

## ORIGINAL CIVIL.

Before McNair J.

MAHOMED HOSSAIN

v.

MAHOMED RAFFIQUE.\*

1940

April 29.

**Election petition**—*Appointment of more than one election agent—Nomination papers. Rejection of—Decision of Returning Officer, if can be challenged—The Calcutta Municipal Act (Ben. III of 1923), ss. 3, sub.-s. (29), 27, sub.-s. (2), 33, 46, 47.*

Where a candidate for election as Councillor of the Corporation of Calcutta submitted several nomination papers in some of which he appointed himself, while in others he appointed another person as his election agent, the Returning Officer was justified in rejecting all the nomination papers.

The decision of the Returning Officer in rejecting the nominations cannot be questioned in an election petition.

The Returning Officer is not a necessary party in an application under ss. 46 and 47 of the Calcutta Municipal Act of 1923.

ELECTION PETITION.

The facts of this case and the arguments of counsel appear sufficiently from the judgment.

*Sir Asoka Roy*, Advocate-General, and *S. C. Ray* for the petitioner.

*S. M. Bose* and *H. N. Sanyal* for the respondent.

*S. R. Das* for the Returning Officer.

McNAIR J. The petitioner in this application was a candidate from the Mahomedan constituency of Colootolla No. 8, for which there are two seats. The petitioner's nomination was rejected by the Returning Officer, and three other candidates who are made parties to this petition, withdrew their candidature, and, in the result, Mahomed Raffique and Dr. Sayed Zaffar Ahmad were declared elected and their names were published in the Calcutta Gazette.

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The petitioner contends that the result of the election has been materially affected by the improper rejection of his nomination paper, and/or by reason of irregularity in respect of the nomination papers and/or by non-compliance with the provisions of the Act. These submissions which appear in his petition are based on ss. 46 and 47 of the Calcutta Municipal Act as amended. Two questions arise on this petition: first, as to the validity of the nomination papers which were rejected, and secondly, whether the Returning Officer's decision can be questioned under ss. 46 and 47 of the Municipal Act.

On February 23, 1940, the petitioner delivered to the Returning Officer two nomination papers, each accompanied by a declaration in writing stating that the petitioner had appointed Mr. Fazal Ahmad as his election agent. On February 26, 1940, the petitioner delivered to the Returning Officer six more nomination papers, each accompanied by a declaration in which he appointed himself as his election agent and on February 27, he delivered five more nomination papers, again, in each appointing himself by a declaration as his election agent.

There is no question that the nomination papers were within time, and it is also clear that in the first two nomination papers Mr. Fazal Ahmad was appointed the petitioner's election agent and in the subsequent nomination papers the petitioner appointed himself. It is noteworthy that in the subsequent nomination papers, in which the petitioner appointed himself as the nomination agent, he did not attempt to revoke the previous nomination of Mr. Fazal Ahmad as his election agent. There was a scrutiny on March 4 by the Returning Officer and he then rejected all the nomination papers. But on one of the nomination papers containing the declaration that

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Mr. Fazal Ahmad is the petitioner's election agent the endorsement of the Returning Officer is as follows :—

Rejected as the candidate has appointed himself as his election agent in serial Nos. 11, 12, 13 and some other nomination papers.

Similarly, in the other nomination papers, an endorsement has been made giving as the reason for the rejection that another election agent had been nominated in other papers.

With regard to the present election, the Provincial Government, under s. 44 of the Calcutta Municipal Act, is empowered by order to authorise any matter or thing to be done which appears to them necessary for the proper preparation or publication of the first electoral rolls or holding of the elections. That order was issued by the Provincial Government and published in the Calcutta Gazette on August 4, 1939. The order substitutes new rules for the rules which previously existed and were issued under s. 30 of the Municipal Act for the conduct of elections. During the argument, the provisions of this order have been referred to as rules and I shall so refer to them in this judgment. Turning first to the sections of the Act, s. 27, sub-s. (2) provides that, on or before the date on which a candidate is nominated, the candidate shall make in writing and sign a declaration appointing either himself, or some other person who is not disqualified, to be his election agent. Section 3, sub-s. (29) of the Act defines election agent as the person appointed under s. 27, sub-s. (2) by a candidate as his agent for an election. Section 33 provides that the appointment of an election agent, whether the election agent appointed be the candidate himself or not, may only be revoked in writing signed by the candidate and lodged with the officer receiving nominations and shall operate from the date on which it is so lodged. From these sections it is clear that the Act contemplates a single

election agent and indeed it has not been seriously argued that more than one election agent is permissible.

Rule 4 of the Government order provides that nominations should be made by means of a nomination paper in form I annexed to the order and rule 5 provides that each candidate shall deliver to the Returning Officer a nomination paper completed in form I. Rule 7 provides that every nomination paper delivered under para. 5 (to which I have referred as rule 5) shall be accompanied by a declaration in writing subscribed by the candidate in the manner laid down in sub-s. (2) of s. 27 of the Act. Sub-section (2) of s. 27 refers to the declaration appointing an election agent. By rule 10 the Returning Officer appoints an hour and place for the scrutiny of the nomination and rule 14 which is largely relied on by the petitioner refers to the scrutiny of nominations by the Returning Officer. Rule 14, sub-rule (1) provides that the Returning Officer shall examine nomination papers and decide all objections and empowers him to refuse any nomination on certain grounds. Rule 14 (1) (iii) contains the relevant ground, viz., "that there has been any failure to comply with any of the provisions of the Act or of this Order relating to the nomination of candidates" and rule 14 sub-rule (3), so far as it is relevant, provides that nothing contained in cl. (iii) of r. 14(1) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of the nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed. Rule 15 provides that the Returning Officer shall endorse on each nomination paper his decision and if the nomination paper be rejected a brief statement of the reason for such rejection.

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Now, it is clear that the Returning Officer has rejected these nominations on the ground that they contained declarations of more than one election agent. I have already stated that it is not contested that only one election agent is permissible. But on the construction of r. 14, it is argued that the nomination papers, or each of them, were valid and that there was no justification for rejecting a valid nomination paper because on comparison with another nomination paper the Returning Officer discovered that more than one election agent had been appointed. It is argued that the Returning Officer is bound to take each nomination paper as a separate entity and come to his decision on that paper and it is further argued that this construction is supported by sub-r. (3) of r. 14.

The Returning Officer was, in my opinion, justified in rejecting these nomination papers. It is admitted on behalf of the successful candidates that the nomination papers were in order. But it is argued, and, in my opinion, rightly, that the Returning Officer was bound to reject them under r. 14 (1) (iii), because there has been a failure to comply with the provisions of the Act. Section 27 of the Act provides that in each nomination paper the candidate shall sign a declaration appointing either himself or some other person to be his election agent and on looking at the nomination papers the Returning Officer was made aware that the candidate had attempted to appoint not *either* himself *or* some other person but *both* himself *and* some other person. The Returning Officer had no power to decide which was the election agent whom the candidate wanted to appoint, but the candidate had power under s. 33 to revoke either of the appointments and had he done so no fault would apparently have been found with the nomination. But the nomination and the declaration are both contained in form I and they are considered as a single unit and if the Returning Officer is of opinion that the candidate has in his nomination papers

failed to comply with the provision of the Act which provides that only one election agent shall be appointed he is justified in rejecting the nomination papers.

Rule 14, sub-r. (3) is not applicable if each of the nomination papers was valid and there was no irregularity as contemplated by that sub-rule. But the rejection was for failure to comply with the Act. In support of this view reference has been made to an earlier case which is to be found in volume I of Hammond's Report of Indian Election Cases, 1920. The facts in that case are not very clear, but apparently each of the respondents filed documents purporting to appoint in one case twenty-six persons and in the other eighteen persons as election agents. The rule there was similar to the rule which is now under contemplation and it was pointed out that, unless the view which was taken by the Returning Officer in this case prevailed, it would be possible for the candidate to appoint a number of persons as his election agents when the Act contemplated only a single election agent.

The next point which arises is whether the decision of the Returning Officer can be questioned on this motion. I have already pointed out in a previous election petition, the difficulty of construing ss. 46 and 47 of the Act, but I held there that s. 46 sets out the grounds on which an application may be made to the Court and s. 47 sets out the grounds on which the election of the returned candidate may be declared void, and unless the grounds set out in s. 47 are established the Court is not empowered to declare the election void. The relevant provision of s. 47 is sub-s. (1) (c) on which reliance has been placed here, but, in my view, none of the grounds set out in s. 47(1) (c) have been contravened and for that reason the decision of the Returning Officer cannot in any event be questioned.

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The Returning Officer has been made a party to this application but, in my view, he is not a party who should have been joined. He is dismissed from the application and the petitioner must pay his costs. The application is dismissed with costs of all parties appearing.

*Application dismissed.*

Attorneys for petitioner: *N. C. Bural and Pyne.*

Attorneys for respondents: *P. N. Mitter, T. C. Mitra.*

A. C. S.