

**In Re: P.D. Shamdasani**

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**Court :** Mumbai

**Decided On :** Sep-23-1935

**Reported in :** (1935)37BOMLR970

**Judge :** John Beaumont, Kt., C.J. and ;Blackwell, J.

**Appeal No. :** Miscellaneous No. 100 of 1935

**Appellant :** In Re: P.D. Shamdasani

**Judgement :**

John Beaumont, Kt., C.J.

1. This is a petition under Section 45 of the Specific Relief Act by which in substance the petitioner asks that the Municipal Commissioner may be directed to hear and decide certain objections which the petitioner takes to a recent election in B Ward in the city.

2. Before coming to the facts, it is desirable to look at the material provisions of the City of Bombay Municipal Act, 1888, under which the election was held. Section 26 provides that candidates for election at a ward election must be: duly nominated in writing in accordance with the provisions of the section ; and under Sub-section (2)(e) (Hi) if any person nominated is disqualified for being a councillor for any of the reasons set forth in Section 16, the Commissioner shall declare such person's nomination invalid. Under Section 16, a person is disqualified if he fails to pay any arrears of any kind due by him to the Corporation

within three months after a special notice in that behalf has been served upon him. Then it is provided in Section 26 that if there are more candidates than there are vacancies, the election is a contested election ; and Section 27 (J) provides that when a ward election is contested, a poll shall be taken seven days after the day fixed for the election, and Sub-section (2) provides that at least three days before the day of the. poll, the Commissioner shall cause the names of all the persons validly nominated, with their respective abodes and descriptions, to be published in the Bombay Government Gazette and in the local newspapers. Then Section 28 contains various provisions relating to contest(c)J ward elections, and the material one is Sub-section (k) which provides that the Commissioner shall, as soon as may be, declare the result of the poll, specifying the total number of valid votes given for each candidate, and he shall, as Soon as may be, hear and decide all objections, if any, to or regarding the poll, made to him in writing not later than 5 o'clock of the afternoon of the day after the poll and shall cause lists to be prepared for each ward, specifying the names of all candidates, and the number of valid and the number of rejected! votes given to each candidate. Then Section 29 enables the Corporation, with the sanction of the local Government, to make rules for the conduct of elections. And then Section 33 directs that an election petition, in which the validity of any election is in question, shall be heard by the Chief Judge of the Small Causes Court, and any such petition has to be presented within fifteen days from the date on which the list prescribed under Sub-section '( ) of Section 28 was available.

3. The facts in the present case are very simple. An election was to be held in Ward B, and the Municipal Commissioner fixed August 20 as the day of election. There were originally four candidates for one vacancy, so that the election was a contested election, and a poll had to be held on August 27. Before the day of the poll, two of the candidates withdrew, leaving only the present petitioner and Mr. Allarakhia who intervenes on this petition. After the poll, and before 5 o'clock on the following day, the petitioner gave notice in writing to the Commissioner of certain objections to or regarding the poll taken on August 27. Those objections are set out in the letter of August 28, 1935, which is annexure B to the petition. The first objection was that the taking of the poll was illegal and invalid. The second objection was ' that without prejudice to the aforesaid objection, the said

poll was conducted in a manner contrary to law.' Then objections 3, 4 and 5 were in terms based on the validity of one of the rules made under the Act; and objection 6 was. that 'the votes taken at the poll for Mr. Allarakhia are all invalid'. The Municipal Commissioner in his reply of August 29, 1935, stated that objections 1 to 5 'are purely questions of law and are outside the scope of Section 28 (k) of the City of Bombay Municipal Act.' As regards objection 6, the Commissioner asked for further particulars, but he has never refused to hear objection No. 6, and that matter is standing over until this petition is disposed of.

4. I think the Municipal Commissioner was wrong in refusing to hear and decide all the objections 1 to 5 on the ground that they raised points of law. There is nothing in Sub-section (k) of Section -28 which restricts the objections, which, the Commissioner is required to hear and decide, to questions of fact. If questions of law or mixed questions of law and fact arise, and if the-Municipal Commissioner is not a lawyer himself, he must do the best he can, but he is not entitled to refuse to perform the duty imposed upon, him by the Act by saying that he does not know the law and is not competent to perform the duty. I think that he ought to have heard, at any rate,, objections 1 and 2, which were expressed in general language, as well as objection 6. But in this petition the grounds for those objections have been explained, and it appears that objection No. 1-that the taking of the poll was illegal and invalid-is based on the contention that Mr. Allarakhia was disqualified from being a candidate under Section 16 of the Act, and that therefore the acceptance of this nomination was invalid; and the petitioner asks not only for a direction on the Municipal Commissioner to hear that question but for an order on him to produce the Municipal books, which will show that Mr. Allarakhia was in arrears with his dues, and that a notice had been properly served upon him. In my opinion, that is not an objection to or regarding the poll within the meaning of Section 28 (ft). It is an objection to the acceptance of the nomination of Mr. Allarakhia, which precedes any question ^>f a contested election, and any question relating to the poll. In my opinion. therefore, the Municipal Commissioner,-now that we know the real reasons for objection No. 1,-is entitled to say that it is not a matter which arises under Section 28 (k).

5. It further appears from the petition that objection No. 2 is really based on the same contention as that in the next three objections. The contention is that the last part of rule 8 of the rules made under Section 29 is invalid, and that the conduct of the election under that rule has resulted in a lot of illegal votes being recorded. Technically, I think, that is a question which the Commissioner could be called upon to decide ; but it seems to me that he could only decide it in one way. The Commissioner is a servant of the Corporation, and he is conducting the poll under the rules made by the Corporation with the sanction of the Local Government, and I think that he is bound by the rules as they stand and cannot question them, and he would be bound so to decide upon any objection which challenged the validity of a rule. If the rules are to be questioned, they must be questioned in the appropriate Court. Although, therefore, I think that we have jurisdiction to make the rule absolute, and direct the Commissioner to decide that objection, it would obviously be futile to do so, if the Commissioner is bound to answer the question in one way only. So that in the exercise of the Court's discretion, I think that we ought to refuse to make the rule absolute.

6. It was contended further that the case did not fall under Section 45 of the Specific Relief Act, because it was suggested that provisos (d) and (e) were not complied with. There is, I think, no force in that contention. The desire of the petitioner is that the Municipal Commissioner may be directed to hear and decide his objections, and if he gets an order to that effect, his objections will be heard and decided, and the relief will be effective. Whether the objections are decided in such a way as to afford him any substantial relief is irrelevant. I am of opinion also that there is no other adequate remedy open to the petitioner, because the right of proceeding, under Section 33 before the Chief Judge of the Small Causes Court has not at present arisen. But, for the reasons given, I think that in our discretion we ought not to make the rule absolute.

**Blackwell, J.**

7. The question before the Court is whether on the facts now known, the Court ought to order the respondent to hear objections 1 to 5 taken by the petitioner in his petition, and set out by him in his letter dated August 28, 1935, to the

respondent. It is conceded by the respondent that it is his duty to hear the objection No. 6 in that letter.

8. The first objection is that the taking of the poll was illegal and invalid. It is now known on the facts before the Court that that objection relates to the validity of the nomination of one of the candidates, Mr. Allarakhia. Under Section 26 of the City of Bombay Municipal Act, 1888, candidates for election at a ward election must be duly nominated in writing ; and by Sub-section (2) (e) (in) of that section a duty is imposed upon the Commissioner to declare whether any person's nomination is invalid, if he comes to the conclusion that he is disqualified from being a councillor for any of the reasons set forth in Section 16. Then by clause (;) of Sub-section (2) of Section 26 the Municipal Commissioner has to decide whether the election will take the form of a contested election or not,-that depending upon whether the number of valid nominations exceeds that of the vacancies. He can only make up his mind whether the election is to be a contested election or not after he has come to a decision upon the question whether the nominations or any of them are invalid, by reason of the disqualifications contained in Section 16. When the Municipal Commissioner has so made up his mind,-s. 27 requires that if a ward election is a contested one, a poll shall be taken seven days after the day fixed for the election, and by Sub-section (2) a duty is imposed upon the Commissioner of causing the names of all persons validly nominated to be published three days before the day of the poll in the Bombay Government Gazette and in the local newspapers. Therefore it is plain that a decision by the Commissioner as to the invalidity of a nomination is a condition precedent to the fixing of a poll. The petitioner here contends that it is open to him to say that Mr. Allarakhia's nomination was invalid, and that that is an objection to or regarding the poll, which the Commissioner is required to hear within the meaning of Sub-section (k) of Section 28 of the Act. In my opinion, such an objection is not an objection to or regarding the poll. The Commissioner, before deciding that a poll should be held, has to make up his mind as to the validity or invalidity of the nomination, and in my opinion that decision having been given by him before the poll is held, any question as to the validity or invalidity of the nomination is not an objection within the meaning of that section. The rights of an aggrieved person in regard to the validity of an election are amply covered by Section 33 of the Act, and the validity

of an election may be challenged as therein provided before the Chief Judge of the Small Causes Court.

9. The next question arising is whether objections 2 to 5 are objections which the respondent ought now to be ordered to hear as objections to or regarding the poll within the meaning of Section 28, Sub-section (k). It is apparent from the contents of the petition itself that all those objections are based upon the alleged invalidity of the second part of rule 8 of the rules which have been made by the Corporation with the sanction of the Local Government under the power contained in Section 29 of the City of Bombay Municipal Act. In my opinion, it is not open to the Municipal Commissioner to take into account the validity or invalidity of any rules made with the sanction of the Local Government under which he holds the poll. In my judgment, the contention that a rule so made was ultra vires the Corporation would not be an objection to or regarding the poll, within the meaning of Sub-section (k) of Section 28. The Act itself 'contemplates by Section 29 that the Corporation shall be empowered to make rules with the sanction of the Government; and when such rules have been made, it is, I think, the bounden duty of the Municipal Commissioner to conduct the poll on the basis of and subject to such rules, without question on his part. In my opinion, it could not possibly have been the intention of the Legislature that the validity of a rule made under the express power conferred by Section 29 of the Act should be open to question as an objection to or regarding the poll within the meaning of Sub-section (k) of Section 28. It being plain from the terms of the petition that objections 2 to 5 all relate to the alleged invalidity of the second part of rule 8, it is, in my opinion, not open to the Court to treat any of those objections as an objection falling within Sub-section (2) of Section 28, and accordingly not open to the Court to direct the Municipal Commissioner to hear those objections. For the above reasons, I think that the Court cannot make this rule nisi R. 123 absolute, and that it should be discharged.

John Beaumont, Kt., C.J.

10. Rule discharged with costs,-including the costs of the hearing before Mr. Justice Davar,--in favour of the respondent. The intervener should bear his own

costs.

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