1944 *Present:* **de Kretser J.**

WEERASEKERE MUDIYANSELAGEY KIRI BANDA, *et al.*

v.

GOVERNMENT AGENT, PROVINCE OF UVA.

IN THE MATTER OF APPLICATIONS FOR WRITS OF *Certiorari* AND *Mandamus* IN REGARD TO VILLAGE COMMITTEE ELECTIONS FOR HOREGANA WARD AND FOR HALDUMMULLA SANITARY BOARD.

Writ of mandamus *or* certiorari—*Election for Village Committee—Presiding officer arriving late for meeting—Election held on same day with consent of voters and candidates—Result of election unaffected by irregularity—Election upheld.*

Where the presiding officer at an election to a Village Committee arrived at the meeting more than one hour after the time fixed and where with the consent of all the voters present and the candidates the meeting was adjourned and the election duly held on the same day.

Held, the Supreme Court would not exercise its discretion to set aside the election on the ground of an irregularity which could not have affected the result of the election.

Ranasinghe v. Government Agent, Sabaragamuwa [1], followed.

A writ of *certiorari* would lie only against a person performing a judicial duty.

THIS was an application for a writ of *mandamus* and a writ of *certiorari* against the Government Agent. Uva.

K. S. Aiyar for the petitioners.

H. H. Basnayake, Crown Counsel, for the respondent.

Cur. adv. vult.

November 27, 1944. DE KRETSER J.—

These two applications for writs of *certiorari* and *mandamus* arise out of the following facts.

Election for members of two wards of a Village Committee had been fixed for December 13, 1943, at the Village Tribunal, for the Horegana Ward at 9.30 A.M. and for the Haldummulla Town at 11 A.M. The Presiding Officer nominated by the Government Agent found his way blocked by a landslide and delayed for about an hour to see if the obstruction could be cleared. He then sent two telegrams to the Government Agent and to the keeper of the Village Tribunal. A telegram was received by the keeper about 11 A.M. from the Government Agent informing him that the Presiding Officer would be late and requesting him to ask the Headman to inform the voters. He did this. The information was publicly announced and the telegram passed from hand to hand.

The Presiding Officer arrived at 11.30 A.M. and was faced with two elections, for the first of which he was two hours late and for the second half an hour late. Section 16, proviso (iii) states that if the Presiding Officer is more than an hour late the meeting should be deemed to be adjourned for another date, of which notice must be given as provided

[1] *44 N. L. R. 572.*

by section 14. The Presiding Officer adjourned the meeting for Haldummulla Town till 1 P.M. and the meeting was then held and concluded at 2.30 P.M., after all present had voted. 319 voters were present and the successful candidate had a lead of 73 votes over his rival. The candidates expressed satisfaction with the way the election was conducted and no complaint has been made by the unsuccessful candidate.

A letter dated December 11, was sent to the Government Agent by a person identified as the President of the Committee, intimating that the Presiding Officer had arrived 3 hours late and requesting him to be good enough to take early steps to cancel the election and reconvene the meeting in terms of section 16 (ii.). He was apparently unaware of the addition of the third proviso brought in by the amending Ordinance No. 54 of 1942. The Government Agent replied by letter dated December 15 and informed him that the Presiding Officer had explained the cause of his delay and had held the election " with the full consent of the candidates ", that no objection had been raised and the general desire was that the election should be held that day. He added that he had no power to declare the election void. Thereafter, a person, who claimed to be qualified to be a voter, made an application for the writs now under consideration alleging that he and a large number of voters had left after an hour and had been deprived of their right to vote, and had requested the President of the Committee to have the election invalidated.

With regard to the Horegana Ward the Presiding Officer swears that he intended to postpone the election but the candidates and their supporters pressed him to hold the elections at once. He called for objections and none was raised and he held the election. 323 voters were present, the winning candidate got 161 votes, the next 143, and the third only 15.

The same procedure was followed by the President of the Committee and the present application was made by two persons qualified to be voters, in almost the very same terms as the one relating to the Haldummulla Town ward.

Numerous counter-affidavits were filed contesting the allegations in the petition. According to them the petitioners were present and took part in the elections, no one left but on the contrary others came in, all were satisfied. Counsel for the petitioners stated he would not rely on the allegations made in the petitions and supporting affidavits but would take his facts from the counter-affidavits and base his whole case on the law. The counter-affidavits seem to be in every way more acceptable. As regards the Haldummulla Town ward Counsel confessed he was on poor ground and he hardly referred to it. It seems to me that the application must fail. The irregularity has not been shown to have caused any harm, if it be an irregularity to adjourn for a short time on the very day and after notice to all assembled. But I am not satisfied it is an irregularity. The applications regarding the Haldummulla Town ward are dismissed.

No provision has been made in the Ordinance for adjournment in the course of the day but this does not mean that such an adjournment would be illegal. The numbers in a ward of a village area may be estimated by the fact that the Government Agent, who would have the

necessary information, only allowed 1½ hours for the Horegana ward. During such a short period adjournment would not ordinarily be needed but if the need did arise an adjournment could be made. Such an adjournment would need to be notified to the meeting. Such temporary adjournments are within the right of any meeting and no special provision is needed. But where a longer adjournment becomes necessary the Ordinance provided not only the power to adjourn but that notices would be necessary before the meeting is held. We have a curious situation disclosed in section 16, proviso (iii). It requires the notice prescribed by section 14 to be given and at the same time requires that the adjournment should not be for a date longer than 30 days from the date and time fixed. Only the Government Agent may give such notice and the Presiding Officer may not. Proviso (i) to section 16 empowers the Presiding Officer to exercise all the powers and perform all the duties that may be exercised or performed by the Government Agent at the meeting and no more. The Government Agent could not give " not less than one month's notice " and yet have the meeting " " not more than thirty days after the date *and time* " fixed in the original notice convening the meeting. The proviso can only be interpreted practically as meaning that the manner of notice and not the period of notice was intended both in proviso (ii) and proviso (iii) when they invoke section 14. The Ordinance provides for the case of the Presiding Officer being present in time and adjourning a meeting. It provides for his arriving within an hour and holding the meeting, which is held in suspense till then. It does not provide for his arriving later than an hour finding all concerned still waiting, and with their consent holding a meeting, as happened in the case of the Horegana ward. It seems clear the Ordinance provided for an adjournment to some other date. Also that it was where no Presiding Officer was present to announce an adjournment, that the meeting would be deemed to be adjourned to an unspecified date, of which further notice would be needed. Candidates and voters would be entitled to disperse after waiting an hour. For what reason and in whose interests was the time of grace fixed at an hour? Clearly in the interests of the electorate, for the protection of whose rights it is that all rules are made. The reason for fixing one hour must be a matter of conjecture. Probably it was felt that if the Presiding Officer did not come for one hour he was not coming at all. The time of grace was surely not allowed to encourage any habit of unpunctuality or to induce lack of care on the Presiding Officer's part or to punish misfortune on his part but to save expense and inconvenience to the electorate. The rule is one of procedure and rules of procedure can always be waived by those for whose benefit they are made. In the present case the evidence is that no voters left and the fact that the full time provided was occupied suggests that all, or almost all, the voters were present. The candidates were best qualified to look after their own interests and they were satisfied. Again an indication that no voters had left. Both they and the voters wished the meeting to be held. A situation arose not contemplated by the Ordinance and the Presiding Officer followed a course which quite satisfied the object of the Ordinance. The proviso does not say " arrive at a meeting after one

hour has elapsed from the time fixed " but " does not arrive within one hour ". It does not contemplate the case of the Presiding Officer arriving but that of his not arriving. The meeting is in being once the voters have assembled at the time fixed but it cannot proceed to business. The section does not say " shall stand adjourned " but " shall be deemed to be adjourned ". " Deemed " by whom? Obviously by those assembled, *i.e.*, the electorate. What if they did not in fact deem it to be adjourned? Villagers notoriously have little idea of the time and when they do make a guess they guide themselves by the sun. All temple life is regulated by solar time and the temple occupies a prominent place in village life. Lucky hours are fixed by Astrologers according to solar times. The villager would in most cases take the time 9.30 as that time by the sun and 11.30 by advanced time would be 10.30 to him. That might in part explain why the voters waited. Many had assembled from early morning, probably making the day a non-working day. But this line of reasoning only fortifies the argument that those concerned might always waive a provision for their benefit. So does the argument that a meeting may always decide to resume after an adjournment. One must not forget this is a village election for a small electorate, living in a small area; that the barest elements necessary for an election are provided by the Ordinance which does not provide for an electoral roll or for electoral offences and other complexities familiar in bigger elections. It would be unfortunate to impose technicalities on such an electorate. I am not sure the writs applied for should be used in connection with these elections for section 24 of the Ordinance provides machinery for settling doubts as to the validity of an election. To sustain the contention that the election was void one would have to read into the proviso words to the effect that the meeting should not be resumed and any election held thereafter shall be invalid.

I feel it difficult to say that the meeting was irregularly, let alone illegally, held. It is certainly a case in which in the exercise of my discretion I should not allow the applications now made.

There remain one or two points to be considered. Crown Counsel contended that the writs would not lie as the Government Agent and the Presiding Officer only performed executive duties and section 42 of the Courts Ordinance only applied to persons discharging judicial functions. I have already expressed my opinion on section 42 in *Wijesekera v. The A. G. A., Matara* [1]. In my opinion the Presiding Officer performed only executive duties and the application to the Government Agent to hold another election was not one calling on him to perform a judicial duty but inviting his attention to the state of affairs and requesting him to act.

A writ of *certiorari* would lie only against a person performing a judicial duty. (Halsbury Vol. IX. s. 1420; 1443). It does not lie where the proceedings were wholly void. (S. 1445; 1482; 1449), nor will the Court grant it where no benefit would arise from granting it (1482). The application must be made by an aggrieved party and not merely by one of the public, and the conduct of the party applying must not have been such as to disentitle him to relief, *e.g.*, acquiescence in the irregularity complained of, failure to object to the constitution of the Court (S. 1481).

[1] *44 N. L. R. 533.*

It seems clear, therefore, that in both cases the writs of *certiorari* cannot be granted. But the writ of *mandamus* stands on a different footing. It will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing such rights (S. 1269). The grant of a writ is as a general rule a matter for the discretion of the Court. It is not a writ of right and it is not issued as a matter of course. It may be refused not only upon the merits but also by reason of the special circumstances of the case (S. 1270). It will lie to enforce statutory rights and duties, to require public officials and bodies to carry out their duties (S. 1270 and 1281). It will issue to Government officials exercising executive duties which affect the rights of private persons. When Government officials have been constituted agents for carrying out particular duties in relation to subjects so that they are under a legal obligation towards such subjects the writ will lie. (S. 1293). The rule that the Code will not question by *mandamus* the honest decision of tribunals applies to all tribunals and not only to those of a judicial character (S. 1500). It must be shown that the Statute imposes a legal duty and the applicant must show that there resides in him a legal right to the performance of the duty. The legal right must be in the applicant himself (S. 1213). The mere fact that a person is interested in the performance of a duty as a member of a class of persons all of whom may be regarded as equally interested but himself having no particular ground for claiming such performance, or that he has an ulterior purpose but no immediate interest of his own or any other person's behalf, will not be sufficient (S. 1305). It must be shown there was a distinct demand of that which the party desires to enforce and that such demand was met by a refusal (S. 1307). It cannot apply where a person has by inadvertence omitted to do some act which he was under a duty to do and when the time within which he can do it has passed. (S. 1307). Nor will it be granted when it seems that obedience to the writ would not be followed by any different result (S. 1308). A writ of *mandamus* would lie to command election to an office where, though there has been election to the office, the election is void or merely colourable and there is in fact no election and the office is not full. It will not be granted where the office is in fact full. Proceedings must then be taken by way of *quo warranto* or election petition (S. 1274), or in this case by an application under section 24. In (Writ of *mandamus* G. A. Northern Province) *28 N. L. R. 323* Dalton J. used the writ to declare an election void where the *venue* had been changed without adequate notice. In the case *Ranasinghe v. G. A. Sabaragamuwa*[1], Hearne J. went on the assumption that the writ lay but refused it on the ground that an adjournment (which had not been published, it was alleged) had not been shown to have effected the election. He followed the case of *Karunaratne v. G. A., Western Province*[2].

Now, the petitioners did not apply to the respondent but a third party did, not stating he was acting on their behalf but ostensibly as a member of the public. He was not a candidate, and, as far as one can see, not a voter. It is not shown he had a right to make the demand nor that the

[1] *44 N. L. R. 572.* [2] *32 N. L. R. 169.*

Government Agent was required by the Ordinance to decide on the validity of the election. The petitioners took part in the election and took no objection nor made a demand for adjournment. They have given no facts which indicate that a different result would have resulted had there been another meeting on another day. The election was held in good faith and cannot be said to be colourable. At most it was irregular. I see no reason, therefore, either on the law or on the facts to issue the writ of *mandamus*. The applications will, therefore, be dismissed.

Counsel left it to the Court to fix costs, if any, and suggested Rs. 105.

In the circumstances of this case I award no costs. The question was one of some novelty and not without difficulty and I do not think costs should be awarded.

Rule discharged.