

CIVIL REVISION.

Before Mallik and Jack J J.

BINODEBIHARI CHATTERJI

1934

Jan. 31.

v.

GIREENDRANATH RAY CHAUDHURI.*

Municipality—Election of commissioner—Application for setting aside election and for declaration of another candidate (not the applicant) to be duly elected, when maintainable—Bengal Municipal Act, 1932 (Beng. XV of 1932), ss. 36, 37, 38, 39, 43—Jurisdiction of High Court in revision.

Under section 39 of the Bengal Municipal Act of 1932 an application by a candidate for setting aside the election of the successful candidate in an election and for a declaration that another candidate (not the applicant) be declared elected is not maintainable.

The High Court has powers of revision of the decision of a judge of any subordinate court refusing to exercise jurisdiction in any application under section 37 of the Bengal Municipal Act of 1932.

CIVIL RULE obtained by the petitioners, Binodebihari Chatterji and another.

The material facts and the arguments appear from the judgment.

Atulchandra Gupta, Jogeshchandra Ray and Promodekumar Ghosh for the petitioners.

Saratchandra Basak and Bhupendrachandra Ray Chauduri for the opposite party.

JACK J. This is a Rule, calling upon the opposite party to show cause why the order of the Subordinate Judge, in connection with an application under section 36 of the Bengal Municipal Act, should not be set aside. The application was made in connection with an election of commissioners by three of the voters and one of the candidates. The Subordinate Judge heard the application under section 37 and dismissed

*Civil Revision, No. 1155 of 1933, against the order of D. P. Pal, Second Subordinate Judge of Faridpur, dated June 30, 1933.

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it on the ground that it had not been made as required by section 39. The ground on which the application was made was that the number of votes had not been correctly recorded. The votes were counted three times. On the first occasion, opposite party No. 2, obtained 127 votes and opposite party No. 5, 131 votes. On the second occasion, opposite party No. 2 obtained 130 votes and opposite party No. 5, 131 votes. On the third occasion, opposite party No. 2 obtained 128 votes and opposite party No. 5, 127 votes.

It is contended that, inasmuch as there was another candidate, *i.e.*, opposite party No. 5, who had obtained more votes than opposite party No. 2, the latter was wrongly declared to be duly elected. The present application was made for a declaration that opposite party No. 5 should be declared elected instead of opposite party No. 2. The learned Subordinate Judge held that this, being a matter coming under section 39 of the Bengal Municipal Act, it was not maintainable, inasmuch as opposite party No. 5 was not one of the petitioners. Section 39 states :—

If, in any case to which section 38 does not apply, the validity of an election is in dispute between two or more candidates, the judge shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected.

The learned judge, accordingly, held that, as this was not a case where the election is in dispute between two or more candidates, section 39 has no application. For the petitioner it is contended that it is clear from section 39 read with sections 36 and 37 that it was not intended that section 39 should be limited to cases in which the disputing candidate was the petitioner. It is clear that, under section 36, any voter may file a petition questioning the election, and the grounds on which the election can be questioned are referred to in sections 38 and 39. Section 37 states :—

Where a petition has been filed under section 36, the District Judge or any judicial officer subordinate to him and not below the rank of a Subordinate Judge to whom the District Judge may transfer the petition, may, after holding such enquiry in accordance with the prescribed procedure as he deems necessary, and subject to the provisions of sections 38 and 39, pass an order confirming or amending the declared result of the election or setting the election aside.

If the contention, made on behalf of the petitioner, is given effect to, it would mean that the words in section 39 "between two or more candidates" should be omitted, as it seems quite clear that the only meaning which can be attached to the words "in dispute between two or more candidates" is that the dispute must be between candidates who are contesting the election. The fact that any voter can question the election does not mean that any voter can question it under section 39. In section 38 there are many points on which the election can be questioned. But it is quite clear from the wording of section 39, which refers to the counting of votes, that the election can only be questioned in that respect where the petitioner is the candidate himself and disputes the election. The fact that one of the petitioners before us happens to be a candidate does not help him, inasmuch as the dispute is not between himself and any of the other candidates. It is, therefore, clear that the learned Subordinate Judge was quite right in holding that this application was not maintainable.

The other ground on which the decision of the learned Subordinate Judge is sought to be assailed is that the decision is final under section 37 and section 43 of the Act. There seems to be no doubt that, where the judge refuses to exercise jurisdiction under section 37, this Court has always power in revision. However, on the merits and on the ground that section 39 makes this application untenable, this Rule must be discharged with costs—hearing fee one gold mohur.

MALLIK J. I agree that the Rule should be discharged on the ground that section 39 had no application to the case.

Rule discharged.

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