

In Re: Amulyadhan Addy

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Court : Kolkata

Decided On : Mar-19-1918

Reported in : (1919)ILR46Cal132,50Ind.Cas.307

Judge : Chaudhuri, J.

Appellant : In Re: Amulyadhan Addy

Judgement :

Chaudhuri, J.

1. This is an application that the nomination of Norman Ritchie Luke be declared invalid. The nomination paper in this case contains the particulars required under Rule 2, Schedule V of the Municipal rules for the conduct of elections. The grounds upon which the application is made are as follows: that although there are 18 persons who appear as voters approving of the nomination, yet six of them are not entitled to be registered as voters, their names not having been in the assessment book; that five of them Live in flats and are therefore not entitled under Section 37, Sub-clause 2(e) of the Calcutta Municipal Act; that one Tosh and one Pick-ford, who live in the same house, are not entitled to be reckoned as voters inasmuch as they do not pay the rent of the premises where they live, which is paid by Messrs. Begg Dunlop & Co. to whom the premises belong. Objections were taken by the applicant to the inclusion of the names of these persons in the election roll, but that objection was overruled. He then applied for revision of the

roll and asked the Chairman to await the decision of this Court in a similar matter, that of Surendra Chandra Ghose (1918) I.L.R. 45 Calc. 950, which was then pending before his Lordship Mr. Justice Greaves. Decision was given in it by his Lordship on the afternoon of the 28th February. A fresh petition was put in by the objector before the Chairman at about 6 P.M. on the 28th February, mentioning the decision, but the Chairman held that he was unable to revise the election roll at that stage: He said, in his opinion it would be incumbent upon him to revise every ward and therefore he did not propose to go beyond the order of the Court in the matter of Surendra Chandra Ghose (1918) I.L.R. 45 Calc. 950.

2. Chapter V of the Municipal Act deals with the election and appointment of Commissioners. Section 36 says that a Municipal Election Roll has to be prepared and published in the manner prescribed in the rules contained in Schedule IV. Section 37 lays down the qualification of voters at elections, and says that a person shall not be entitled to vote at an election unless he is enrolled in the Municipal Election Roll as a voter of the ward for which such election is held. Sub-clause (2) of that section lays down that a person shall not be entitled to be enrolled in the Municipal Election Roll as a voter except under certain circumstances. The rules, which have been framed under Section 567 and have the effect of law, are contained in Schedule IV. It provides for the preparation of a list of voters on or before the 1st December immediately preceding each general election. Rule 5 provides for the publication of the list. Rule 7 provides for notice of publication and sale of lists. Rule 8 provides for objections. Rule 10 provides for revision of the list. It says that the Chairman shall before the first day of the succeeding month of March revise the said list. Rule 12 provides that after the revision the Chairman shall sign a printed copy and that copy shall be considered the Municipal Election Roll. Such Election Roll is to come into operation on the 1st March immediately preceding the general election according to Rule 15(1). Rule 15(2) says that the roll shall be final and while it continues in force, it shall not be altered except to correct such clerical errors as the Chairman may advertise by public notice given from time to time. Section 54 of the Municipal Act provides that elections are to be conducted in the manner prescribed in the rules contained in Schedule V. Rule 2 of that schedule provides for nomination papers, and it seems to me to be clear that the persons referred to in Rule 2 as voters are persons

appearing on the Election Roll as voters. On the facts stated by the applicant, it seems to me, inasmuch as there is no reply to his affidavit, that there have been serious mistakes in the Election Roll and grave irregularities in its preparation. Rule 10 (2) Schedule IV, provides that three clear days' notice of the holding of the enquiry has to be given to dispose of objections. It is asserted by the applicant that no such notice was given, and as I have said, having regard to the fact that there has been no affidavit in reply, I must take that as an admitted fact, which cannot but be characterised as a very grave irregularity.

3. Section 37(2) of the Act provides that a person is not entitled to be enrolled unless his name is entered in the assessment book. It has been stated that in this case six such names have been incorporated in the Election Roll. The interpretation of Section 37(2)(e) may be somewhat difficult, but Mr. Justice Greaves has held that persons living in flats cannot be enrolled in the Election Roll, and I am inclined to take the same view. But the question before me is, having regard to Rule 15(2) Schedule IV, whether it is competent for me now to question the electoral roll. The application is not for the correction of the Election Roll, but only to have it declared that the nomination paper may be rejected and declared inoperative. As I have said the nomination paper purports to comply with the provisions contained in Rule 2, Schedule V. Objections which were raised by the applicant were placed before the Chairman on the 23rd February, and decision was given against him on the 25th February. He had plenty of time to come to this Court and ask at that stage to stop the publication or for the correction of the electoral roll. He did not choose to come to this Court at that stage but waited for the decision in Surendra Chandra Ghose's matter (1918) I.L.R. 45 Calc. 950, with the result that he presented his petition for revision on the 28th after 6 P.M. Rule 11 of Schedule IV provides that the Chairman can only adjourn the hearing of any matter under the foregoing Rules from time to time, but that no adjourned hearing should be held after the last day of February immediately preceding the general election. Having regard to that provision, I do not think he could deal with the application which was presented to him at 6 P.M.

4. Elaborate provisions have been made in the rules for the preparation, publication and revision of the rolls, and it seems to me that persons objecting to

the final publication of the election roll should take steps to prevent the publication before the Election Roll is finally published according to the rules. It was argued with very great ability and considerable force that in matters of this character, the finality which is given by Rule 15 is inoperative, having regard to the decision in *Nundo Lal Bose v. The Corporation for the Town of Calcutta* (1885) I.L.R. 11 Calc. 275 which has since been followed in this Court, amongst others in *Chairman of Giridih Municipality v. Suresh Chandra Mommdar* (1908) 12 C.W.N. 709 But in *Nundo Lal Bose's case* (2), the Commissioners were held to have acted without or in excess of jurisdiction; and therefore the Court held that it had power to quash the proceedings on a certiorari notwithstanding the finality provided for in Section 117 of the Municipal Consolidation Act of 1876. In the *Giridih Municipality's case* (1908) 12 C.W.N. 709, the Court interfered on practically the same ground. It was held that if the error goes to jurisdiction, the Court can and ought to interfere; if not, the Court has no power to do so, I do not think that at this stage I can alter the Election Roll. Section 56 of the Act was referred to, but that relates to the hearing of election petitions by the High Court after publication of the return. That question does not now arise. It is greatly to be regretted that in matters of such serious moment, requirements of the law are not carefully observed, and I regret to have to hold that I have no power now to interfere with an Election Roll apparently carelessly prepared. Having regard to the way in which it is said the Election Roll was prepared, I discharge the Rule, but without costs. In deciding as I have done with regard to the finality of the Election Roll, I have relied largely upon *The Queen v. Tug well* (1868) L.R. 3 Q.B. 704.