APPELLATE CIVIL.

Before Mookerjee and Chotzner JJ.

1922

July 7.

RAGHU NATH SARMA DOLAI

v.

JIBAN CHANDRA SARMA.*

Temple Election—Validity—Ballot Act, 1872, (35 & 36 Vict. c. 33), s. 7, —Bengal Municipal Act (Beng. III of 1884), rules of the 21st November, 1896.

Where in an election of a high priest of a temple, the persons whose names were not entered in the list of voters were permitted to participate in the election :

Held, that in the absence of any provision in the scheme for the management of the temple, to the effect that the right of a person to vote at the election was dependent on the entry of his name in the register, it could not be maintained as a matter of principle that the election was invalidated by the fact that persons were permitted to participate in the election, though their names had not been previously placed on the register of voters.

Raman Julu v. *Partha Sarathi* (1) referred to.

Although the scheme states that those Bardeories whose names are entered in the list are entitled to vote, it does not provide, nor does it follow in the absence of an express direction to that effect, that those not so entered cannot vote. There is consequently no infringement of a mandatory rule.

Shyam Chand v. *Dacca Municipality* (2) referred to.

APPEAL by Raghu Nath Sarma Dolai, the petitioner.

This appeal arose out of an application to set aside the election of the high priest of the Madhub temple

* Appeal from Original Decree, No. 79 of 1922, against the decree of S. E. Stinton, District Judge of the Assam Valley Districts, dated March 4, 1922.

(1) (1915) 17 M. L. T. 331.

(2) (1919) I. L. R. 47 Calc. 524 ; 30 C. L. J. 270.

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at Hajo in the district of Kamrup. A scheme was drawn up by the High Court in 1911 to regulate the management of the temple. Accordingly the last election took place on the 19th and 20th February, 1922, and Jiban Chandra Sarma, the respondent, was duly elected the high priest. The appellant challenged the validity of the election on a number of grounds.

Dr. Sarat Chandra Basak, *Babu Prokash Chandra Majumdar*, *Babu Mahesh Chandra Banerjee* and *Babu Manmatha Nath Ray II*, for the appellant.

Babu Ram Chandra Majumdar and *Babu Bijan Kumar Mookerjee*, for the respondent.

MOOKERJEE AND CHOTZNER JJ. This appeal is directed against the determination of the question of validity of an election to the headship of the Madhub temple at Hajo in the district of Kamrup. The high priest is named Dolai, and the last incumbent of the office died on the 21st December, 1917. This religious endowment is described in the proceedings as ancient, and its management is now regulated by a scheme drawn up by this Court on the 1st May, 1911, in modification of a scheme prepared by the District Judge on the 9th December, 1908, in a suit instituted under section 539 of the Civil Procedure Code of 1882 for the administration of the Trust.

This scheme directs that the Dolai be elected as before by the Bardeories of the temple, to hold the office for life unless removed by the Civil Court in a suit instituted for that purpose. There will also be a committee of five elected members besides the Dolai who will hold office for three years. Three of the members will be elected by the Bardeories and two by the shebaits; the Dolai will be the sixth and will

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have a casting vote. The scheme further directs that a commissioner be appointed by the Court to prepare a list of the Bardeories living within 5 miles of Hajo, who will be entitled to vote at the election of a Dolai and of the members of the committee. There will also be a list of the shebaits entitled to vote for the Committee; and the Court will indicate the manner in which such election should be held, for future guidance. The Committee will revise the list of voters once a year after the publication of notice and will arrange for the election of their successors and of a Dolai when there is a vacancy.

In accordance with this scheme, steps were taken for the election of a Dolai and the election was in fact held on the 15th January, 1918. The result was that the present appellant received 203 votes and the respondent 48 votes. The validity of the election was consequently challenged by the respondent. The District Judge allowed the objection and cancelled the election. On appeal, this Court reversed the decision of the District Judge and remitted the case for further consideration. The District Judge thereupon upheld the objection that the election had been held in an objectionable manner and again cancelled the election. There was a further appeal to this Court which was dismissed on the 10th February 1921. But this Court directed that a list of voters be framed and that a fresh election be held after the Committee had been reconstituted. The election was held on the 19th and 20th February, 1922, and we are now called upon to decide whether the election was valid in law.

The validity of the election is assailed on the ground that persons whose names were not entered in the list of voters were permitted to participate in the election. This objection has been overruled by the

District Judge and has been reiterated here as a matter of principle. On behalf of the appellant the position has been maintained that the Commissioner who held the election was not competent to permit any person to participate in the election whose name had not been previously entered in the electoral roll. We are of opinion that there is no force in this contention. There is nothing in the scheme which ordains that the right to vote is dependent on the entry of the name of the voters in the voter's list. Although the scheme states that those Bardeories whose names are entered in the list are entitled to vote, it does not provide, nor does it follow in the absence of an express direction to that effect, that those not so entered cannot vote. There is consequently no infringement of a mandatory rule: *Shyam Chand* v. *Dacca Municipality* (1). This view of the effect of the scheme was incidentally adopted by Mr. Justice Woodroffe and Mr. Justice Smither in an earlier stage of these proceedings. But it has been urged before us that the question was not at that stage directly and substantially in issue. This may be conceded. We are of opinion, however, that the view then taken was undoubtedly well founded on principle.

Under section 7 of the Ballot Act, 1872, it is provided that at any election for a county or a borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: provided, that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute or by the common law of Parliament, or

(1) (1919) I. L. R. 47 Calc. 524; 30 C. L. J. 270.

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relieve such persons from any penalties to which he may be liable for voting. The effect of this provision was examined in the case of *Stowe* v. *Jolliffe* (1) where it was ruled that the register is conclusive not only at, but after, the election, so that the votes of persons whose names are on the register cannot be struck off on a petition unless the persons come within the proviso. Lord Coleridge reviewed the history of the establishment of register of voters and pointed out that it was not till the register was established by the Reform Act that the view was adopted that the entry of the name of a voter on the register was a condition precedent to the exercise of franchise by him. A similar provision will be found in the Rules framed on the 21st November, 1896, under the Bengal Municipal Act. These rules are so framed as to make no person eligible to vote, unless he has been previously duly registered in accordance with the rules prescribed for the maintenance of register of voters. In the case before us, there is no provision in the scheme to the effect that the right of a person to vote at the election is dependent on the entry of his name in the register. We are consequently of opinion that it cannot be maintained as a matter of principle that the election in this case is invalidated by the fact that persons were permitted to participate in the election, though their names had not been previously placed on the register of voters. In this connection reference may be made to the decision in *Raman Julu* v. *Partha Sarathi* (2) where it was pointed out that the Common Law of England relating to Parliamentary elections should not be applied to regulate the election of temple trustees in this country, though the principles which underlie that law may be

(1) (1874) L. R. 9 C. P. 734. (2) (1915) 17 M. L. T. 331.

invoked, if they appear to the Court to be in conformity with the rules of justice, equity and good conscience.

In the view we take, the only question which remains for consideration is, whether the facts found by the District Judge show that the election has been fairly held. As regards the voters who recorded their votes in favour of the respondent, objection has been taken on the ground that two of them, who were originally infants but had attained majority at the time of the election, were allowed to take part in the election and that two other persons whose father was a voter and was recorded as such in the register, but had died before the election, were also allowed to take part in the election. The course adopted by the Commissioner in these circumstances was manifestly correct. It is not disputed that each of these persons possessed the necessary qualifications at the time when the election took place

As regards the voters who were excluded from the election and who, it is asserted, would have recorded their votes in favour of the appellant, the District Judge has found that the objection is groundless. These persons did not appear at the proper time and at the proper place to record their votes. They visited the Commissioner at a time when the election was not in progress and at a place other than that fixed for the election. The Commissioner also was not satisfied as to some of them that they were the persons whose names were recorded as voters. We are of opinion that the course adopted by the Commissioner cannot be successfully challenged.

It has finally been urged on behalf of the appellant that opportunity was not granted to him to establish his objection at the time of the scrutiny of the votes recorded. There is no substance in this

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contention. There are no rules prescribed as to the mode in which the scrutiny is to be conducted. The only test to be applied is, whether the party who takes exception to the votes recorded has been prejudiced by the procedure adopted. We are unable to say that there was any genuine attempt made by the appellant to support his allegation by the production of evidence. There is nothing to show that he asked the Commissioner or the District Judge to take evidence in support of his assertions. In these circumstances we are not satisfied that he has a real grievance in this matter.

The result is that we affirm the decree made by the District Judge and dismiss the appeal with costs.

B. M. S. *Appeal dismissed.*

APPELLATE CIVIL.

Before Mookerjee and Chotzner JJ.

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July 19.

NABADWIP CHANDRA NANDI

v.

SECRETARY OF STATE FOR INDIA*.

Peshkosh—Abwab—Holders of permanently-settled estate—Statutory or contractual liability—Public Demands Recovery Act (Beng. III of 1913).

Where the holders of a permanently-settled estate under the Government were assessed with *peshkosh* by the Government in addition to the revenue paid by them:

Held, that in the absence of any evidence to show the method of assessment and the realization of *peshkosh* from time out of memory, it

* Appeal from Appellate Decree, No. 2020 of 1920, against the decree of Haripada Majumdar, Subordinate Judge of Midnapore, dated June 16, 1920, affirming the decree of Suresh Chandra Sen, Munsif of Contai, dated Dec. 11, 1918.