

1930

Present : Lyall Grant J.

APPUHAMY v. HAY.

247—*M. C. Kandy, 2,786.**Municipal Councillor—Nominated member—
Interest in contract—Municipal Councils
Ordinance, No. 6 of 1910, s. 33.*

Section 33 of the Municipal Councils Ordinance, which penalizes a Councillor who is concerned or interested in a contract made with the Council, applies to a nominated member.

APPEAL from an order of the Police Magistrate of Kandy. A charge was laid before the Magistrate that the accused, being a member of the Municipal Council of Kandy, was concerned or interested, otherwise than as a shareholder in a joint stock company, in a contract made with the Municipal Council of Kandy and had thereby committed an offence punishable under section 33 of Ordinance No. 6 of 1910.

When the complainant asked for summons, accused was represented by counsel who took objection to the issue of summons on the ground that the section applied only to elected members. The Magistrate upheld the objection and refused process. The complainant appealed.

L. A. Rajapakse, for complainant, appellant.—Section 33 is a general section, and clearly applies to nominated as well as to elected councillors. Admittedly many of the earlier sections apply only to elected members, but there is no such limitation in section 33. In interpreting statutes, a Court will abide by the plain meaning of the words, unless such an interpretation leads to absurdity. (*Coe v. Lawrence*¹; see also *Maxwell on the Interpretations of Statutes*, pp. 3-7.) Moreover, the intention of the legislature in enacting section 33 is clear. Its object is to prevent a conflict between interest and duty which would inevitably arise if Councillors, elected or nominated, were

¹ 1 *E. and B.* 516.

permitted to enter into private contracts with the Council. The words “any Councillor” were introduced into section 33 in order to give the section the widest possible application.

Hayley, K.C. (with him *E. F. N. Gratiaen*) for accused, respondent.—With regard to the interpretation of the word “any”, the generality may be restricted by the subject-matter of the context. (*London Tobacconists’ Co. v. Woodroffe*,¹ *In re Bagster*,² *Poulters Company v. Phillips*.³) Section 33 must be read with section 29 which deals with the disqualifications of Councillors “after election”, and which has no application to nominated members. So too it is clear from the context that sections 30, 31, and 32 are restricted to elected members. The only section which deals with the qualifications of nominated members is section 9 (i). Every section which has application to nominated members expressly mentions them (see sections 34 and 35). Where an elected member is disqualified under section 29 and thereby incurs a penalty under section 33, section 30 provides that he shall *ipso facto* cease to be a Councillor. Can the legislature have intended a nominated member, who has incurred a penalty under section 33, to continue in office notwithstanding that fact?

June 18, 1930. LYALL GRANT J.—

This is an appeal from an order of the Police Magistrate of Kandy refusing process. The complaint laid was that a certain councillor of the Municipal Council of Kandy was concerned or interested, otherwise than as a shareholder in a joint stock company, in a contract made with the Municipal Council of Kandy . . . , whereby he has committed an offence punishable under section 33 of Ordinance No. 6 of 1910, the Municipal Councils Ordinance.

¹ 7 B. and C. 838, at p. 856.

² 53 L. J. Ch. 124.

³ *Bing N. C.* 314.

When the complainant asked for the issue of summons, the accused was represented and put forward certain objections. The objection to the issue of summons was taken on the ground that this section only applies to elected members and not to nominated members of the Council. It appears to be common ground that Dr. Hay, the member in question, is a nominated member and not an elected member. This objection was sustained by the Magistrate and process refused.

In appeal it was argued that the provisions of section 33 of the Ordinance are quite clear and explicit.

The section reads as follows :—

Any Councillor who is concerned or interested, otherwise than as a shareholder in a joint stock company, in any contract or work made with or done with the Council shall be guilty of an offence, and shall be liable on conviction thereof to a fine not exceeding five hundred rupees.

It was argued that the words “any councillor” must be read as meaning any elected councillor, but counsel for the appellant urged that there was no justification for such a reading of the plain words of the section.

On behalf of the respondent it was argued that the Ordinance taken as a whole makes it clear that in this section the words “any councillor” means only elected councillors. Reference was made to section 10 as amended by Ordinance No. 15 of 1924. That section provides that councillors shall be persons nominated by the Governor or elected by votes, &c., and that a person shall not be qualified to be elected or having been elected to be a Councillor unless his name appears in the list of persons qualified to be elected. Sub-section (3) sets out further the various qualifications required from an elected councillor and also certain disqualifications. Nowhere in the Ordinance does any statement appear of qualifications or disqualifications which apply to a nominated councillor.

After dealing with various matters pertaining to election, the Ordinance proceeds in section 29 to say :—

No councillor shall continue to be a councillor who, after election, has been sentenced to imprisonment for any indictable offence, such sentence not having been subsequently reversed or quashed, or becomes bankrupt or insolvent, or who is interested otherwise than as a shareholder in a joint stock company in any contract or work made with or done for the Council, nor, unless the Council otherwise decide, shall any person continue to be a councillor who fails to attend three consecutive general meetings.

Section 30 provides that persons disqualified under section 29 shall vacate office. Section 32 enacts further that any person acting as councillor without possessing the necessary qualifications or being disqualified shall be guilty of an offence and liable to a penalty. I think it is clear that section 29—at any rate down to the word “insolvent”—applies only to elected councillors, and it follows that this limitation must equally apply in section 30 where that section refers to councillors “so sentenced or becoming bankrupt or insolvent”. The remainder of the section is not so clearly inapplicable to nominated councillors. Nor is it certain that section 32 may not apply to a nominated councillor who acts after being disqualified by non-attendance as provided in section 29.

Section 34 was also referred to, which enacts as follows :—

An elected or nominated councillor may at any time resign office by a written notice to the Chairman.

It is argued that this is the first section which applies to nominated councillors and that where they are intended to be included they are separately mentioned.

It is clear from the substance of these sections that several of their provisions can only apply to elected members. No

such limitation can be found in the wording of section 33. Its language is quite plain and straightforward and its plain meaning is that it applies to every councillor whether he is elected or nominated. In these circumstances, I think the Court would have to be satisfied that there is some inherent absurdity in the way in which the section would operate if so interpreted, or that for some other reason it is perfectly clear that the legislature intended it to be limited to elected members.

I was referred to the case of *In re Bagster*,¹ where the expression “any creditor” occurring in one of the bankruptcy rules was held to apply only to creditors who had proved their claims. In that case, however, the judgment of the Master of the Rolls clearly shows that this interpretation arose from necessary implication. I cannot find any such necessary implication in the present case.

Part V. of the Ordinance deals with contracts, and section 67 expressly forbids officers and servants from being interested in contracts. There is nothing, so far as I can see, in the Ordinance which forces one to the conclusion that nominated members alone are to be free to accept contracts with or to do work for the Council. It seems to me that the intention of the legislature, as expressed, is that no councillor should be allowed to put himself in such a position and that no distinction is to be made in this respect between different classes of councillors.

It was argued that this interpretation might produce considerable *casus hi* in particular cases. That, however, is a matter to be considered by the Legislature and not by this Court. All that this Court has to do is to interpret the meaning of the language used. Even in the case of statutes which the Court considered were so expressed as to defeat the objects of the Legislature, it has been held that the Court is not entitled to put upon the act a construction which is not

¹ 24 *Chancery Div.* 477

warranted by its words, nor give effect to what it might suppose to have been the intention of the Legislature.

In the case of *Coe v. Lawrence*,¹ Lord Campbell said :—

I cannot doubt what the intention of the Legislature was, but that intention has not been carried into effect by the language used. It is far better that we should abide by the words of the statute than seek to reform it according to the supposed intention.

In the present case I see no reason to suppose that the intention of the Legislature was other than that which is expressed in section 33. If that is not the case, it is open to the Legislature to apply the remedy by expressing its intention in more precise language.

I would therefore allow the appeal and remit the case back to the Magistrate to issue process.

Appeal allowed.
