

## APPELLATE CIVIL.

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Before Jack J.

KASHIRUDDIN TALUKDAR

v.

MAFIZUDDIN AHMAD.\*

1936

Feb. 27, 28;  
Mar. 4.

*Jurisdiction—Civil Court, if may decide qualification of member of District Board—Election to District Board, if invalidated wholly by disqualification of one member—Bengal Local Self-Government Act (Beng. III of 1885), s. 138 ; rr. IA, 26A, 26B, 56.*

Under the rules framed by the Government of Bengal in accordance with the Bengal Local Self-Government Act the civil Court has no jurisdiction to decide whether a person who has been elected to a District Board is qualified to be so elected or not.

*Lachmi Chand Suchanti v. Ram Pratap Choudhury* (1) distinguished.

The fact that one of the members of a District Board has been found not to be duly qualified would not invalidate the whole election.

SECOND APPEAL by the plaintiff.

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

*Bijan Kumar Mukherji* and *Subodh Chandra Sen* for the appellant.

*Sarat Chandra Basak* and *Amarendra Mohan Mitra* for defendants Nos. 1 to 5.

*Atul Chandra Gupta* and *Dwijendra Narayan Ghoshal* for the other defendants.

*Cur. adv. vult.*

JACK J. This appeal has arisen out of a suit for a declaration that the constitution of the present District Board of Bogra is illegal and *ultra vires*;

\*Appeal from Appellate Decree, No. 949 of 1935, against the decree of Sarat Chandra Mukherji, Subordinate Judge of Bogra, dated April 12, 1935, affirming the decree of Abdul Maleque, First Munsif of Bogra, dated Sept. 19, 1934.

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that the election of the Chairman and Vice-Chairman was illegal and that they are not entitled to assume office as such. The District Board, as at present constituted, consists of eighteen members, twelve elected from the two Local Boards, namely, the East Bogra Local Board and the West Bogra Local Board, and six nominated by the Government. Defendants Nos. 1 to 7 were the members from the West Bogra Local Board, defendants Nos. 8 to 12 from the East Bogra Local Board and defendants Nos. 13 to 18 are nominated members. Defendants Nos. 5 to 7 are the nominated members of the West Bogra Local Board and defendants Nos. 1 to 4 are the elected members. Defendants Nos. 8 to 10 are the elected members and defendants Nos. 11 and 12 are the nominated members of the East Bogra Local Board. Defendant No. 18 is the father of defendant No. 5. The plaintiff is an elected member of the West Bogra Local Board and the *pro forma* respondent (who was originally plaintiff No. 2 and was made a *pro forma* defendant on his choosing not to proceed with the suit) is an elected member of the East Bogra Local Board.

The plaintiff's case is that the defendants Nos. 5 and 11 had not the residential and other qualifications required by law, and, as such, they were not eligible for election as members of the District Board; that by the illegal election of defendants Nos. 5 and 11 the plaintiff lost his chance of being elected to the District Board; and that the election of defendants Nos. 5 and 11 having been illegal, the election of the other elected members and the other office bearers of the District Board was illegal and *ultra vires*.

The contesting defendants pleaded that the civil Court had no jurisdiction to try the suit, that the defendants Nos. 5 and 11 had the necessary qualifications for election as members of the District Board, and that the suit was *mala fide* and brought in collusion with and at the instance of defendant No. 3.

The trial Court dismissed the suit holding that the defendant No. 5 was qualified for election but that defendant No. 11 was not so qualified, as he had not the necessary residential qualification required by law, and that the civil Court had no jurisdiction to try the suit. The lower appellate Court came to the same conclusion as regards qualification of defendants Nos. 5 and 11, but held that the civil Court had jurisdiction to try the suit, and that the present plaintiff had no right to challenge the election of defendant No. 11. It therefore dismissed the appeal.

In this appeal, it is urged that defendant No. 5 had not the requisite qualification for membership of the District Board and that as a voter of the Local Board the plaintiff was entitled to challenge the election of defendant No. 11. Under s. 138A of the Bengal Local Self-Government Act it would be lawful for the Local Government to make rules consistent with the Act for any District Board for the purpose of determining the qualifications and disqualifications of members. On referring to s. 9 (2) of the same Act, we find that every person who is qualified to vote at an election of members of a Union Board within the area under the authority of a Local Board shall be entitled to be a member of the Local Board if duly elected thereto. Under r. 59 of the Election Rules, under the Local Self-Government Act,—

Only persons qualified for election as members of the Local Board in the district are qualified for election as members of the District Board,

So that rules have, in fact, been framed laying down the qualifications of members of the District Board. Section 7 of the Village Self-Government Act lays down the qualifications of voters and members of the Union Board.

Every male person of the full age of 21 years and having a place of residence within the union—

(1) who, during the year immediately preceding the election, has paid a sum of not less than one rupee as cess under the Cess Act, 1880, in respect of lands situated wholly or in part in such union, or who, during the year immediately preceding such election has been assessed at and paid a sum of not less than one rupee for the purpose of the union rate payable under this

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Act, \* \* \* or who is a member of a joint undivided family, which, during the year immediately preceding the election, has paid a sum of not less than one rupee as such cess, rate or tax,

shall be entitled to vote at an election of members of the Union Board.

By virtue of s. 9 (2) of the Bengal Self-Government Act, and r. 59 of the Election Rules under that Act, these electors are qualified to be members of the District Board. The question, then, is whether defendant No. 5 and defendant No. 11 were qualified to vote for the election of members of the Union Board under this rule. It was found that defendant No. 11 had no place of residence within the union and he is, therefore, not qualified. As regards defendant No. 5, it is urged that he has a place of residence within the union and that he is entitled to vote under sub-cl. (iii) of s. 7. It is also claimed that he is entitled to vote under sub-cl. (i), but on the facts found he is clearly not so entitled. It has been urged on the other hand, that on the facts found, he is also not entitled to vote under sub-cl. (iii) as well as owing to the fact that he has no place of residence within the union. He claims to have a place of residence at Sultanganj within the union where for some months of the year, during the mango season, he lives with his father, defendant No. 18. The finding is that this residence belongs to his father, that he lives in joint family with his father and that, therefore, he is entitled to come in under sub-cl. (iii). It is clear, however, that unless there is evidence that he has some title to this place of residence, he will not be eligible as having a place of residence within the union.

It has been found that he and his father both inherited shares in the property left by his mother and it is claimed, therefore, that they are members of a joint undivided family. The evidence, however, shows that the defendant No. 5 is mainly supported by his father and that the father has married another wife by whom he has other children and that it would be more correct to say that they are two members of a family having a joint interest in inherited property

rather than that they are members of a joint undivided family. In any case, even if they can be regarded, technically, as members of a joint family, the evidence shows that the cess was paid not by the joint family but by defendant No. 18, and, therefore, defendant No. 5 was clearly not qualified under this rule. It is doubtful, also, whether he comes under the proviso which states that only one member of a joint undivided family is entitled to vote. It is true that defendant No. 18 asked that his son, defendant No. 5, should be allowed to vote in his place. But it is questionable whether he can be said to have been nominated to vote on behalf of a joint family. But, both on the ground that he possessed no place of residence within the union, and that he was not a member of a joint undivided family which paid more than one rupee as cess during the year immediately preceding the election, it is clear that defendant No. 5 had not the necessary qualification to vote for the election of the members. Therefore, he is not qualified to be a member of the District Board.

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The other point that remains to be decided is whether the civil Court had jurisdiction to decide the dispute as to the qualifications of the members of the District Board. In this connection, the relevant rules are first of all r. 1A of the Election Rules under the Local Self-Government Act which states:—

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

Rule 24 says:—

Every person whose name does not appear in the register of voters and who claims to vote may, at least six weeks before the date fixed for the election, apply in writing to the Magistrate of the district, or to such other officer as the Magistrate of the district may appoint, in this behalf stating distinctly the grounds of his application to have his name inserted in the register or substituted for any name in the register,

namely, in the register of the electors, for members of the Local Board; and r. 25 says:—

Any person whose name is in the register and who considers that any name appearing in the register ought to be omitted, may, at least six weeks before the date fixed for the election, apply in writing to the Magistrate of

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the district, or to such officer as the Magistrate of the district may appoint in this behalf, stating distinctly the grounds of his application to have such name omitted.

### Rule 26B says:—

Every application made under r. 24 or r. 25 shall be duly considered by the Magistrate of the district, or such other officer as may be appointed by him in his behalf on the date fixed under r. 26A and the decision of the Magistrate of the district or of the officer so appointed, as the case may be, shall be final.

### Rule 56 says:—

The names of the persons elected to serve on the District Board shall be forwarded without delay to the Magistrate of the district, who shall ascertain if they are duly qualified and are willing to serve.

### Rule 57 says:—

If any person having been elected, decline to take office, or be found not to be duly qualified, the unsuccessful candidate, if any, who received the largest number of votes, shall be declared to be duly elected. If there is no unsuccessful candidate, a fresh election shall be held to fill the vacancy thus created.

### Section 59 referred to before states:—

Only persons qualified for election as members of a Local Board in the district are qualified for election as members of the District Board.

It seems to me that under r. 56, it is for the Magistrate to ascertain whether the persons elected to serve on the District Board are duly qualified or not, and it is also the District Magistrate who, at an earlier stage, under r. 26A, is entitled to decide whether any person who claimed the right of voting for the Local Board had or had not that right. Under r. 26B it is clear that the decision of the Magistrate on such claims is final. Any one can claim to have the necessary qualification and it is open to anyone to dispute the qualification of any person who claims to have the necessary qualification and has been elected; both can apply to the Magistrate whose duty it is to ascertain who is duly qualified, and under r. 1A all disputes arising under the rules shall be decided by the Magistrate and his decision is to be final.

It is urged on behalf of the appellant that this is not a dispute arising under the rules. But any dispute as to the qualification for membership of the

District Board appears to be a dispute under the rules which lay down the qualifications. It was clearly intended by the legislature that the procedure should be a summary one so that disputes as to qualifications for membership and as to election should not be kept pending in the civil Court. In support of the appellant's claim that the civil Court has jurisdiction, the case of *Lachmi Chand Suchanti v. Ram Pratap Choudhury* (1) has been referred to. That case was decided with reference to r. 68 of the rules framed by the Bihar and Orissa Government under their Local Self-Government Act which states that all disputes arising under these rules in regard to any matter, other than a matter, the decision of which by any authority is declared by these rules to be final, shall be decided by the District Magistrate whose decision shall be final. In this case it was held that the decision of the Returning Officer as to the validity of a ballot paper being made final by the rules, the District Magistrate had no power to decide that dispute and, therefore, that r. 68 did not bar the jurisdiction of the civil Court to entertain the suit. So that that case is no authority for holding that, in a case with reference to the rules framed under the Bengal Local Self-Government Act, the civil Court had jurisdiction. However, the argument in favour of the appellants is based on the reference made in that case to s. 138 of the Bihar and Orissa Local Self-Government Act, 1885, which is in terms similar to the Bengal Local Self-Government Act, with regard to which it was held that it was the intention of the legislature that an election tribunal should be set up by the Local Government for deciding all disputes relating to elections upon petitions to have an election declared invalid for any reason, such as, for example, such irregularity in the conduct of the election as had materially affected the result thereof, or upon such general grounds as wholesale bribery or public disorder which prevented

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the voter from exercising their franchise, and that the District Magistrate does not constitute the election tribunal to decide all disputes as contemplated by s. 138; his authority is limited to deciding any dispute relating to the procedure of the election save and except such disputes as are to be decided by the Presiding Officer or the Returning Officer, and that where the tribunal so contemplated by the legislature has never been brought into existence, the subject has the right to proceed in the ordinary civil Courts, unless and until the legislature carries out its duty of appointing a special tribunal.

It may be that, under s. 138, it was the intention of the Local Government to set up a tribunal for determining disputes other than those provided for in the rules already in existence or the rules which have since been framed, but in the case of the qualifications and disqualifications of members of the District Board, inasmuch as rules had already been framed laying down the qualifications and stating that the Magistrate of the district was to decide who was qualified, it is not clear why the Local Government should have contemplated the establishing of any special tribunal to decide such matters. The rules have already determined the qualifications of the members of the District Board and, as regard disputes arising under these rules, it has been laid down that the decision of the District Magistrate shall be final; so that, in my opinion if the Local Government had the idea of establishing the tribunal, it must have been with reference to other disputes than those already provided for in the rules. The Patna case is only authority for the special case which was then decided with reference to the rules of the Bihar and Orissa Government.

The finding of the appellate Court that the plaintiff had no right to dispute the qualification of defendant No. 11 has been attacked on the ground that the plaintiff had the right of a voter, *i.e.*, as a member of a Local Board in the district, he was entitled to vote for the members of the District Board and,



therefore, he was entitled to dispute the election of defendant No. 11. But in the plaint his right of action was based only on the fact that he lost his chance of being elected in the District Board owing to the illegal election of defendants Nos. 5 and 11. But it is clear that the election of defendant No. 11 from the Local Board of East Bogra in no way affected the plaintiff's chance of election from the West Bogra Local Board. It was only through the West Bogra Local Board he could be elected and, therefore, his election was not in any way influenced by any illegal election of defendant No. 11 from the East Bogra Local Board. It is, however, contended now that in any case as voter for the election or even as a rate-payer he was entitled to dispute the election of defendant No. 11. But even if he be held to be entitled to dispute the election of defendant No. 11, it would not follow that the whole election was illegal. Rule 57 of the Election Rules stated that—

If any person, having been elected, decline to take office or be found not to be duly qualified, the unsuccessful candidate, if any, who received the largest number of votes, shall be declared to be duly elected. If there is no unsuccessful candidate, a fresh election shall be held to fill the vacancy thus created.

But the fact that one of the members has been found not to be duly qualified would not invalidate the whole election, and, as regards the election of the Chairman and the Vice-Chairman, in this case it has not been shown that the invalid election of defendant No. 5 or No. 11 has in any way affected the election of the Chairman or the Vice-Chairman. So that, there seems to be no foundation for the plaintiff's claim for a declaration that the whole election or the election of the Chairman or Vice-Chairman is invalid. However, on the general ground that the civil Court has no jurisdiction, this appeal is dismissed with costs.

Leave to appeal under s. 15 of the Letters Patent is prayed for and is rejected.

*Appeal dismissed.*

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