioner for Ward XXIII, was one of the candidates in that ward for election as Commissioner at the general election of Municipal Commissioners notified to be held in Calcutta on the 20th March, 1918. In accordance with the rules under the Calcutta Municipal Act, the Deputy Chairman under the powers delegated to him by that Act, duly prepared a preliminary list of

* Ordinary Original Civil Jurisdiction.

(1) (1868) L. R. 3 Q. B. 704.

(2) (1885) I. L. R. 11 Calc. 275.

(3) (1908) 12 C. W. N. 709.

persons entitled to be enrolled in the Municipal Election Roll as voters in the abovenamed ward. Objection was taken by Amulyadhan Addy to the names of certain persons appearing in the said list on the following, amongst other, grounds: that the said persons were occupiers of flats not separately numbered and valued for assessment purposes, and paid rent for such flats only. The Deputy Chairman overruled the objection. On the 26th February, 1918, Amulyadhan Addy applied to the Deputy Chairman for revision of the Election Roll and requested him to await the decision of the High Court in *In the matter of Surendra Chandra Ghose* (1), in which a similar question was involved and which was then pending before Mr. Justice Greaves. On the 27th February, 1918, the Deputy Chairman rejected the application for revision and on the same day Amulyadhan Addy submitted his petition for revision to the Chairman. In the afternoon of the 28th February 1918, Mr. Justice Greaves delivered judgment in the above named case. In view of the decision therein contained Amulyadhan Addy, at about 6 P.M. of that same evening, submitted a fresh petition to the Chairman, who passed the following order thereon: "I am unable to revise the Election Roll at this stage. In my opinion it would be incumbent upon me to revise every ward. I do not propose to go beyond the order of the Court." On the 1st March, 1918, the list of voters was finally published by the Chairman. On the 5th March, 1918, one Norman Ritchie Luke, the rival candidate for election as Commissioner for Ward XXIII having obtained the signatures of 18 persons to his nomination paper in accordance with the rules under the Municipal Act, submitted the same to the Chairman.

1918

AMULYA-
DHAN
ADDY,
In re.

(1) (1918) I. L. R. 45 Calc 950

1918
 AMULYADHAN
 ADDY,
In re.

Objection was, thereupon, taken by Amulyadhan Addy to the said nomination and a petition was accordingly presented to the Chairman, asking him to declare the same to be invalid on the ground that out of the 18 persons who signed the said nomination paper as approvers, the names of 13 of them should not be registered in the list of voters for the following reasons, namely, that the names of 6 of them did not appear in the assessment book of the Corporation, that 5 of them were occupiers of flats or portions of houses not separately numbered and valued for assessment purposes, and lastly, that 2 of them did not pay rent for the premises they both occupied as members of, and trustees for, the firm of Messrs. Begg, Dunlop Co. In respect of one of the 2 persons referred to in the last reason above stated, it was further alleged, that he did not pay on his sole account and in his own name any taxes leviable under Chapter XIII of the Municipal Act for the year 1916-17, though his name was entered in the Municipal Election Roll as voter for having taken out a motor-car license. On the 13th March 1918, the Chairman overruled the objection. Thereupon, Amulyadhan Addy applied to the High Court for relief under s. 45 of the Specific Relief Act. The matter came on for hearing on the 18th March 1918.

Mr. Langford James (with him *Mr. R. C. Bonnerjee*) showed cause. It was too late at this stage to take exception to persons whose names were registered in the list of voters as the Election Roll had been finally published. Any person, whose name appeared in the revised list after publication was entitled to vote: see *The Queen v. Tugwell* (1) and *Flintham v. Roxburgh* (2) in support of these two propositions. Furthermore,

(1) (1868) L. R. 3 Q. B. 704.

(2) (1885) 17 Q. B. D. 44.

the rival candidate took the names of the approvers for his nomination from the list of voters as decided by the Chairman, and his position was completely altered. On the question of the qualifications of voters and their right to vote, ss. 37 of the Municipal Act was referred to. Section 3(30) defined occupier. Difficulty might arise as to additional votes,—a matter not involved in the present question,—but not with regard to a single vote: see s. 47.

1918
 AMULYA-
 DEAN
 ADDY,
In re.

Mr. A. N. Chaudhuri (with him *Mr. C. C. Ghose*), in support of the Rule. Before a person puts his signature to the nomination paper, it must be shown that he had the right to nominate. If a name were inserted by mistake in the Election Roll, it could not be urged on behalf of the person whose name was so inserted, that he had the right to vote. Assuming that the right to nominate was subsidiary to the right to vote, a right to vote could be questioned up to the time of election. Section 56 of the Municipal Act made that perfectly clear and *The Queen v. Tugwell* (1), cited by the opposite party, was exactly in point. In that case the election had actually taken place. After the election there was no right to object, but there was the right to object at any time before election, except with regard to discretion. Rule 15 of the Municipal Rules made the Election Roll final only for certain purposes. The High Court had jurisdiction to interfere; see *Nundo Lal Bose v. The Corporation for the Town of Calcutta* (2) and *Chairman of Giridih Municipality v. Suresh Chandra Mozumdar* (3). As regards s. 37, that section dealt with the conditions precedent to being a voter.

Mr. R. C. Bonnerjee (with leave of Court). The names of the persons in the nomination paper appeared

(1) (1868) L. R. 3 Q. B. 704.

(2) (1885) I. L. R. 11 Calc. 275.

(3) (1908) 12 C. W. N. 709.

1918
 AMULYA-
 DHAN
 ADDY,
In re.

in the Election Roll. So *prima facie* the nomination paper was valid. The petitioner before questioning the right of voting, should have applied to the Court for an order to expunge the names of the persons objected to from the Roll. So long as their names appeared on the Election Roll, they had the right to vote.

CHAUDHURI J. This is an application that the nomination of Norman Ritchie Luke be declared invalid. The nomination paper in this case contains the particulars required under rule 2, schedule V of the Municipal rules for the conduct of elections. The grounds upon which the application is made are as follows: that although there are 18 persons who appear as voters approving of the nomination, yet six of them are not entitled to be registered as voters, their names not having been in the assessment book; that five of them live in flats and are therefore not entitled under section 37, sub-clause 2 (e) of the Calcutta Municipal Act; that one Tosh and one Pickford, who live in the same house, are not entitled to be reckoned as voters inasmuch as they do not pay the rent of the premises where they live, which is paid by Messrs. Begg Dunlop & Co. to whom the premises belong. Objections were taken by the applicant to the inclusion of the names of these persons in the election roll, but that objection was overruled. He then applied for revision of the roll and asked the Chairman to await the decision of this Court in a similar matter, that of *Surendra Chandra Ghose* (1), which was then pending before his Lordship Mr. Justice Greaves. Decision was given in it by his Lordship on the afternoon of the 28th February. A fresh petition was put in by the objector before the

(1) (1918) I. L. R. 45 Calc. 950.

Chairman at about 6 P.M. on the 28th February, mentioning the decision, but the Chairman held that he was unable to revise the election roll at that stage: He said, in his opinion it would be incumbent upon him to revise every ward and therefore he did not propose to go beyond the order of the Court *in the matter of Surendra Chandra Ghose* (1)

1918

AMULYA-
DHAN
ADDY,
In re.

CHAUDHURI
J.

Chapter V of the Municipal Act deals with the election and appointment of Commissioners. Section 36 says that a Municipal Election Roll has to be prepared and published in the manner prescribed in the rules contained in Schedule IV. Section 37 lays down the qualification of voters at elections, and says that a person shall not be entitled to vote at an election unless he is enrolled in the Municipal Election Roll as a voter of the ward for which such election is held. Sub-clause (2) of that section lays down that a person shall not be entitled to be enrolled in the Municipal Election Roll as a voter except under certain circumstances. The rules, which have been framed under section 567 and have the effect of law, are contained in Schedule IV. It provides for the preparation of a list of voters on or before the 1st December immediately preceding each general election. Rule 5 provides for the publication of the list. Rule 7 provides for notice of publication and sale of lists. Rule 8 provides for objections. Rule 10 provides for revision of the list. It says that the Chairman shall before the first day of the succeeding month of March revise the said list. Rule 12 provides that after the revision the Chairman shall sign a printed copy and that copy shall be considered the Municipal Election Roll. Such Election Roll is to come into operation on the 1st March immediately preceding the general election according to rule 15 (1). Rule 15 (2) says that the roll

(1) (1918) I. L. R. 45 Calc. 950.

1918
 AMULYA-
 DHAN
 ADDY.
In re.
 CHAUDHURI
 J.

shall be final and while it continues in force, it shall not be altered except to correct such clerical errors as the Chairman may advertise by public notice given from time to time. Section 54 of the Municipal Act provides that elections are to be conducted in the manner prescribed in the rules contained in Schedule V. Rule 2 of that schedule provides for nomination papers, and it seems to me to be clear that the persons referred to in rule 2 as voters are persons appearing on the Election Roll as voters. On the facts stated by the applicant, it seems to me, inasmuch as there is no reply to his affidavit, that there have been serious mistakes in the Election Roll and grave irregularities in its preparation. Rule 10 (2) Schedule IV, provides that three clear days' notice of the holding of the enquiry has to be given to dispose of objections. It is asserted by the applicant that no such notice was given, and as I have said, having regard to the fact that there has been no affidavit in reply, I must take that as an admitted fact, which cannot but be characterised as a very grave irregularity.

Section 37 (2) of the Act provides that a person is not entitled to be enrolled unless his name is entered in the assessment book. It has been stated that in this case six such names have been incorporated in the Election Roll. The interpretation of section 37 (2) (e) may be somewhat difficult, but Mr. Justice Greaves has held that persons living in flats cannot be enrolled in the Election Roll, and I am inclined to take the same view. But the question before me is, having regard to rule 15 (2) Schedule IV, whether it is competent for me now to question the electoral roll. The application is not for the correction of the Election Roll, but only to have it declared that the nomination paper may be rejected and declared inoperative. As I

have said the nomination paper purports to comply with the provisions contained in rule 2, Schedule V. Objections which were raised by the applicant were placed before the Chairman on the 23rd February, and decision was given against him on the 25th February. He had plenty of time to come to this Court and ask at that stage to stop the publication or for the correction of the electoral roll. He did not choose to come to this Court at that stage but waited for the decision in *Surendra Chandra Ghose's matter* (1), with the result that he presented his petition for revision on the 28th after 6 P.M. Rule 11 of Schedule IV provides that the Chairman can only adjourn the hearing of any matter under the foregoing rules from time to time, but that no adjourned hearing should be held after the last day of February immediately preceding the general election. Having regard to that provision, I do not think he could deal with the application which was presented to him at 6 P.M.

Elaborate provisions have been made in the rules for the preparation, publication and revision of the rolls, and it seems to me that persons objecting to the final publication of the election roll should take steps to prevent the publication before the Election Roll is finally published according to the rules. It was argued with very great ability and considerable force that in matters of this character, the finality which is given by rule 15 is inoperative, having regard to the decision in *Nundo Lal Bose v. The Corporation for the Town of Calcutta* (2) which has since been followed in this Court, amongst others in *Chairman of Giridih Municipality v. Suresh Chandra Mozumdar* (3). But in *Nundo Lal Bose's case* (2), the Commissioners were

1918

AMULYA-
DHAN-
ADDY,
In re.

CHAUDHURI
J.

(1) (1918) I. L. R. 45 Calc. 950. (2) (1885) I. L. R. 11 Calc. 275.

(3) (1908) 12 C. W. N. 709.

1918

AMULYA-
DHAN
ADDY,
In re.

CHAUDHURI
J.

held to have acted without or in excess of jurisdiction; and therefore the Court held that it had power to quash the proceedings on a *certiorari*, notwithstanding the finality provided for in section 117 of the Municipal Consolidation Act of 1876. In the *Giridih Municipality's case* (1), the Court interfered on practically the same ground. It was held that if the error goes to jurisdiction, the Court can and ought to interfere; if not, the Court has no power to do so. I do not think that at this stage I can alter the Election Roll. Section 56 of the Act was referred to, but that relates to the hearing of election petitions by the High Court after publication of the return. That question does not now arise. It is greatly to be regretted that in matters of such serious moment, requirements of the law are not carefully observed, and I regret to have to hold that I have no power now to interfere with an Election Roll apparently carelessly prepared. Having regard to the way in which it is said the Election Roll was prepared, I discharge the Rule, but without costs. In deciding as I have done with regard to the finality of the Election Roll, I have relied largely upon *The Queen v. Tugwell* (2).

O. M.

Rule discharged.

Attorney for the applicant: *Subodh Chandra Mitter.*

Attorneys for the opposite party: *Orr, Dignam & Co.*

(1) (1908) 12 C. W. N. 709.

(2) (1868) L. R. 3 Q. B. 704.