

proceedings in execution against the Company, the intention of the legislature being that the assets of insolvent companies should be distributed equally among the creditors. The appellant who was himself the purchaser certainly cannot avail himself of any protection afforded by sub-section (3) of section 51 for his conduct has obviously been devoid of good faith. In my opinion the order of the District Judge was right and this appeal should be dismissed. The contesting creditors are entitled to one set of costs and the official receiver is entitled to another.

SAUNDERS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Wort and Dhaile, JJ.

VASISTHA NARAIN SINHA

v.

SANT LAL KUMAR.*

District Board Electoral Rules—rule 68—Bengal Local Self-Government Act, 1885 (Beng. Act III of 1885), section 138—suit for setting aside election—no free voting by reason of rioting—dispute, whether arising under the rules—District Magistrate, dispute whether falling within the cognizance of—Civil Court, jurisdiction of, whether ousted.

Rule 68 of the District Board Electoral Rules, framed under the Bengal Local Self-Government Act, 1885, provides :

“ All disputes arising under the 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.”

Where the plaintiffs brought a suit for a declaration that the defendant's election was illegal and the substance of the plaintiffs' claim was that by reason of the conduct of the Returning Officer and at the instance of the defendant a riot

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* Appeal from Original Decree no. 23 of 1932, from a decision of Babu R. C. Mitra, Additional Subordinate Judge of Bhagalpur, dated the 3rd November, 1931.

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took place at the polling station with the result that a majority of voters could not exercise their right of franchise.

Held. (i) that the case as presented to the trial court was a case of a dispute not arising under the District Board Electoral Rules and was, therefore, not within the cognizance of the District Magistrate under rule 68;

(ii) that, therefore, the jurisdiction of the Civil Court to try the suit was not ousted.

Kali Prasad Singh v. Makutdhari Prasad Singh(1), referred to.

Appeal by the defendant.

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

M. Yunus and G. N. Mukharji, for the appellant.

S. N. Sahay and P. N. Gour, for the respondents.

WORT, J.—Under section 138 of the Bengal Local Self-Government Act (Act III of 1885), which applies to this province, the Legislature gave the local Government power to frame rules relating to the conduct of elections to the District or Local Board and, inter alia, to determine the authority “ who shall decide disputes relating to such elections ”. It is quite clear from that provision that the local Government was entitled to set up a tribunal which should have power to deal with all disputes relating to elections and what is ordinarily spoken of as election petitions. It is clear, however, that under that the power was not fully exercised when regard is had to the rules which were framed under the section to which I have referred.

Rule 68 of the rules governing the elections to the District Boards reads as follows:—

“ 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.”

It is clear that the local Government has limited the power of the District Magistrate under that rule to decide disputes arising under the rules, and it may be said that a large number of disputes do arise which affect the validity of elections but which under no circumstances could be said, having regard to the provisions of the rules to which I am referring, to come under those rules.

The matter that we have to determine in this case is whether the matters complained of by the plaintiffs in their action were matters that came under the rules and whether, according to the defendant, the disputes which have arisen are matters which had to be decided by the District Magistrate.

The plaintiffs were the unsuccessful candidates in the election to the District Board, the defendant being the successful candidate, and I regret to say that this matter has to be decided in circumstances which makes the question argued merely academic.

Another election has since taken place and, therefore, the only question of substance in the case is the question of costs which the defendant, being the unsuccessful party in the litigation in the court below, was ordered to pay.

The plaintiffs complained—and I propose to deal with the allegations of the plaintiffs generally—that the presiding officer at this election was a partizan, he was favouring the candidature of the defendant and that many of his acts were evidence of that allegation. The gravamen of the plaint is that his conduct was such that when the plaintiffs objected the defendant ordered his men to attack the plaintiffs' party with the result that something in the nature of a riot took place which resulted again in there being no free voting. I must state at this stage of my observations that the matter comes before us on the pleadings and on the judgment alone. There is no evidence, the parties agreeing to argue the appeal on those materials.

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The facts as found by the learned Subordinate Judge must be considered to be binding upon this Court. Reading the pleadings together with the judgment it is clear, as I have already observed, that the real charge against the defendant was that the conduct of the presiding officer was such as to bring about what I have described as a riot, and so far as the judgment of the learned Subordinate Judge in the court below is concerned, the matter seems to be summed up in this observation :

" I have no hesitation to say that at the instance of the defendant there was a serious rioting on account of which the voters fled away and the poll was closed from noon "

and again

" it is evident from the testimony of the returning officer that the majority of the voters could not exercise their right of franchise and as such the election could not be upheld."

In conjunction with that I refer to certain allegations in the plaint which are summed up in paragraph 15. That paragraph states :—

" The returning officer did not comply with the rules and did not give any notice in writing to the plaintiffs as required by rule 55 of the Election Rules framed by the local Government and the plaintiffs have subsequently come to know that the votes were counted on the 2nd May, 1930, illegally and that the Returning Officer declared the defendant to be elected which is wholly illegal."

I refer to that passage because it is admitted by Mr. Sahay on behalf of the plaintiff-respondents that as to a part of his claim it related admittedly to breaches of the rules made by the local Government and to which I have already referred. Substantially these breaches of the rules consisted in the acts of unfairness of which I have made mention, the favouring of the defendant's candidature, the refusal to allow the persons voting in favour of the plaintiffs to record their votes, and finally this matter, which is dealt with in paragraph 15, illegally declaring the defendant returned as elected on the 2nd of May, 1930.

The learned Judge in the course of his judgment has made this statement :

" But as the present dispute is not covered by rule 68 this Court has got jurisdiction to try this suit.....In my opinion the District Magistrate has exclusive jurisdiction with regard to all disputes arising under the rules and the Civil Courts have no concurrent jurisdiction in respect of those disputes."

He then quotes a case upon which his opinion on the point of law appears to be based. I have referred to paragraph 15 of the plaint and the observations of the learned Judge in order to discover what really was the plaintiffs' case in the court below.

From the judgment of the learned Subordinate Judge, it seems to be clear, having regard to such observations which I have read in his judgment relating to the exclusive jurisdiction of the District Magistrate, that the learned Subordinate Judge appeared to be under the impression that he was dealing with something outside the rules. The fact that the learned Subordinate Judge supposed that he was dealing with something outside the rules is not final. But, in my judgment, the view which the learned Judge took as regards this point was a correct one and correct because in substance, as I have stated, the case of the plaintiffs was that there was no exercise of the right of free voting on the date of the election. A full discussion of this point became necessary by reason of the decision of this Court in *Kali Prasad Singh v. Makutdhari Prasad Singh*(1). In that case Fazl Ali and James, JJ. came to the conclusion that the Civil Court's jurisdiction was not ousted by rule 68. That case was an even stronger one than we have before us at this moment. That was a case in which the nomination of a candidate was refused because the Returning Officer was of the opinion that the candidate's name did not appear on the electoral roll whereas in fact it did. Whether the Returning Officer appears to have been under an

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erroneous opinion that the name should appear on the electoral roll of a particular circle in which the election was to take place is not clear, although as a matter of fact the candidate's name did in fact appear on the electoral roll of the subdivision in which that circle was placed. It is quite clear from the rules framed by the local Government that the matter whether a nomination should be excluded or not is to be finally determined by the Returning Officer; and even though in the case to which I am now referring the Returning Officer decided that matter, yet the learned Judges in that case decided that it was not a matter for the District Magistrate but it was a matter which could be agitated in the Civil Court. And James, J. in the course of his judgment makes this statement :

“ It may be remarked that since the decision of the Returning Officer under section 29 of the Act is final, it would follow that if Mr. Naval Kishor Prasad'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.”

That case was, in my opinion, a clear case of the jurisdiction of the District Magistrate if the argument of Mr. Yunus who appears on behalf of the appellant is to be accepted, because it was, as pointed out by the learned Judge in that case, a matter on which the Returning Officer had the final disposal.

That brings me to a point although it may not be strictly relevant in the circumstances of this case, but which would have some bearing on the matter if we were now free to determine the question of jurisdiction. The matter provided for by section 29 is, as I have stated, one in which the Returning Officer has the final decision; and it is argued, and it seems to me an argument of some considerable force, that when rules 29, 30 and 58 are read in conjunction with

rule 68, they give some support to the argument that the jurisdiction of the District Magistrate is a jurisdiction which is to be exercised in a summary fashion in matters of dispute arising during the course of the election. Under rule 68 again

"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."

The important words in this connection are

"other than a matter the decision of which by any other authority is declared by these rules to be final."

One of those other matters is the matter which was dealt with by James, J. in the case to which I have already made reference. It does appear to me, therefore, to be a reasonable construction to be placed on rule 68 that the jurisdiction of the District Magistrate as regards matters other than those which are finally disposed of by the other authorities, is co-extensive with that of other officers who had finally to determine the matters under those particular rules. But it becomes unnecessary to express an opinion on that point having regard to the admission of Mr. Yunus in this case, namely, that the real matter in dispute is whether these matters in regard to which the plaintiffs complained were matters that came under the rules or not. The most that can be said in favour of the appellant is that if they were disputes arising under the rules the proper tribunal would be that of the District Magistrate but only in the circumstances of our expressing disapproval of the decision in *Kali Prasad Singh v. Makutdhari Prasad Singh*⁽¹⁾ and being of the opinion that the matter is one which it is necessary to refer to a Full Bench, could we decide in favour of Mr. Yunus. But, as I have said, I have come to the conclusion in favour of Mr. Yunus on that point.

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In my judgment, the only matter that we have to determine is whether the matters complained of were within the rules or not. I expressly wish to state that I come to no conclusion as to the decision of James, J., a decision which is binding upon me and I express no view which would in any way question the authority of that case. But, on the admission of Mr. Yunus, we have to determine the point which I have just stated.

Now having regard to the statement of the learned Judge and having also regard to the matters to which I have referred in the plaint, it seems to me to be quite clear that the substance of the plaintiffs' claim was that by reason of the conduct of the Returning Officer this affair, which I have described as a riot that took place, prevented free voting.

Mr. Yunus contends that that also is a matter which comes under the rules. Under rule 36 the Presiding Officer is enjoined to conduct the election fairly. It is said by Mr. Yunus that the immediate cause of this so-called riot was the unfair conduct of the Presiding Officer. It seems to me that the point is met by the bare statement of the facts of what took place according to the findings and according to the pleadings, namely, that the supporters of the plaintiffs objected to the conduct of the Presiding Officer and for the reason which is not given and perhaps is somewhat difficult to understand, the defendant then ordered his men to attack the plaintiffs and the riot ensued. By no stretch of the imagination, it seems to me, can it be said that the riot was caused by the unfair conduct of the Presiding Officer. As a part of its history it might be said that the Presiding Officer's unfair conduct did indeed cause the events which led ultimately to the riot. But why the defendant should commence the riot when the decision of the Presiding Officer was in his favour it is difficult, as I have said, to understand. It does not

seem to me to be relevant whether the disturbance took place inside or outside the polling room. The result seems to me to be the same, namely, that which was expressed by the learned Subordinate Judge that the voters were prevented from voting and substantially the polls were closed for a short interval from 11 o'clock in the day. There is no doubt under those circumstances that the result of the election was materially affected. I make mention of that fact because rule 67 provides that

"No election shall be invalidated on account of any irregularity whatever unless it appears that the irregularity was such as to materially affect the results of the election."

It is a somewhat surprising provision to find in the rules if indeed the position is that the District Magistrate is not the Court which has to finally decide the disputes relating to an election; but that observation is by the way and not strictly relevant to the point with which we are dealing.

To return to the point. It is a finding of the learned Subordinate Judge that the voting was interrupted but that does seem to me to be in no way directly connected with what has been described by Mr. Yunus as the unfair conduct of the Presiding Officer.

I cannot part with this case without saying that it is a pity that the parties, particularly the defendant in the court below, did not ask for particulars of the plaint, thus binding the plaintiffs down as to what actually were the allegations in the plaint. The allegations were of the vaguest possible character, they being made against all sorts of persons, not only the defendant, and it is only by reading the plaint together with the findings of the learned Subordinate Judge on the facts, which I have stated are binding upon this Court, that I can come to any conclusion as to what the case of the plaintiffs was. But, in my judgment, as I have already stated, the substance

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of the case was that the polls were closed owing to this riot, that there was no proper election by reason of the prevention of the voters from exercising their right to vote, and it was on that ground substantially that the plaintiffs attacked the validity of the election.

WORT, J. I regret to have to come to this conclusion but, having arrived at that conclusion, it seems to me that the necessary order to pass is that the appeal must be dismissed with costs.

DHAVLE, J.—I agree. The case as presented to the lower court was a case of a dispute not arising under the District Board Electoral Rules and, therefore, not within the cognizance of the District Magistrate under rule 68. As regards the nature of his jurisdiction under that rule, Mr. Yunus for the appellant was unable to show that in deciding disputes under the rule, the District Magistrate has any power to compel the production of evidence. If that be so, it is difficult to conceive of the District Magistrate as the Court intended by the rule-making authority to dispose of what are called election petitions, to say nothing of the fact that he cannot go behind the decisions of the returning officer as regards nomination papers and rejected ballot papers, since these decisions are final under rules 30(3) and 58(2). This suggests that the finality attached to decisions under the rules is of a restricted kind, but the question does not really arise on the argument before us. The appellant adduced no evidence below and was content to have the appeal argued on the pleadings and the judgment of the trial court. Mr. Yunus's contention was that the case of the plaintiffs was one coming entirely within the electoral rules, and this contention fails, as has been so clearly pointed out by my learned brother.

Appeal dismissed.