APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kisch

1933
January, 24

JOTI PRASAD UPADHIYA (PLAINTIFF) *v.* AMBA PRASAD (DEFENDANT)*

District Boards Act (Local Act X of 1922), section 35(3)—Question regarding due election of Chairman—Forum—Tribunal to be appointed by Local Government—Refusal of Government to appoint tribunal—Civil court—Jurisdiction impliedly barred—Civil Procedure Code, section 9—Right to vote at election of Chairman—Interpretation of statutes—Proceedings of Legislative Council.

The jurisdiction of the civil court to try a suit challenging the validity of the election of a Chairman of a District Board is impliedly barred by section 35(3) of the United Provinces District Boards Act; and even an arbitrary disregard by the Local Government of the mandatory provisions of that section, by refusing to appoint a tribunal to decide the question, does not bring into play the jurisdiction of the civil court.

The plaintiff sought redress with respect to the infringement of his right as an elected member of the Board to participate in the election of the Chairman, a right created by section 35-A of the District Boards Act. It is well settled that where the statute which creates the right also prescribes a particular remedy for the infringement of that right, that remedy, and that remedy alone, can be pursued by the person complaining of the infringement. When the Act prescribes that a dispute as to the validity of the election of a Chairman is to be decided by a tribunal appointed by the Local Government, it follows that the tribunal's jurisdiction to determine such disputes is exclusive and the jurisdiction of the civil courts is entirely barred. The legislature cannot have intended that the civil court should also have, so to say, dormant jurisdiction to decide the question and that that jurisdiction is to become active the moment the Local Government refuses to appoint a tribunal.

Where the law is clear, it is the duty of the court to give effect to it without attempting to inquire into the reasons for the enactment, and the court is not justified in appealing to

*Second appeal No. 467 of 1930, from a decree of H. G. Smith, District Judge of Agra, dated the 4th of April, 1932, reversing a decree of Manzoor Ahmad Khan, Munsif of Agra, dated the 17th of March, 1932.

the proceedings of the Legislative Council and to the alleged interpretation put upon the enactment by the Minister concerned.

Mr. *Shiva Prasad Sinha*, for the appellant.

Messrs. *S. K. Dar* and *Bhagwati Shankar*, for the respondent.

IQBAL AHMAD and KISCH, JJ. :—The question of law that arises in the present appeal is whether a civil court has jurisdiction to try a suit challenging the validity of the election of a Chairman of a District Board. Such a suit is undoubtedly a suit of a civil nature, and, unless the jurisdiction of the civil court to try such a suit is expressly or impliedly barred by any provision of law, the suit is, in view of the provisions of section 9 of the Code of Civil Procedure, triable by the civil court. It is admitted that the jurisdiction of the civil court is not expressly barred by any enactment having the force of law, but it is contended on behalf of the defendant respondent that section 35(3) of the District Boards Act (Act No. X of 1922 passed by the Local Legislature) impliedly bars the cognizance of such a suit by a civil court. If this contention is well founded, this appeal must fail and the decision of the lower appellate court dismissing the suit brought by the plaintiff appellant must stand, otherwise we shall have to decide the further question whether the lower appellate court was right in rejecting an application for amendment of the plaint filed by the plaintiff appellant in that court, in circumstances hereinafter specified.

The suit giving rise to the present appeal was for a declaration that the election of Rai Bahadur Munshi Amba Prasad, defendant respondent, as Chairman of the District Board of Agra, on the 8th of January, 1932, was "void and illegal and ineffectual", and for a permanent injunction restraining him from acting as Chairman of the Board. The facts that led to the election of the defendant are all admitted, and are as follows. [The facts which are not material for the purpose of this

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report have been omitted here.] The plaintiff's case was that the Local Government had no power to fix a date for the election of a Chairman prior to the election of the members of all the constituencies, and that as in consequence of the election of a Chairman on the 8th of January, 1932, before the election in the Iradatnagar constituency had taken place, he was deprived of his legal right to participate in the election of the Chairman, the meeting of the Board that took place on the 8th of January, 1932, was illegal and *ultra vires* and the election of the defendant as Chairman was void and illegal. The suit was filed on the 10th of February, 1932.

The defendant respondent contested the suit *inter alia* on the ground that the civil court had no jurisdiction to try the suit and that, in accordance with the provisions of section 35(3) of the District Boards Act, the question of the validity or otherwise of his election as Chairman could only be taken cognizance of by a tribunal appointed by the Local Government for the purpose of deciding that question. Section 35(3) runs as follows: "When there is a question whether the Chairman of a Board has been duly elected or nominated under subsection (2) the Local Government shall refer it for final decision to a tribunal consisting of a person or persons qualified to be appointed as Judges of the High Court who shall be appointed by the Local Government."

It appears that the plaintiff appellant has a brother named Dr. Ishwari Prasad who was elected as a member of the Board from a certain constituency on the 5th of December, 1931. He addressed a letter to the Local Government on the 19th of January, 1932, stating that the election of the defendant as Chairman was void and requesting the Government to refer the matter to a tribunal for decision. The Government despatched a reply on the 9th of February, 1932, refusing to appoint a tribunal. It is to be noted that the suit was filed the very next day, viz. on the 10th of February,

1932, and it is admitted that till the date of the institution of the suit the reply had not been received by Dr. Ishwari Prasad and that the plaintiff was not aware of the refusal of the Local Government to appoint a tribunal.

The Munsif overruled all the pleas urged in defence including the plea of jurisdiction, and passed a decree declaring that the election of the defendant respondent as Chairman of the District Board of Agra was invalid, and restrained him by a permanent injunction from acting as Chairman. In determining the question of jurisdiction raised by the defendant, he did not confine himself to a consideration of the provisions of the District Boards Act, but freely drew upon the proceedings of the United Provinces Legislative Council which culminated in the amendment of the Act in 1929 by the addition of clause (3) to section 35 quoted above, and summarized the result of his investigations as follows: "It appears to me that there are two principles underlying this enactment (District Boards Act). Firstly, that the executive should not have a final say in respect of disputes about the election of a member or a Chairman. Secondly, either for speedy determination of the dispute or to prevent the money flowing to the pockets of the lawyers, as was remarked by certain members in the Council, the matter is not to be litigated in regular courts in a regular manner." He felt impressed by the absence of any provision in the Act as regards the procedure to be followed on an election petition questioning the validity of the election of a Chairman, analogous to the provisions in the Act prescribing the procedure for the decision of an election petition questioning the validity of the election of a member of the Board. He then proceeded to quote in his judgment (from the proceedings of the Legislative Council of the United Provinces, 19th December, 1929, Vol. XLV, No. 6) what he characterized as the interpretation put on section 35(3) by the Hon'ble Minister for Local Self-Gov-

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ernment and noted that that interpretation commended itself to him. He pointed out that to uphold the defendant's contention would be to hold that "the ultimate authority lies with the executive which may refuse to appoint a tribunal and an aggrieved person like the plaintiff shall have no remedy. This would be going against a principle which . . . . underlies the laws of the District Boards." He held that "so long as a tribunal is not appointed, the jurisdiction of the civil courts in my opinion is not taken away."

The defendant respondent went in appeal to the lower appellate court. The appeal was heard and decided by the learned District Judge. An application for amendment of the plaint was presented in his court on behalf of the plaintiff, the appellant before us. By the amendment the plaintiff sought further to allege that the cause of action, apart from the dates mentioned in the plaint, also arose on the 9th of February, 1932, when the Local Government refused to appoint a tribunal in accordance with the provisions of section 35(3) of the District Boards Act.

The learned District Judge held that, as in the plaint there was no reference to the refusal by the Local Government to appoint a tribunal for the decision of the question of the validity of the election of the defendant as a Chairman and as the fact of the refusal by the Government to nominate a tribunal was not within the knowledge of the plaintiff when he filed the suit, the suit as brought was impliedly barred by section 35(3) of the Act. He did not decide the question whether, if the fact of the refusal by the Local Government to appoint a tribunal was known to the plaintiff before he filed the suit, and if that refusal was pleaded as giving to the plaintiff a cause of action for a suit in the civil court, the civil court would or would not have had jurisdiction to decide the matter. But he thought that the proposed amendment would change "the entire nature of the cause

of action" and as the application for amendment had been made at a very late stage, he refused to grant the same. The result was that he allowed the appeal filed by the defendant and dismissed the plaintiff's suit.

In second appeal before us it is argued by the learned counsel for the plaintiff appellant that in the circumstances of the present case the learned District Judge erred in rejecting the application for amendment and that, in order finally to settle the controversy between the parties, the proposed amendment ought to have been allowed, and the District Judge should have approached the question of jurisdiction of the civil court on the assumption that the Local Government had, prior to the institution of the suit, refused to appoint a tribunal, though it was bound to do so in accordance with section 35(3) of the Act. It is pointed out by the learned counsel that to refuse the amendment prayed for would be to invite the plaintiff to institute a fresh suit on the allegations contained in the plaint with the addition of the fact that the Local Government had, on the 9th of February, 1932, refused to appoint a tribunal for deciding the question of the legality of the election of the defendant as Chairman of the Board, and this would mean waste of public time and inordinate delay in the decision of a matter which, on grounds of public policy, should be speedily settled and decided.

As we are satisfied that the jurisdiction of the civil court to try a suit challenging the validity of the election of a Chairman of a District Board is impliedly barred by section 35(3) of the District Boards Act and that even an arbitrary disregard by the Local Government of the mandatory provisions of that section, by refusing to appoint a tribunal to decide the question, does not bring into play the jurisdiction of the civil court, we refrain from expressing an opinion on the question whether the District Judge was right in refusing to allow the proposed amendment.

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The plaintiff sought redress in the present suit with respect to the infringement of his right as an elected member of the Board to participate in the election of the Chairman. This right is vested in a member by section 35-A of the District Boards Act. But for the provisions contained in the Act the right to elect a Chairman could not and did not exist in a member of the Board. It follows, therefore, that the right, the infringement of which was complained of in the present suit, owes its existence to the District Boards Act, and it is well settled that where the statute which creates the right also prescribes a particular remedy for the infringement of that right, that remedy, and that remedy alone, can be pursued by the person complaining of the infringement of the right for the redress of the alleged wrong done to him: *Abdur Rahman* v. *Abdur Rahman* (1).

The District Boards Act is a self-contained Act containing exhaustive provisions for the constitution of Boards, for the preparation of electoral rolls, for the election of members and Chairman of the Board, for the manner in which the validity of the elections of members and Chairman can be called into question, and the tribunal by which such questions are to be determined. So far as election petitions questioning the validity of the election of a member of the Board are concerned, there are detailed provisions in the Act as regards the form and presentation of such petitions and the procedure to be followed at the hearing of such petitions and it is provided by section 19 of the Act that "Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Code of Civil Procedure, 1908, in regard to suits shall, so far as it is not inconsistent with this Act or any rule, and so far as it can be made applicable, be followed in the hearing of election petitions." Then follow certain provisos which are immaterial for our present purposes. It is true, as pointed out by the Munsif, that chapter III of the Act that

(1) (1925) I.L.R., 47 All., 513.

deals with the election of a Chairman does not contain any provisions analogous to the provisions of section 19 which find a place in chapter II of the Act which is headed as "Constitution of Boards". But the mere omission by the legislature to prescribe the procedure to be followed by the tribunal appointed by the Local Government in accordance with section 35(3) of the Act does not lead to the conclusion that the legislature intended impliedly to give jurisdiction to the civil court to determine the question of the validity of the election of a Chairman in the event of the Local Government refusing to appoint a tribunal. On the other hand, the omission appears to be deliberate and suggests that the legislature, in its discretion thought fit not to trammel the tribunal by technical rules of procedure and to let the tribunal have a free hand in expeditiously deciding the question of the validity of the election of a Chairman. And the reason for it is not far to seek. Delay in the decision of the question whether a member of the Board has or has not been duly elected does not matter much. The Board, notwithstanding the pendency of such dispute, can and does go on functioning and it is provided by section 69(1) that "No vacancy in a Board, or in a committee of a Board, shall vitiate any of its acts or proceedings." But important functions of the Board have to be discharged by the Chairman and the Act clothes him with, and casts on him, powers and duties of far reaching importance, and delay in the decision of the question of the validity of his election may be disastrous and might lead to grave complications. By section 4 of the Act it is provided that the Board shall be a body corporate having perpetual succession and "vested with the capacity of suing and being sued in its corporate name, of acquiring, holding and transferring property . . . . . and of entering into contracts." The Board in most cases acts through its Chairman and it is, therefore, expedient that the controversy regarding the validity of the election of such an official of the Board should

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not remain pending for a long time and that the doubt on the point should be set at rest as speedily as possible. If jurisdiction with respect to such matters is vested in the civil courts the inevitable delay that takes place in the final decision of civil suits is bound to occur, with the result that the whole administration of the Board would be paralysed while questions of academical interest are being discussed in civil courts. It appears to us, therefore, that the legislature has reserved the question of the validity of the election or nomination of the Chairman of a Board for final decision by a tribunal appointed by it, without prescribing the procedure that the tribunal may be bound to follow.

It is unnecessary to pursue this discussion further, for if the law is clear it is our duty to give effect to it without attempting to inquire into the reasons for the enactment, and in this connection we may point out that the learned Munsif was wholly wrong in appealing to the proceedings of the Legislative Council and the so-called interpretation put upon section 35(3) by the Hon'ble Minister for Local Self-Government in order to decide the question of jurisdiction raised by the defendant. It cannot be doubted that the right of a member to vote in the election of a Chairman is the creation of the District Boards Act and that that Act prescribes that the dispute as to the validity of the election of a Chairman is to be decided by a tribunal appointed by the Local Government. It follows, therefore, that "except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive" and "It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary courts for they never had any; there is no change of the old order of things; a new order is brought into being.": *Bhaishankar Nanabhai* v. *Municipal*

Corporation of Bombay (1). We find it difficult to believe that the legislature, while providing that a tribunal appointed by the Local Government should be seised of the matter, intended that the civil court should also have, so to say, dormant jurisdiction to decide the question and that that jurisdiction is to become active the moment the Local Government refuses to appoint a tribunal. If the legislature wanted not to bar the jurisdiction of civil courts and not to give exclusive jurisdiction to the tribunal appointed by it, nothing would have been easier than to give expression to such an intention by express words in the enactment. The inconvenience that would result by conceding jurisdiction to the civil court can better be imagined than described. The Local Government may, for reasons that appear convincing to it, delay the appointment of the tribunal. An aggrieved member may in the meantime file a civil suit and then a tribunal is appointed by the Local Government. What is to happen in such a case? Is the civil suit to be stayed or to continue and what is to happen if the decisions of the tribunal and of the civil court are contradictory? If the civil court was to have concurrent jurisdiction with the tribunal, one would have expected provisions in the Act concerning these questions, and these matters could not have been left to be at large at common law. The omission in the Act to provide for such contingencies leads to the inevitable conclusion that the legislature did intend to bar the jurisdiction of the civil courts in such matters.

The view that we take is opposed to the view expressed in *Sarvothama Rao* v. *Chairman, Municipal Council* (2). In that case WALLACE, J., while dealing with rule 31 of the election rules under the Madras District Municipalities Act (V of 1920) which lays down that "if any question arises as to the interpretation of the rules, otherwise than in connection with an election inquiry,

(1) (1907) I.L.R., 31 Bom., 604. (2) (1923) I.L.R., 47 Mad., 585.

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the question shall be referred to the Local Government, whose decision shall be final", observed : "Now, if this tribunal had functioned in this case and given a decision, ... I am clear that the civil court would have no jurisdiction. . . . But where the proper tribunal has declined jurisdiction and the aggrieved party is thus bereft of his statutory and constitutional remedy, it is the province of the civil court, as a court of equity, to fill the vacuum created and to exercise the jurisdiction which the proper tribunal has failed to exercise." With due deference and for the reasons given above we are unable to agree with that decision. When the legislature has prescribed a particular method for the redress of an alleged wrong, that method alone is open to the aggrieved party and in such a case the civil court has no jurisdiction to deal with the matter reserved by the legislature to a specially appointed tribunal.

We hold, therefore, that the jurisdiction of the civil court to try the suit giving rise to the present appeal was impliedly barred and we accordingly dismiss this appeal with costs.