

APPELLATE CIVIL.

Before Nasim Ali J.

1934

May 14, 15, 17.

MAHEDAR RAHMAN MIYA

v.

KANTICHANDRA BASU.*

Civil Courts—Jurisdiction—Election—Voter, whether qualified—Magistrate's decision, if final—Bengal Local Self-Government Act (Beng. III of 1885), s. 138(a)—Statutory rules thereunder, rr. 1(a), 26(b)—Bengal Municipal Act (Beng. III of 1884), s. 15, prov.—Code of Civil Procedure (Act V of 1908), s. 9.

Civil courts have no jurisdiction to try the question, whether a candidate for election to the Local Board is a qualified voter or not, for their jurisdiction is barred by the Statutory Rules, which have been framed by the Local Government under section 138(a) of the Bengal Local Self-Government Act of 1885.

Rathischandra Munshi v. Amulyacharan Ghatak(1) and *Sibesh Chandra Pakrashi v. Bidhu Bhusan Roy*(2) discussed and distinguished.

The magistrate's decision under rule 26(b) is a judicial decision and not simply an executive order passed by the returning officer in connection with the preparation of a register of voters and is really a decision as to whether the person is or is not a qualified voter.

Where the legislature has set up a special tribunal for the purpose of determining certain questions as to rights, which are the creature of the Act, the jurisdiction of that tribunal is exclusive and civil courts cannot take cognisance of such matters.

SECOND APPEAL by the plaintiff.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Charuchandra Biswas, Debiprasad Datta and Gopendrakrishna Banerji for the appellant.

Jogeshchandra Ray and Nagendranath Basu for the respondent.

Cur. adv. vult.

*Appeal from Appellate Decree, No. 1360 of 1933, against the decree of Troilokyanath Ray, Additional Subordinate Judge of Malda, dated May 15, 1933, affirming the decree of Serajul Islam, Munsif of Nawabganj, dated Aug. 20, 1931.

(1) (1930) I.L.R. 58 Calc. 87.

(2) (1928) I.L.R. 56 Calc. 52.

NASIM ALI J. This is an appeal by the plaintiff in a suit for declaration that the election of the defendant to the Malda Local Board was illegal and void and for a perpetual injunction restraining him from exercising the functions of a member of the same Board. Various objections were taken by the plaintiff to the election of the defendant. In view of the concurrent findings of the courts below the learned advocate, appearing for the appellant, has pressed in this appeal only one objection, namely, that the defendant, not being a qualified voter, was not entitled to stand as a candidate in the election. The defendant's answer to this objection was that the civil courts had no jurisdiction to try that question. The courts below have accepted the defendant's plea on this point and have agreed in dismissing the suit. Hence the present appeal by the plaintiff.

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The only point for determination, therefore, in this appeal is whether civil courts have jurisdiction to try the question, whether the defendant was a qualified voter or not. Section 9 of the Civil Procedure Code lays down that—

The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

The point for determination, therefore, is whether the trial of this question by the civil courts is barred either expressly or impliedly. The case for the defendant is that the jurisdiction of the civil courts is barred by the rules, which have been framed by the Local Government under section 138 (a) of the Bengal Local Self-Government Act (Bengal Act III of 1885). Rule 1 (a) of the Statutory Rules framed under the aforesaid Act is in these terms:—

All disputes arising under these rules, other than objections under rules 15 and 42 shall be decided by the magistrate and his decision shall be final.

Rule 26 (b) lays down that—

Every application made under rule 24 or rule 25 shall be duly considered by the magistrate of the district, or such other officer as may be appointed by him in this behalf on the date fixed under rule 26(a) and the decision of the magistrate or of the officer so appointed, as the case may be, shall be final.

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It was urged by the learned advocate for the appellant, on the authority of the decision in the case of *Rathischandra Munshi v. Amulyacharan Ghatak* (1), that the word "final" in the rules quoted above means final so far as the executive authorities are concerned and, consequently, the question can be tried again by civil courts. That was, however, a case, which arose out of an election under the Bengal Municipal Act, in which there is an express proviso to section 15 of the said Act retaining the jurisdiction of civil courts to try suits relating to election matters. The learned advocate for the defendant respondent, on the other hand, contended that the word "final" in rules 1 (a) and 26 (b) means "not liable to be "challenged in a civil suit". The observations of Mitter J. in the case of *Sibesh Chandra Pakrashi v. Bidhu Bhusan Roy* (2) support this contention of the respondent. It was, however, contended by the learned advocate for the appellant that the observations of Mitter J. in that case were mere *obiter dicta*, inasmuch as the learned Judge having found that the objection taken by the plaintiff in that case (namely, whether Tarak was a qualified voter) fell within rule 42, it was not necessary for the learned Judge to come to a decision as to the meaning of the word "final" in that rule.

Even if it be assumed that the observations of Mitter J. in that case are *obiter dicta*, I am not prepared to say that the opinion expressed by the learned Judge in that case is wrong.

Section 138 (a) of the Bengal Local Self-Government Act as originally enacted was in these terms :—

It shall be lawful for the Lieutenant-Governor to make rules, consistent with this Act, for any District Board or Local Board for the purposes of

(a) determining the mode and time of appointment or election of members of Boards and Committees, the term of office and the qualifications and disqualifications of such members, and the qualifications and disqualifications and the registration of voters and candidates, and generally for regulating all elections under this Act.

(1) (1930) I. L. R. 58 Calc. 87.

(2) (1928) I. L. R. 56 Calc. 52.

By Bengal Act I of 1914 the following words were added to clause (a) of section 138 :—

and determining the authority who shall decide disputes relating to such elections.

The result of this amendment of section 138 (a) was that the Local Government obtained powers from the legislature to determine by rules the authority who shall decide disputes relating to elections under the Bengal Local Self-Government Act of 1885. In exercise of that power, the Local Government has framed certain rules. The question is whether, by any of these rules, the Local Government has determined the authority, who is to decide disputes relating to elections held under the Act. Under rule 22 of these statutory rules, the magistrate is to have a register of persons qualified to vote, prepared and such a register is to be prepared from the assessment list from enquiries made by persons especially deputed for the purpose and in such manner as may appear expedient. Under rule 23 the list of voters is to be published. Under rule 24 any person, whose name is omitted from the register, is to apply to the magistrate in writing to have his name inserted in the register, stating the grounds of his application. Under rule 25 any person, whose name is in the register and who considers that any name appearing in the register ought to be omitted, may apply in writing to the magistrate, stating definitely the grounds of his application to have such name omitted. Rule 26 lays down that the application need not be stamped and may be submitted either by post or through an agent. Rule 26(a) indicates how the notice of that application is to be served and a date fixed for the hearing of that application. Then comes rule 26(b), under which the magistrate or some other officer, as may be appointed by him in this behalf, on the date fixed under rule 26 (a), is to hear the application and to pass his decision. It seems to me that, by these rules, the Local Government has determined the authority, who is to decide disputes

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relating to the qualification of voters and there can be no doubt that such a dispute is a dispute relating to elections under the Act.

It is true that, though the Local Government has obtained powers from the legislature to determine the authority, who is to decide all disputes relating to elections, it has not yet exercised that power to its fullest extent. The Local Government has not yet determined the authority, by which disputes other than those arising under the rules framed (as for example, corrupt practices) are to be decided. In fact civil courts still continue to have jurisdiction to decide such disputes. This is clear from the fact that the Local Government has given authority to the magistrate to decide only those disputes, which arise under the election rules. It appears to me also that the decision, which the magistrate gives under rule 26(b) is a judicial decision and not simply an executive order passed by the returning officer in connection with the preparation of a register of voters. The decision under rule 26(b) is really a decision as to whether the person is or is not a qualified voter. A particular procedure has also been laid down for getting the decision under rule 26 (b). On all these grounds, I am of opinion that the Local Government, by virtue of the power delegated by the legislature, has set up a special tribunal for deciding whether a certain person is qualified to vote or not.

It is well established, on authorities, that where the legislature has set up a special tribunal for the purpose of determining certain questions as to rights which are the creatures of the Act, then the jurisdiction of that tribunal is exclusive and civil courts cannot take cognisance of such matters. If the plaintiff had really any grievance he should have resorted to the tribunal, which has been set up for redressing that grievance and, if he did not avail himself of that opportunity, he cannot now complain.

that the law has deprived him of his right to have his grievances redressed by civil courts.

On these grounds, I agree with the courts below that the jurisdiction of civil courts to try the question, as to whether the defendant is a qualified voter or not, is barred by the rules framed by the Local Government under section 138(a) of the Bengal Local Self-Government Act.

It was, however, contended by the learned advocate for the appellant that the actual decision in *Sibesh Chandra Pakrashi v. Bidhu Bhusan Roy* (1), goes to show that the question as to whether a person is a qualified voter or not is a question, which can be tried by civil courts. In that case, however, the learned Judges held that the question, as to whether a certain person was a qualified voter or not, was a question which came under rule 42 and consequently by virtue of the provisions of rule 1 (a) the decision of the magistrate on that question was not final. It appears, however, that at the time when the election, which was in dispute in that case, was held, the specific rules, quoted above, determining the authority, who is to decide disputes relating to the qualification of voters, were not framed by the Local Government. Under the existing rules, the dispute relating to the qualification of voters no longer falls within rule 42. Consequently, the actual decision in the case referred to above does not help the appellants so far as the present appeal is concerned. No sufficient ground has, therefore, been made out for interfering with the judgment and decree of the courts below.

The appeal is, accordingly, dismissed with costs.

(1) (1928) I. L. R. 56 Calc. 52.

Appeal dismissed.

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