

**A.B. Mitchell Vs. J.C. Dutt**

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**Court :** Kolkata

**Decided On :** May-26-1927

**Reported in :** AIR1928Cal209

**Appellant :** A.B. Mitchell

**Respondent :** J.C. Dutt

**Judgement :**

**Gregory, J.**

1. This is an application under the Calcutta Municipal Act (3 of 1923 B.C.), for an order declaring the election of Mr. J.C. Dutt as Councillor for the Corporation for the Waterloo Street Constituency Ward No. 12 of the Corporation of Calcutta at the second Municipal General Election null and void. It ft also prayed that one Mr. S.J. Cohen, the next candidate, be declared duly elected for the said ward.

2. The petitioner, Mr. A.B. Mitchell, is a gentleman whose name is enrolled in the electoral roll as a voter, and he disputes the validity of Mr. Dutt's election in the present proceedings which have been instituted under Section 46, Municipal Act. By this section any person enrolled in the electoral roll may apply to the High Court

if there is any dispute as to whether any person whose name is published under Sub-section (8) of Section 29 is qualified to be elected a Councillor, or if the validity of any election is questioned, whether by reason of the commission of any

corrupt practice by a candidate or his agent or by any other person or by reason of the improper rejection of a nomination or of the improper reception or refusal of a vote or for any other cause.

3. Section 47, to which I shall refer, later states the grounds on which the election of a returned candidate shall be void.

4. The facts, which are not disputed, are as follows:

The last date fixed for the filing of the nomination papers was 27th February 1927. As 27th February was a Sunday, the Chief Executive Officer of the Corporation published a notice in the 'Statesman' (issue of 24th February) to the effect that 27th February being Sunday, the deposit money of the candidates, ordinarily due on 1st March under Section 27(3) of the Act, would be received up to 5 p.m. of 2nd March. Mr. Dutt paid the deposit money on 2nd March. The scrutiny of the nominations was held on 3rd March. Mr. Dutt's nomination was accepted as a valid one, and he proceeded to election as a validly nominated candidate. The election for Ward No. 12 took place on 16th March and Mr. Dutt was declared by the Receiving Officer as the candidate who had been duly elected as Councillor for the Corporation for Ward No. 12. His election is now impugned on the ground that it proceeded upon a nomination that was void.

5. Section 27(3) of the Act provides as follows:

A candidate who has been duly nominated shall within three days of his nomination deposit with the Executive Officer Rs. 250.... Failure to deposit the said amount shall render the nomination void.

6. It is not disputed that under this section the deposit money was due on 1st March, and I have not understood counsel for Mr. Dutt to contend that the Corporation had any authority to extend the time prescribed by the Act for paying the deposit money, but the answer made to the objection that Mr. Dutt's nomination was void, is that Section 27(3) does not say that failure to deposit Rs. 250 within three days of the nomination shall render the nomination void. I think the section can mean nothing else, it is mandatory; and its plain sense is that

within three days of the nomination the candidate must pay the deposit money, otherwise his nomination is rendered void. On the admitted facts it must be held that the nomination in this case was rendered void.

7. Then it is contended that, assuming the nomination was void, an objection to the validity of the election on that ground does not lie under Section 46 of the Act. It is argued that the scope of that section is confined to two general matters : the qualification of the elected candidate to be elected a Councillor and to the validity of the election on any of the grounds state, and that the general words 'or for any other cause' must be construed so as to admit only such other grounds as are ejusdem generis with those preceding these words. In support of the argument it is pointed out that inasmuch as only an improper rejection of a nomination is under the section made a ground for disputing the validity of an election, an improper acceptance of a nomination is by implication shut out from the section as a valid ground of objection. I am unable to construe the section in this way. I cannot agree that because the improper rejection of a nomination at the scrutiny, for any o the reasons contained in Rule 15, is made a ground for disputing the election, the reasonable and correct inference to be drawn from the words of the section is that the improper acceptance of a nomination which had been rendered void is not an admissible ground for the purposes of Section 46.

8. On the subject o limiting general terms in a statute the Judicial Committee in the case of Attorney General v. Merces [1883] 8 A.C. 778 laid it down as a sound rule that every word ought prima facie to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context.

9. In the case of Smelting Co. of Australia, v. Commissioners of Inland Revenue [1897] 1 Q.B. 175 Rigby, L.J., on the same subject said:

The rule of construction, which is called the ejusdem generis doctrine or sometimes noseitur socus is one, which, I think, ought to be applied with great caution because it implies a, departure from the natural meaning of the words in order to give them a meaning which may or may not have been the intention of the legislature.

10. I may also refer to a short passage in the judgment of Esher, M.R., in *Powell v. Kempton Park Racecourse Co.* [1897] 2 Q.B. 242, which shows how far the rule of *eiusdem generis* should be carried, if it is applied:

That rule requires an interpretation of the general words limiting them to matters or things of the same kind as to the mischief being dealt with, as the previous words, but an interpretation as wide as the limitation just described will admit.

11. In the present case the ground of objection taken to the validity of the election is consistent with every word in Section 46, and I cannot see that any difficulty or complication can arise if this ground of objection is admitted under the general words as a proper one for the purposes of Section 46. In my opinion it would be pushing the principle of the rule of *eiusdem generis* too far not to do so.

12. Section 47 of the Act, referred to before, states the grounds on which the election of a returned candidate shall be void, and it provides that when the High Court is of opinion that the result of the election has been materially affected by any noncompliance with the provisions of the Act or the rules made thereunder, the election of the returned candidate shall be void. In this case, as stated before, by reason of the noncompliance with the provisions of Section 27(3) Mr. Dutt's nomination was rendered void, but it was acted upon at the scrutiny of nominations as a valid one—probably because the receiving officer proceeded upon the assumption that the Act had been complied with by virtue of the notice published by the Executive Officer in the 'Statesman.' Be that as it may, in the result Mr. Dutt was elected though he was not a duly nominated candidate. In my opinion, the objection to the election falls within the purview of Section 46, and the result of the election was materially affected by the noncompliance with the provisions of Section 27(3). The consequence of that non-compliance vitiated the election which held was null and void and which I set aside.

13. With regard to the contention that the next candidate should be declared elected I may say at once that I can find nothing in the Act to support it. It is urged that whereas Section 46 provides that a fresh election shall be held if the Court sets aside an election or holds it to be null and void, Section 47 merely provides that the election shall be void, and that it does not provide that a fresh election

must be held. I must confess I am unable to appreciate the argument. Section 47 is not independent of Section 46 for it applies, in terms, to proceedings instituted under Section 46. It is clear from its scheme that Section 47 was intended to set out in Clause (1) those cases in which an election shall be deemed void, and in Clause (2) those cases in which discretion is given to the Court to find that an election is not void. There is no sensible distinction between the expressions 'void' and 'null and void' which are used indifferently in the two sections. I hold there is nothing in the Act to support the contention that the next candidate, Mr. Cohen, must be declared elected. In the result, though I must hold that Mr. Dutt's election was void, the prayer that Mr. Cohen be declared elected cannot be entertained.

14. Besides this petition of Mr. Mitchell, another petition was presented to this Court and a rule obtained on it by : Mr. Prabodh Das who appeared and argued his petition in person. By agreement of all the parties both petitions were heard together. Mr. Das impugns the validity of Mr. Dutt's election on the same ground as that taken in Mr. Mitchell's petition, but he does not contend that the next candidate (Mr. Cohen) must be declared elected. As both these questions have been dealt; with in my judgment I need not say anything further with regard to them.