Densieski v. Suffolk County Board of Elections

2001 | Cited 0 times | New York Supreme Court | October 25, 2001

This opinion is uncorrected and will not be published in the Official Reports.

Elections--Referendum Petitions

(*1)

MOTION DATE: 10/24/01

MOTION NO.: 001 MG Case Disp

Upon the following papers numbered 1 to 5 read on this petition; Order to Show Cause and Supporting Papers 1 - 4; Answering Affidavits and Supporting Papers 5 - 6; Replying Affidavits and Supporting Papers 7 - 8; it is,

ORDERED, that this petition by Edward Densieski for a judgment pursuant to CPLR Article 78 directing the respondents, Suffolk County Board of Elections and Barbara Barci and Neil Tiger Commissioners ("respondents") to place the ballot proposition as it appears in the Riverhead Town resolution 1008 before the electorate on Election Day, November 6, 2001 is granted; and it is further

(*2) ORDERED that the respondents immediately place the proposition as it appears in Riverhead Town Resolution 1008 on the November 6, 2001 ballot.

On September 18, 2000 the Town Board of the Town of Riverhead duly adopted a resolution that would place a referendum on the ballot regarding the use of existing runways at Calverton Enterprise Park. The referendum reads as follows:

Densieski, E. v. Suffolk Cty. Bd. of Elections, et al Index No. 24838-01 Page 2. PUBLIC REFERENDUM FOR RUNWAYS AT CALVERTON ENTERPRISE PARK

Authorizes the Town of Riverhead or its designated Agency or Representative to operate the existing runways located at Calverton Enterprise Park (EPCAL) as a non-commercial, public use airport, and to expend funds appropriated in the Town of Riverhead 2002 budget using funds raised in the 2002 tax levy for repair and maintenance of the existing facilities.

On September 21, 2001, the Riverhead Town Clerk forwarded by facsimile a copy of the resolution

containing the above resolution and abstract to Barbara Barci, a Commissioner at the Suffolk County Board of Elections. Included in Respondents' return are copies of the certified resolution. These copies are date stamped September 26, 2001, but the stamp does not identify the identity of the receiver. However, since respondents do not allege in opposition to this petition that the referendum was not timely certified in compliance with Election Law § 4- 108(1)(b), the Court finds that certification was timely.

On October 2, 2001, the Commissioners notified the Town Clerk that they rejected the ballot proposition because ". . . it is not in the form of a question and . . . the time period within which to transmit any proposals to us has expired."

Petitioner commenced the instant proceeding on October 17, 2001, seeking a judgment directing respondents to place the referendum on the November 6, 2001 ballot. The only objection in point of law raised by respondents is that the proceeding is time barred. This argument is without merit.

Respondents argue that the last day this petition could have been filed is October 15, 2001. Respondents arrive at October 15, 2001 by referring to Election Law §16 -104 (2) and (3). However, these section require a petition contesting the wording of the abstract or form of submission to be brought within 14 days after the last day to certify the wording of such abstract or form of submission. These sections are not applicable to the instant case where petitioner is not challenging the wording, but rather respondents' refusal to place the proposition on the (*3)ballot. Moreover, it was petitioner, (among others) who in his official capacity, approved the resolution and its wording. Accordingly, since petitioner was not aggrieved at that point in time, it would be illogical to conclude that his time to commence this proceeding was triggered by the certification.

There is nothing in the record to indicate that any person ever challenged the wording of this referendum in accordance with Election Law § 16-104(2) and (3). Rather, the Commissioners, on their own accord, rejected the referendum. Pursuant to Election Law §4-114, the Board of Elections is required to determine the candidates duly nominated for public office and the questions that shall appear on the ballot. This is a ministerial function (Lenihan v. Blackwell, 209 A.D.2d 1048, 619 N.Y.S.2d 888 [4th Dept. 1994]). In Lenihan, the Appellate Division held that the Supreme Court improperly interfered with the authority of the Commissioners of the Board of Elections when it directed the Board to print a proposition on the ballot that the Board had previously rejected. However in that case, the Board alleged, and no contrary proof was offered, that the abstract and proposition were not certified in accordance with Election Law §4-108. The Lenihan Court found the rejection on these grounds to be ministerial because of the failure to meet formal requirements of Election Law 4-108(1)(b).

In contrast, here there is no allegation that te referendum was not certified and the record indicates that the certified resolution was timely received. There are no allegations and no evidence that the Town Board failed to comply with any formality of the Election Law. Respondents have failed to cite

a single statute of case that allows them to reject this proposition because they disagree with the wording. This is a function for the court after a timely challenge pursuant to Election Law 16-104(2) and (3). Since such a proceeding was not brought and since respondents have failed to show that the Town Board did not strictly comply with Election Law formalities, the Respondents are required to include the proposition set forth in Riverhead Town Board Resolution 1008 on the ballot on November 6, 2001. Simply stated, respondents acted beyond their ministerial capacity.

The foregoing constitutes the decision and judgment of the court.

(*4)