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in exercise of the revisional powers of the court passed a few days earlier. In effect the appellants' inviting us to hear an appeal against the order of Mr. Justice Wort or, to be more correct, against his refusal to pass any order under section 151 is an invitation to hear an appeal against his order passed in revision. That in my opinion is not tenable. I agree with my Lord the Chief Justice that the appeal should be dismissed with costs.

KHAJA MOHAMAD NOOR, J.

Appeal dismissed in limine.

APPELLATE CIVIL.

1932.

Nov., 28.
Dec., 8.

Before Fazl Ali and James, JJ.

KALI PRASAD SINGH

v.

MUKUTDHARI PRASAD SINGH.*

Local Self-Government Act, 1885 (*Beng. Act III of* 1885), *as amended by Bihar and Orissa Act* 1 *of* 1923—*District Board Electoral Rules framed under the Act—rules* 29 *and* 68—*Returning Officer, summary rejection of nomination paper by—suit for a declaration that the order was illegal —Civil Court, jurisdiction of, whether ousted—Specific Relief Act*, 1877 (*Act I of* 1877), *section* 42—*District Magistrate, how far empowered to hear election petitions.*

Rule 68 of the District Board Electoral Rules framed by the Local Government under the Local Self-Government Act, 1885, as amended by Bihar and Orissa Act 1 of 1923, provides :—

"All disputes arising under these rules in regard to any matter other than a matter the decision of which by any other authority is declared by these rules to be final, shall be decided by the District Magistrate whose decision shall be final."

Held, (*i*) that the provision in rule 68 is only a precautionary measure to see that some authority is provided by the

* Second Appeal no. 1866 of 1931, from a decision of Rai Bahadur A. N. Chattarji, District Judge of Gaya, dated the 26th July, 1931, confirming a decision of Babu B. K. Sarkar, Munsif of Aurangabad, dated the 3rd February, 1931.

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rules for the decision of disputes, necessary when rules are being framed, since it is difficult to make provision for possible grounds of dispute over the observance of every rule.

(*ii*) that the District Magistrate is not empowered to hear election petitions which are based on anything more than some irregularity in the election rules; in other words, the rules do not empower him to hear applications which are based on the grounds of improper rejection or acceptance of nomination papers, bribery or corruption, intimidation or personation discovered after the election.

Sibesh Chandra Pakrashi v. *Bidhu Bhusan Roy*,(1) distinguished.

M was nominated as a candidate for election in a particular circle of the Aurangabad subdivision, being eligible by the fact that his name was borne on the electoral roll of Aurangabad. At the time of election the Returning Officer, without examining the electoral roll of the subdivision, rejected the candidate on the ground that his name was not found on the electoral roll of the circle and no certified copy of any other electoral roll had been filed by him. The candidate was, however, correctly described in the nomination paper as on the roll of the subdivision and his number in that roll was specified.

M instituted a suit in the Civil Court praying for a declaration that the order of the Reutrning Officer rejecting his nomination was invalid.

Held, (*i*) that the order of the Returning Officer was without jurisdiction and that, in the absence of any express provision excluding the jurisdiction of the Civil Court, it had jurisdiction to entertain the suit and to grant the declaration sought for under section 42 of the Specific Relief Act, 1877.

(*ii*) that rule 29(2) did not imply that absence of a certified copy could be treated as if it afforded proof that the candidate's name was not on the electoral roll.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of James, J.

N. K. Prosad II and *Sarjoo Prosad*, for the appellant.

A. N. Lal, for the respondents.

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JAMES, J.—The rules framed by the Local Government under the Bihar and Orissa Local Self-Government Act require that the name of a candidate for election to the District Board shall be recorded on the roll of some electoral circle within the subdivision in which he is a candidate. Mukutdhari Prosad Sinha was nominated as a candidate for election in the Kutumba-Nabinagar Circle within the Aurangabad subdivision, being eligible by the fact that his name was borne on the electoral roll of Aurangabad. At the time of nomination, the Returning Officer rejected the candidate on the ground that his name was not found on the electoral roll of the Kutumba-Nabinagar Circle and no certified copy of any other electoral roll had been filed by him. The rejected candidate instituted a suit in the court of the Munsif of Aurangabad praying for a declaration under section 42 of the Specific Relief Act, to the effect that the order of the Returning Officer rejecting his nomination was invalid in which he was successful. An appeal from the Munsif's decision was dismissed by the District Judge of Gaya; and the contesting defendant now comes in second appeal from that decision.

Mr. Nawal Kishor Prosad on behalf of the appellant argues in the first place that civil courts have no jurisdiction to entertain a suit of this nature. Under rule 29 of the electoral rules framed by the Local Government, the Returning Officer is required to decide summarily regarding the qualification of candidates; and his decision is to be final. Rule 68 provides that all disputes arising under these rules, other than those in which the decision of the appointed officer is declared to be final, shall be decided by the District Magistrate, and his decision shall be final. Mr. Nawal Kishor Prosad argues that rule 68 makes the District Magistrate the tribunal for the decision of election petitions; and the fact that his decision is to be final necessarily excludes the jurisdiction of the civil courts. It may be remarked that since the decision of the Returning Officer under section 29 of

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the Act is final, it would follow that if Mr. Nawal Kishor Prosad's contention were correct, no election could ever be set aside on the ground that a nomination had been improperly rejected by the Returning Officer. The learned Advocate cites authority for his proposition that the Local Government has power to create special tribunals for the hearing of election petitions, or for the decision of disputes that may arise in the course of elections and that when such a special tribunal is created by rules framed under the Act, the ordinary jurisdiction of the civil courts under the Specific Relief Act is excluded. On that point generally speaking there need be no doubt; but the question is whether by the rules framed under the Act in Bihar and Orissa, the Local Government has actually set up such a tribunal to the exclusion of the civil courts; that is to say, whether the provisions of rule 68 do make the District Magistrate the final tribunal for the determination of such questions in general, and particularly when what has to be decided is what practically amounts to an election petition. Mr. Nawal Kishor Prosad points out that similar rules framed by the Government of Bengal were interpreted in this way by a Division Bench of the Calcutta High Court in *Sibesh Chandra Pakrashi* v. *Bidhu Bhusan Roy*(1). That suit was similar in its nature to the suit with which we are here concerned; but the presiding officer had in that case rejected the nomination on the ground that the proposer and seconder were not qualified voters. The learned Judges apparently accepted the argument put forward by Dr. Radha Binode Pal, that the ordinary tribunal for the decision of election petitions would be the District Magistrate whose decision would be final. Rule 1A of the Bengal Electoral Rules, to which reference is made in that decision, corresponds practically to rule 68 of the Bihar and Orissa Rules. Rule 15 of the Bengal Rules corresponds practically to rule 29 of the rules in Bihar, with the same provision

(1) (1928) I. L. R. 56 Cal. 52.

that the decision at the time of nomination will be final. But rule 42 of the Bengal rules deals with the decision of disputes regarding qualifications of voters at an election, wherein there is no express provision that the decision shall be final. By the Bengal rule 1A the District Magistrate is appointed to decide disputes arising under the rules other than rules 15 and 42; and the learned Judges treated the dispute before them as one under rule 42, which could not be decided by the District Magistrate and in which the original decision was not by the rules declared to be final. With due respect to the learned Judges who decided that case, we may be permitted to say that, although we would not question the correctness of the decision, the grounds on which it is based are open to criticism. It appears to us that the dispute in that case was one under rule 15; and if the making of the decision of the District Magistrate final by rule 1A excludes the jurisdiction of the civil courts, there is no logical reason why the jurisdiction should not be equally held to be excluded by the finality given to decision of the presiding officer regarding a nomination by rule 15. At the same time, it must be observed that the learned Judges did not expressly find that the decision of the Magistrate under rule 1A was not liable to be challenged in the civil court, since they were not required to do it, as they held that the case before them was not one in which the Magistrate was empowered to decide a dispute by rule 1A.

In our judgment, the view which has been taken by the lower courts in this case is correct; the civil courts have jurisdiction to entertain cases of this nature; and the provisions of section 42 of the Specific Relief Act apply to such suits in the absence of any express provision excluding the jurisdiction of the civil court. It is argued that the Local Government has made the District Magistrate the court for the hearing of election petitions; but if this had been intended, the point would have been made clear by the rules, and the jurisdiction of the civil courts would

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have been expressly excluded. It appears to us that the provision in rule 68 that disputes under the rules are to be decided by the District Magistrates where they have not been decided already by any authority whose decision is declared to be final is only a precautionary measure to see that some authority is provided by the rules for the decision of disputes, necessary when rules are being framed, since it is difficult to make provision for possible grounds of dispute over the observance of every rule.

It is no part of our duty to decide whether under rule 68 a District Magistrate can determine the result of an election; but it appears to be obvious that even if he can do so, he is not empowered to hear election petitions which are based on anything more than some irregularity in the election rules. The most common grounds on which elections of all kinds are liable to be attacked are the improper rejection or acceptance of nomination papers; bribery or corruption, intimidation, or personation discovered after the election. It does not appear that the rules empower the Magistrate to hear petitions based on any of these grounds; but if it had been intended that the District Magistrate should be the exclusive court for the hearing of election petitions, and that the jurisdiction of the civil courts should be excluded, he would have been given general powers to entertain petitions based on more serious grounds than those of mere disputes arising under the electoral rules.

We are not required to lay down the precise circumstances in which the civil courts may entertain a suit framed under the Specific Relief Act for a declaration at variance with the decision of a Magistrate or a Returning Officer under the electoral rules. As Mr. Nawal Kishor Prosad suggests, it may be unreasonable to hold that the civil courts should reopen the whole question, when a candidate has been rejected whose qualifications are really questionable, who entered into evidence before the Returning Officer, on the ground that if more evidence had been tendered,

the candidate's case might have been proved. The present case is not one of that nature. The Returning Officer had before him the electoral rolls of his sub-division; and it appears from the evidence of one of the defendants that he did examine these rolls in order to check the qualifications of those candidates whose nominations were admitted. The respondent now before the court was correctly described in the nomination paper as on the Aurangabad roll and his number in that roll was specified. The Returning Officer, although he had the Aurangabad Roll before him, examined the roll of the Kutumba-Nabinagar Circle where the candidate's name would certainly not be found; but he did not examine the Aurangabad roll as he ought to have done. Rule 29(*2*) provides that the production of a certified copy of an entry made in the electoral roll shall be conclusive evidence of the right of any elector named in that entry to stand for election, unless it is proved that the candidate is otherwise disqualified. The Returning Officer summarily rejected the nomination on the grounds, first, that the name of the candidate was not borne on an electoral roll other than that on which he claimed to be borne; and, secondly, on the ground that he had produced no certified copy of the electoral roll on which he claimed to be borne. It is needless to remark that if any electoral roll is to be examined by the Returning Officer, it should be that on which the candidate's name purports to be borne. It is suggested on behalf of the respondent that the Returning Officer may reasonably have thought that rule 29(*2*) implied that the absence of a certified copy could be treated as if it afforded proof that the candidate's name was not on the electoral roll; but no such meaning can be reasonably read into the rule, and it is impossible to hold that the Returning Officer exercised the jurisdiction which was vested in him when he thus rejected the nomination paper without making any real enquiry at all. As the learned District Judge has pointed out, an order of this nature may certainly be challenged under section 42 of the Specific Relief Act.

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because this arbitrary decision of the Returning Officer not only took away the right of the candidate to stand for election, but also deprived the electors of the exercise of their right of franchise in choosing their own representative. The decision of the learned District Judge must accordingly be affirmed and this appeal must be dismissed with costs.

JAMES, J. FAZL ALI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

1932.

Nov., 8, 9.
Dec. 12, 13, 15.

Before Wort and Fazl Ali, JJ.

J. H. PATTINSON

v.

SRIMATI BINDHYA DEBI.*

Interest—Interest Act, 1839 (*Act XXXII of* 1839)—*proviso—money wrongfully detained—no stipulation as to interest—interest, whether recoverable in law or equity—Contract Act*, 1872 (*Act IX of* 1872), *section* 73, *scope of—equity, justice and good conscience, rule of, when applicable—Courts, duty of—company incorporated under Companies Act*, 1913 (*Act VII of* 1913), *whether is a separate legal entity—both principal and agent joined in an action—liability, whether attaches to both.*

Section 73 of the Contract Act, 1872, is only declaratory of the right of damages for breach of contract.

Unless the matter can be brought within the Interest Act, 1839, or the proviso, there is no warranty under section 73 of the Contract Act for awarding interest for the mere detention of money, however wrongful, from the date upon which it should have been paid.

Held, further, that in the absence of an agreement, express or implied, interest on money wrongfully detained is not recoverable either under the Interest Act or by law as contemplated by the proviso.

* Appeals from Original Decrees nos. 88 of 1929 and 77 of 1930, from a decision of Babu Gajadhar Prasad, Subordinate Judge of Dhanbad, dated the 6th February, 1929.