

Zahid Husain vs M. Hamid Uddin And Anr. on 21 April, 1952

Equivalent citations: AIR1953ALL167, AIR 1953 ALLAHABAD 167

JUDGMENT

Sapru, J.

1. This appeal has been presented to this Court by Shri Zahid Husain who was one of the defendants in the suit for a declaration that the order and judgment dated 25th May 1946 of the Additional Commissioner, Bareilly Division, and all the proceedings in connection with the election petition so far as they relate to the plaintiff were 'ultra vires' and null and void. Included in the reliefs prayed for in the suit was a prayer for an injunction to restrain the defendants from executing the decree awarded by the election tribunal. The plaintiff, Shri Hamid Uddin, is a pleader practising in Moradabad. In 1945 municipal elections were held in that city. For the two Muslim seats in Ward No. 4 about a dozen candidates offered themselves for election. Of those candidates, the plaintiff and Ahmad Ullah were declared successful. Thereafter, the defeated candidates, namely, Shri Pir Bux and Shri Zahid Husain, presented a joint election petition against the plaintiff and Ahmad Ullah to the Commissioner of the division in which the Municipal Board was situate. This election petition was transferred for disposal by the Commissioner to the Additional Commissioner, Bareilly Division. The election of the plaintiff was set aside by the Additional Commissioner and he was debarred from seeking election for a period of five years. On an application for review of his order, the Additional Commissioner set aside the order disqualifying him for five years. In other respects the order was maintained. After the review application had been disposed of, the plaintiff filed the suit out of which this appeal has arisen. This suit, as has been stated before, was one for a declaration that the order and judgment of the Additional Commissioner, Bareilly Division and all the proceedings in connection with the election petition were null and void so far as the plaintiff was concerned.

2. The learned munsif in a careful judgment held that he had no jurisdiction to entertain the suit as the allegation of the plaintiff that the Additional Commissioner had not followed a correct procedure had not been established by him. On an appeal to the lower appellate Court, the decree of the learned munsif was set aside. The learned Civil Judge allowed the appeal and decreed the suit by declaring that the decision of the Additional Commissioner referred to above and subsequently modified by the order passed in review on 18th September 1946 was not binding on Hamid Uddin, plaintiff. He further declared that he had not ceased to be a member of the Municipal Board and that the defendant, Zahid Husain, was not a duly elected member of the Municipal Board. He further held that, in view of his order, the plaintiff was not bound to pay the costs awarded by the election tribunal. Aggrieved by this order of the learned Civil Judge, the appellant has come up to this Court

in appeal.

3. The question for consideration is whether the order of the learned Civil Judge is one which can be upheld in this case. In the careful argument which has been addressed to this Court by Mr. Gyanendra Kumar on behalf of the respondents, three points have been urged. In the first place, Mr. Kumar's argument is that the civil Court has jurisdiction under Section 9, Civil P.C. to adjudicate upon a matter decided by an election tribunal where the tribunal acts without jurisdiction. In the second place, his contention is that the special tribunal in this particular case had acted in contravention of the mandatory provisions of the Municipalities Act and the procedure prescribed thereunder. In the third place, Mr. Kumar's argument is that the order of the special tribunal is contrary to the principles of natural justice and, as such, liable to be set aside by this Court. I shall deal with these arguments 'seriatim'.

4. The exact extent to which Courts can interfere with the verdict of election tribunals was considered in the case of -- 'Mani Ram v. Bhagwat Sarup', AIR 1949 All 50, and it may be useful to refer to what Malik C.J. had to say on the question which has been raised by Mr. Kumar. I quote Malik C. J.:

"Section 9, Civil P.C., is the section that gives: jurisdiction to the civil Courts to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The cognizance of the civil Court to hear an election petition under the U.P. Municipalities Act or to give any relief in the nature thereof is clearly impliedly barred under the provisions of the Municipalities Act, but the question whether there has been a legal adjudication by the Commissioner in accordance with the provisions of the Municipalities Act is not a question excluded from, the cognizance of the civil Court. If the adjudication is illegal and the order of the Court (the Commissioner as the Election Tribunal) is 'ultra vires' of the provisions of the Act it may be said to have resulted in a civil wrong cognizable by the civil Court on the general principles underlying Section 9, Civil P. C. Where a special tribunal is provided by law to try civil rights of a certain nature the legislature must be deemed to have intended that the jurisdiction of the civil Courts would be excluded only if the special tribunal has acted within the authority given by that law."

5. With respect I would say that I entirely agree with the observations of Malik C.J. which indeed are supported by the observations of the Judicial Committee of the Privy Council in the case of -- 'Secretary of State v. Jatindra Nath', 51 Ind App 241 (PC). This case has been referred to by Malik C. J. in his judgment. It is unnecessary to deal with this question any further as there is a full discussion of it in the judgment of Malik C. J. with which I am in complete agreement.

6. Mr. Gyanendra Kumar's argument is that the Additional Commissioner had no jurisdiction in this particular case to entertain the election petition which was presented by Shri Zahid Husain to the Commissioner of the Bareilly Division. Under Section 22(1) of the U.P. Municipalities Act (Act 2 of 1916) an election petition has to be heard by the Commissioner of the Division within which the municipality concerned is situated, unless some other person or tribunal has been appointed by rule

in this behalf, and at a place in the district within which such municipality is situated. Mr. Kumar's contention is that the Commissioner is a 'persona designata' under this section and that this section does not cover the case of an Additional Commissioner. An Additional Commissioner has not been defined in the Municipalities Act, nor is there any definition of an Additional Commissioner in the U.P. General Clauses Act which was passed in 1904. Under Section 4(11) of the General Clauses Act a Commissioner has been defined as the chief officer in charge of the revenue administration of a division. Section 4 (8) of the Land Revenue Act defines a revenue Court as meaning all or any of the following authorities (that is to say), the Board and all members thereof, Commissioners, Additional Commissioners, Collectors, Additional Collectors etc. etc. Under Section 13(1) of the Act the Provincial Government has the power to appoint an Additional Commissioner in a division and under Clause (3) of Section 13 an Additional Commissioner can exercise such powers and discharge such duties of a Commissioner in such cases or classes of cases as the Provincial Government, or in the absence of orders from the Provincial Government the Commissioner concerned, may direct. Clause (4) of Section 13 is important and may be quoted below:

"This Act and every other law for the time being applicable to a Commissioner shall apply to the Additional Commissioner, when exercising any powers or discharging any duties under Sub-section (3), as if he were the Commissioner of the division."

7. The argument that has been advanced on behalf of the respondent is that the powers and duties referred to in Clauses (3) and (4) of Section 13 are of a revenue nature only. They cannot and were not designed to give to the Additional Commissioner the administrative powers which the Commissioner of a division possesses. Actually it is not in his administrative capacity that the commissioner or the Additional Commissioner has acted in this case. The Additional Commissioner has acted as an election tribunal. Whatever may be the exact position of the Additional Commissioner 'vis-a-vis' the administration of the division, the real question in this case is whether the election petition in this particular case could be heard by the Additional Commissioner or not. As I have pointed out before, Section 22(1) of the Municipalities Act authorises the Commissioner of the division within which the municipality is situate to hear an election petition, unless some other person or tribunal has been appointed by rule in this behalf, and at a place in the district within which such municipality is situated. There is nothing before me to show that the Additional Commissioner was not a person or tribunal appointed by Government by rule in this behalf. No objection was taken by the respondent to the hearing of the election petition by the Additional Commissioner at the time when the election petition came to be disposed of by him. It is only fair to assume that, had there been no rule appointing the Additional Commissioner to hear election petitions, the respondent would have taken such objection to the election petition being heard by the Additional Commissioner at the time when it came up before him for hearing. I am satisfied, therefore, on the facts before me that the Additional Commissioner had jurisdiction to hear the election petition.

8. I now come to the second part of the argument which has been addressed by learned counsel for the respondent. It appears that the plaintiff-respondent Hamid Uddin, and Ahmad Ullah were working together for purposes of their election. The ward Was a double member ward. Now, in the petition which was filed against Hamid Uddin and Ahmad Ullah it was established that there had

been three cases of false personation. It is necessary on this part of the case to understand clearly what the findings of the Additional Commissioner on the part played by the plaintiff so far as these false personations are concerned. In deciding the question of personation, the Additional Commissioner kept in mind two factors, namely, (1) whether the persons other than those entitled to vote voted for the respondents and (2) whether this personation was done with a corrupt mind and was within the knowledge of the respondents themselves, their agents or identifiers. The Additional Commissioner was driven to the irresistible conclusion that the application, Ex. P-14, which contained the list of election agents was presented by the respondents before the presiding officer and the persons named in that document did act as agents on their behalf. On this basis, he came to the very sound conclusion that both the respondents in the election petition before him, were bound by the act of their agents. He further came to the finding that the agents mentioned in Ex. P-14 presented by the respondents before him had identified voters whom he had held to be impersonating others. The Additional Commissioner was, therefore, driven to the conclusion that the respondents were let down by their agents. They did not produce their agents to explain whether they committed a mistake under the 'bona fide' belief that they were identifying correct voters. Further, they did not offer themselves as witnesses. The conclusion arrived at by him was that both respondents in the election petition before him and not only one of them had obtained false votes.

9. It must be remembered that the respondent before me was collaborating for purposes of election with Ahmad Ullah in this case. The Additional Commissioner has passed severe strictures against Ahmad Ullah. He considers him to be the more guilty of the two persons. From what he has written, it is however clear that he looks upon Hamid Uddin as a person who has connived at what was done by Ahmad Ullah or his agent on their joint behalf. It is, therefore, important to bear in mind the provisions of Section 28 of the Municipalities Act. That section runs as follows:

"A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate; (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money, or valuable consideration or any place or employment, or holds out any promise of individual advantage or profit to any person; (Hi) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote; (iv) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i), (ii) and (iii)."

10. It will be observed that the section is very widely worded and that according to it a person is deemed to have committed a corrupt practice if he, directly or indirectly, by himself or by any other person commits any one of the acts mentioned in Clauses (i), (ii), (iii) and (iv). It has been strenuously contended by learned counsel for the respondent that his client was, according to the finding of the learned Civil Judge, neither directly nor indirectly involved in the alleged corrupt practices, if any, committed by Ahmad Ullah or his agents. On a correct reading of the report of the Additional Commissioner, I am unable to agree with this argument. The plaintiff must blame himself for associating for election purposes with a man whom the Additional Commissioner

describes as 'a thoroughly unscrupulous person'. He was collaborating, i.e. co-operating with him. Both Ahmad Ullah and Hamid Ullah had according to the findings of the Additional Commissioner, agents who were co-operating with one another. On these facts, the inference is irresistible that the plaintiff-respondent was conniving at the corrupt practices used by Ahmad Ullah and his agents. His attitude was one of complete indifference as to whether what was being done by these agents was right or wrong. The thing that mattered, so far as he was concerned, was success in the election. It was unfortunately this excessive desire to see himself elected as a municipal commissioner that led him to associate himself -- it may be indirectly -- with the corrupt practices used by his colleague, Ahmad Ullah, and his agents. I cannot, in these circumstances, say that the Additional Commissioner has taken a wrong view of the law applicable to the case. It is essential to preserve in a democratic country fairness in elections. Courts are justified in taking a strong view where corruption, directly or indirectly is proved in any election. On a fair reading of the Additional Commissioner's judgment, I have come to the conclusion that, while he thinks that the part played by the plaintiff-respondent was of a comparatively minor character, he was not entirely free from blame. For this reason, the order passed by him was in the circumstances of the case, particularly after he had reviewed it, a completely just one.

11. I now come to the third part of the argument which has been addressed by Mr. Kumar. His contention is that it is contrary to the principles of natural justice to hold a person responsible for 'not what he but some other person has done'. The principle, as enunciated by him, is of an unexceptional character. Undoubtedly, it would be monstrous to make a person who has been clean himself to suffer for the wrongs committed by a colleague about whose character and antecedents he had no reason to be suspicious. In this particular case, however, that principle has no application for the simple reason that the finding of the Additional Commissioner is that the plaintiff-respondent cannot be said to be entirely free from blame inasmuch as he gave his passive support to the misdeeds of Ahmad Ullah and his agent. The active person in this unholy affair was undoubtedly Ahmad Ullah; but the respondent willingly led himself to be dragged into the mire by the unscrupulous methods which were employed by his colleague.

12. An error into which the learned Civil Judge has fallen in this particular case is that he looked upon himself as a sort of appellate tribunal in an election matter. Undoubtedly, as has been emphasised by Malik C. J., it is for the civil Court to see that an election tribunal or for the matter of that any special tribunal set up under any act of the legislature acts within the jurisdiction allotted to it by the Legislature. If such a tribunal does anything which it is not warranted by law to do, its proceedings can be questioned successfully in a civil Court. But where the tribunal acts within its jurisdiction, it is not for the Court to weigh evidence on which it has acted with nicety. The approach of the learned Civil Judge was, in my opinion, incorrect.

13. Before I conclude, I must notice another argument which was addressed by learned counsel for the respondent. This argument is that the Additional Commissioner who tried the two cases at the same time did not separate the two petitions properly. This, it is urged, he was bound to do under Section 23 of the Municipalities Act. The short answer to this argument is that, on a fair reading of the Additional Commissioner's order, it is clear that the two cases were kept, as far as possible, separate and that the universal character of the rule is not affected by the words "so far as is

consistent' with such joint trial or hearing." I do not think that the Additional Commissioner has made any error in his approach so far as this part of the case is concerned. I am unable to interfere with the order regarding costs as that was a discretionary matter with the election tribunal.

14. For the reasons given above, this appeal must be allowed. I set aside the decree of the learned Civil Judge, restore that of the learned munsif and dismiss the plaintiff's suit with costs throughout.

15. Leave to appeal to a Division Bench is refused.