

## APPELLATE CIVIL.

Before Nasim Ali and Remfry J.J.

1937  
June 1, 2.

SUBODH CHANDRA CHAKRABARTI

v.

JNANENDRA NATH CHAKRABARTI.\*

*Local Self-Government—Election disputes—Jurisdiction of District Magistrate to entertain, after delegation of power to another—Jurisdiction of civil Court regarding suits challenging the Magistrate's finding—Bengal Local Self-Government Act (Ben. III of 1885), ss. 5, 18B, 138(a), 148.*

Under the Bengal Local Self-Government Act of 1885, a District Magistrate has power to entertain application for setting aside an election under the Act and to transfer that case to another officer, even after his prior delegation of powers to some other Magistrate, who did not deal with any such application.

The decision of the election dispute by the District Magistrate or by the officer to whom he might transfer the same is final and civil Courts have no jurisdiction to entertain any suit challenging the same.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

The material facts and the arguments in the appeal appear in the judgment.

*Nirmal Chandra Chakrabarti* for the appellants.

*Naresh Chandra Sen Gupta* and *Bama Prasanna Sen Gupta* for the respondents.

NASIM ALI J. This is an appeal from the decision of the District Judge of Faridpur, dated April 30, 1936, affirming a decision of the Subordinate Judge of that place, dated August 5, 1935. The suit out of which this appeal arises was for a declaration that the decision of Mr. R. L. De, the Senior Deputy Magistrate of Faridpur, under s. 18B of the Bengal Local Self-Government Act setting aside the election of the plaintiff and the

\*Appeal from Appellate Decree, No. 1322 of 1936, against the decree of K. B. Ray, District Judge of Faridpur, dated April 30, 1936, affirming the decree of Bishnu Pada Ray, First Subordinate Judge of Faridpur, dated Aug. 5, 1935.

*pro forma* defendant as members of the Madaripur Local Board is without jurisdiction and void. The Courts below have dismissed the suit on the ground that the civil Court has no jurisdiction to entertain it. Hence this Second Appeal by the plaintiff.

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It appears that, after the polling was over, a petition was submitted by the principal defendant to the Sub-Divisional Officer of Madaripur, who was invested with powers to decide election disputes arising out of the Election Rules, praying for the postponement of the declaration of the result of the election on the ground that there were certain irregularities and illegalities in the recording of votes. This prayer was disallowed by the Sub-Divisional Officer. He then called for a report from the Polling Officer, against whom the allegations were made, and, on receipt of the report, intimated to the District Magistrate of Faridpur that the allegations of the defendant were unfounded. Thereafter the defendant filed an application before the District Magistrate of Faridpur under s. 18B of the Bengal Local Self-Government Act for setting aside the election of the plaintiff and the *pro forma* defendant. This petition was transferred by the District Magistrate to Mr. R. L. De, who was also empowered to decide election disputes for disposal.

Mr. De heard this petition and set aside the election. Plaintiff thereupon instituted the present suit for reliefs mentioned above.

The first point urged in support of this appeal is that the District Magistrate of Faridpur, after having delegated his powers to decide election disputes to the Sub-Divisional Officer of Madaripur, had no jurisdiction to entertain the application of the defendant under s. 18B of the Act. By Rule 1A of the Election Rules framed by the Local Government under s. 138(a) of the Bengal Local Self-Government Act, the authority to decide disputes relating to elections arising under Election

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Rules is the "Magistrate of the District". The expression "Magistrate of the District" has not been defined in the Rules. By s. 5 of the Act, however, "Magistrate of the District" *includes* any Magistrate subordinate to the Magistrate of the District to whom he may delegate all or any of his powers under the Act. The word "includes" in the definition indicates that the District Magistrate is not divested of his authority after he has delegated his power. The District Magistrate, therefore, had jurisdiction to entertain the application under s. 18B of the Bengal Local Self-Government Act and transfer it to Mr. De for disposal. This contention therefore fails.

The next contention on behalf of the appellant is that the District Magistrate of Faridpur had no jurisdiction to entertain a fresh application under s. 18B of the Act after the Sub-Divisional Officer of Madaripur had decided the matter and the order of Mr. De setting aside the election based on this application is, therefore, void. This argument assumes that there was previous application before the Sub-Divisional Officer of Madaripur under s. 18B and that on the basis of that petition he gave a decision. It has been already pointed out that the petition of the defendant before the Sub-Divisional Officer of Madaripur was for the postponement of the declaration of the result of the election and the allegations contained in the said petition were made in connection with this prayer. No petition was or could have been filed before him under s. 18B at that stage, as the question of the validity of the election did not and could not arise before the declaration of the result. It is not disputed that the Sub-Divisional Officer of Madaripur did not fix any date for hearing the matter in the presence of the parties and did not take any evidence. This clearly indicates that he did not decide the matter at all. There were certain allegations made against the Polling Officer. He, therefore, thought it proper to call for a report from him and to communicate his opinion about those allegations to the District

Magistrate. There had been no decision at all, therefore, by the Sub-Divisional Officer of Madaripur regarding the validity of the election. The District Magistrate had, therefore, jurisdiction to entertain the application under s. 18B and transfer it to Mr. De for disposal. Under Rule 1A of the Election Rules and s. 148 of the Bengal Local Self-Government Act the decision of Mr. De setting aside the election is final and cannot be questioned in any Court. The Courts below were, therefore, right in dismissing the suit.

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The appeal is accordingly dismissed with costs.

REMFY J. I agree.

In my opinion the Magistrate of the District under s. 5 has a continuing authority to delegate his powers under rule 1A and can alter, amend or recall any order made under s. 5. His powers are the same as those under s. 21 of the General Clauses Act.

Doubtless the regular course would be to set aside his order delegating his powers to a named Magistrate before authorising another in respect of the same matter, but the omission to do so is, in my opinion, a mere irregularity which does not render the second order invalid.

*Appeal dismissed.*

A. K. D.