

In Re: R.C. Sen

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Court : Kolkata

Decided On : Feb-19-1912

Reported in : (1912)ILR39Cal598

Judge : Fletcher, J.

Appellant : In Re: R.C. Sen

Judgement :

Fletcher, J.

1. This is a rule granted under Section 45 of the Specific Relief Act, calling upon Mr. S.L. Maddox, Chairman of the Calcutta Corporation, to show cause why he should not prepare and publish; a revised list of voters for Ward No. 13 of the Municipal town of Calcutta under Schedule IV of the Calcutta Municipal Act by rejecting the claims, objections and applications filed by Mr. I.J. Cohen, Commissioner of the said Ward No. 13, on the 2nd day of January 1912, and by giving effect to the claims, objections and applications filed by Mr. Ramesh Chandra Sen, as if the said claims, objections and applications filed by the said Mr. I.J. Cohen were not filed at all, and why he should not pay the costs of and incidental to this 1 application.

2. Now, the rules for preparation and publication are contained in Schedule IV of the Calcutta Municipal Act, 1899, and by Rule 2 of that Schedule it is provided that on or before the 1st day of December 1908, and thereafter on or before the 1st

day of December immediately preceding each general election, the Chairman shall prepare from the register of his office a list of persons appearing to be entitled to be enrolled in the Municipal election roll as voters of wards. The list shall contain the names of all persons qualified under any clause or clauses of Section 37, and the number of votes to which they are entitled. Rule 3 makes it a condition precedent as being qualified as voters that there should be no arrears of rates and taxes. Then Rule 4 provides for the arrangement in alphabetical order of the list of voters, and Rule 5 provides for the publication of printed copies of the list for public inspection in a conspicuous position at the Municipal office. Rule 6 provides for delivery of printed copies to persons applying for same on payment of fees as may be prescribed by the Chairman. Then Rule 7 provides that on or before the 10th December the Chairman shall give notice by advertising in all the local newspapers of the publication of the list. Rule 8 provides that every person who claims to have his name inserted in the list as being qualified under any of the clauses of Section 37 or who claims to be entitled to more votes than are allotted to him in the list, must, on or before the first day of the succeeding month of January, give written notice of his claim to the Chairman. Any person whose name is in the list may object to any other person as not being entitled to have his name retained therein. Rule 9 provides for representation of companies, associations and joint Hindu families. Rule 10 provides that the Chairman shall before the 1st day of March revise the said list, which he publishes, and he shall for that purpose hear in open office the claims, objections and applications duly made as aforesaid, and shall give three clear days' notice of the holding of the enquiry.

3. The point in dispute arises in this case is as follows: The Chairman delegated all his duties to the Deputy Chairman, Mr. Goode. Section 18 provides that the Chairman has the power to delegate his powers. The Deputy Chairman says quite frankly that the office was kept open not only on the 1st January, but also on the 2nd, and he says quite frankly that in settling all the lists of voters he did not consider whether the claims were lodged on the 1st or 2nd January. It is quite obvious to my mind that there is nothing in the Act to suggest that the Chairman can extend the time beyond the 1st January for lodging claims or objections. The facts in the present case appear to be as follows: It appears that Mr. I.J. Cohen sent certain claims to the Municipal office, but he says that the messenger

returned, having been informed, he says, that the Election Department was closed. It makes no difference whether I accept his story that he sent a messenger who found the office closed, or Mr. Sircar's statement. The point is that Mr. I.J. Cohen took these claims on the 1st January net to the Election Department, but to the private residence of the Secretary to the Corporation. Now, the Secretary to the Corporation happens to live in the same building as the Corporation keeps its office. Perhaps the Corporation provides the Secretary with residential accommodation. However that may be, the place where the papers were lodged by Mr. I.J. Cohen was not the office of the Corporation, but the private residence of the Secretary to the Corporation. The Chairman having appointed a certain place known as the Election Department as the office for taking work with reference to the election of the Corporation, and that office was opened on the 1st January. The order of Mr. Goode, the Deputy Chairman, is as follows: 'It is admitted that Messrs. I.J. Cohen and D.G. Cohen, Commissioners of the Calcutta Corporation, made over a number of applications to Mr. Mookerjee, Secretary to the Corporation, on the evening between 5 and 6 on the 1st January, asking him to receive them as the Election Department was closed. Mr. Mookerjee received the applications and placed them in a box in his office. The box was not locked. Next day about noon Messrs. Cohen came to Mr. Mookerjee, who sent a chaprasi with them, taking the applications to the Election Department.' The first point is that there is nothing to show that the Secretary to the Corporation is the proper person with whom to lodge the election papers. The person directed by Schedule IV to carry into effect preparations and publications of the Municipal Act is a separate Municipal authority as defined in the Act, namely, the Chairman of the Corporation, and the duties are cast upon the Chairman, and not upon any other authority to carry into effect the provisions of Schedule IV. Moreover, the evidence seems to establish that the Election office remained open on the 1st January till 9 P.M. Then the next point is that the next day, about noon, Messrs. Cohen came to the Secretary and took these papers to the Election Department. It seems to me that on the ordinary reading of the English language the papers were not lodged in the Election Department by the Secretary, but by Mr. Cohen on the 2nd. That being so, it is difficult to see that they were lodged for any other purpose than for safe custody with the Secretary on the night of the 1st January. In my opinion whether

they were lodged for safe custody or with a view to be lodged in time on the 1st, the lodging with the Secretary was not a proper lodging as required by the terms of the Act, unless it is shown that the Chairman of the Corporation had Corporation as a place where the claims could be lodged. The Chairman of the Corporation has a private residence of his own. If it were necessary to lodge the papers with the Chairman when the Election office was closed, there was nothing to prevent Mr. Cohen going to the Chairman and lodging the papers with him. I think the more probable story is that these papers were left with the Secretary on the night of the 1st January, and Mr. Cohen came the next day and took them to the Election office, and in fact the papers were lodged in the Election office on the 2nd by this gentleman. Then the only question is, ought this Court to issue an order in the form of mandamus. The representation made by the Chairman of the Corporation is that he really does not know if he had performed his statutory duties or not. The Chairman does not oppose the rule being made absolute. Mr. Das raises the point under Section 45 of the Specific Relief Act, proviso (c), it has not been shown that in the opinion of the Court such doing or forbearing is consonant to right and justice. If the omission of a statutory officer to perform his public duties as to the settlement of the election roll in the manner provided by the Act is not forbearing to do something that is not consonant to right and justice, I do not know what is. There can be no standard of right and justice, except to see whether the public officer has properly performed the duties cast upon him by the statute or not. It seems to me on the representation of the Corporation there is no option but for the Court to make this rule absolute, and direct the Chairman to act in accordance with the terms of the rule. The point on which the Corporation has asked for a direction is as to whether these papers lodged with Mr. Mookerjee on the 1st were properly lodged. I am of opinion that if the facts are as stated in Mr. Goode's order, then these claims, objections and applications were not properly lodged. They were lodged by Mr. Cohen in the Election office on the 2nd January. I accordingly make the rule absolute.

4. With regard to costs, the chairman has acted in good faith. He delegated his duties to a junior officer, who kept the office open on the 2nd and 3rd January. This appears to have been a slip, and I do not, therefore, order the Chairman to pay the costs. As against Mr. Das's client, he came here and fought the rule but

has failed. That being so, I think the ordinary rule must apply. I direct Mr. Das's client to pay the applicant's costs of the rule.

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