

1969 Present : H. N. G. Fernando, C.J., and Wijayatillake, J.

P. G. ARIYATILLEKE, Petitioner, and
N. KANAKARATNAM and another, Respondents

*S. C. 623/68—Application for a Writ of Quo
Warranto and Mandamus*

*Urban Council—Resignation of office by Chairman—Meeting of Council to elect new
Chairman—Failure of Assistant Commissioner to preside—Effect—Urban
Councils Ordinance (Cap. 255), s. 17 (5)—Local Authorities Elections Ordinance
(Cap. 262), s. 69—Quo warranto—Mandamus.*

When a meeting of an Urban Council is convened for the purpose of electing a Chairman in terms of section 17 (5) of the Urban Councils Ordinance, the failure to comply with the requirement that the Assistant Commissioner (and not a person authorised by him) shall preside at the meeting would render the meeting invalid if the Court, upon an application for a writ of *quo warranto*, cannot be certain that such failure has not affected the result of the election.

APPLICATION for a writ of *quo warranto* and *mandamus*.

Nimal Senanayake, with *Sam Silva* and *H. W. Amerasinghe*, for the petitioner.

S. Rajaratnam, for the 1st respondent.

N. Sinnatamby, Crown Counsel, for the 2nd respondent.

Cur. adv. vult.

October 30, 1969. H. N. G. FERNANDO, C.J.—

The Chairman of the Hatton Urban Council resigned his office on 16th September 1968. Thereupon sub-section (5) of Section 17 of the Urban Councils Ordinance, Cap. 255, required the Assistant Commissioner of Local Government to convene a meeting of the Council for the purpose of the election of a new Chairman, and in terms of that sub-section, the provisions of sub-section (1) of the same Section became applicable. Accordingly the Assistant Commissioner by notice dated 25th September 1968, convened a meeting of the Council for 11th October 1968.

The concluding para. of sub-section (5) required that the Assistant Commissioner shall preside at this meeting until the election of the new Chairman. On the day of the meeting however, the Assistant Commissioner was ill and unable to attend the meeting. He therefore

purported to authorise a person who has been referred to as an "Investigating Officer" to preside at the meeting. All the members of the Council were present at the meeting except one member who is the petitioner in the present case. The members who were present unanimously elected the 1st respondent as Chairman.

The ground for the present application by the petitioner for a Writ of Quo Warranto declaring invalid the election of the 1st Respondent is that the provision in sub-section (5) of s. 17, that the Assistant Commissioner of Local Government shall preside at a meeting held for the purposes of electing a Chairman, is imperative, and that the meeting in this case was a nullity. There is some support in sub-section (2) of s. 17 for the ground relied on by the petitioner. That section provides for an adjournment of a meeting, if it cannot be held on the date fixed under sub-section (1).

Counsel appearing for the Respondents had relied on certain decisions holding that irregularities in regard to the holding of elections do not invalidate the elections. The usual ground on which such decisions rest is that the result of the election was not affected by the irregularity. The principle thus applicable is also stated in s. 69 of the Local Authorities Elections Ordinance, Cap. 262. The present case has however to be distinguished. The petitioner has stated in his affidavit that he kept away from the meeting because he was informed by the Secretary of the Council that the Assistant Commissioner would not preside at the meeting. The petitioner also states that he had intended to nominate a person other than the 1st Respondent for election as Chairman. If therefore the Assistant Commissioner had in fact presided at this meeting, the petitioner could in the exercise of his right as a member have nominated the name of some other person for election; and it is impossible to say what the result would have been if such a nomination had been made. If the election of the 1st Respondent had been contested, the other nominee may have been elected; again, if the petitioner had nominated a candidate, it is possible that the 1st Respondent may not have been nominated. In these circumstances a Court cannot be certain that the failure to comply with the requirement that the Assistant Commissioner should preside did not affect the result of this election.

For these reasons we made order for the issue of the Writ of Quo Warranto, and for a Mandate directing the Assistant Commissioner to convene another meeting for the purpose of electing a new Chairman.

WIJAYATILAKE, J.—I agree.

Application allowed.