1966 *Present :* **Sansoni, C.J., and Siva Supramaniam, J.**

T. KANDIAH, Petitioner, *and* THE MINISTER OF LOCAL GOVERNMENT, Respondent

S. C. 235/1966—Application for a Mandate in the nature of a Writ of Certiorari *on the Minister of Local Government*

A. T. DURAIAPPAH, Petitioner, *and* W. J. FERNANDO and 3 Others, Respondents

S. C. 250/1966—Application for a Mandate in the nature of Writs of Certiorari *and* Quo Warranto *and Injunction on W. J. Fernando and others*

Municipal Council—Power of Minister to dissolve Council for incompetency—Incapacity of any member of the Council to question Minister's decision— Certiorari*—Natural justice—Municipal Councils Ordinance (Cap. 252), ss. 277 (1), 280.*

Where the Minister, acting under section 277 (1) of the Municipal Councils Ordinance, directs that a Municipal Council shall be dissolved and superseded on the ground that it appears to him that the Council is not competent to perform the duties imposed upon it, the decision cannot be questioned by way of *certiorari*. In such a case, it cannot be contended that the Minister failed to observe the rules of natural justice in that he did not hear the Mayor and members of the Council before making his Order.

Sugathadasa v. Jayasinghe (59 N. L. R. 457) followed.

APPLICATIONS for writs of *certiorari* and *quo warranto*.

C. Thiagalingam, Q.C., with *C. Chellappah, E. B. Vannitamby, T. Parathalingam, M. S. M. Nazeem* and *C. Motilal Nehru*, for the Petitioner in each Application.

H. W. Jayewardene, Q.C., with *N. Nadarasa, S. S. Basnayake* and *Bala Nadarajah*, for the 1st to 3rd Respondents in Application No. 250/1966.

V. Tennekoon, Q.C., Solicitor-General, with *R. S. Wanasundera* and *A. G. de Silva*, Crown Counsel, for the Respondent in Application No. 235/1966 and for the 4th Respondent in Application No. 250/1966.

Cur. adv. vult.

2—RR 18959—1,914 (11/66)

September 29, 1966. SANSONI, C.J.—

These two applications for Writs were heard together, and we dismissed them at the end of the argument. We now give our reasons.

Application No. 235, filed by a member of the Municipal Council of Jaffna, is for a Writ of Certiorari against the Minister of Local Government. Application No. 250 has been filed by a member of the same Council, who was also functioning as Mayor from 31st March 1966, for Writs of Certiorari and Quo Warranto. 1st, 2nd and 3rd Respondents in this application are the three Special Commissioners appointed by the Governor-General, and 4th Respondent is the Minister of Local Government. In both applications the Petitioners complain that the Minister's Order dated 29th May 1966 made under section 277 (1) of the Municipal Councils Ordinance, Cap. 252, is bad, and they ask that it be quashed. By that Order the Minister, stating that it appeared to him that the Jaffna Municipal Council was not competent to perform the duties imposed upon it, directed that the said Council shall be dissolved and superseded.

The main ground on which the applications have been supported before us is that the Minister failed to observe the rules of natural justice in that he did not hear the Mayor and members of the Council before making his Order. The other grounds urged were that the Minister acted *mala fide*, and that the affidavit filed by him discloses an error of law on the face of it. It seems to me that if the main ground fails, both applications fail.

The chief obstacle in the way of the petitioners is, as those who drafted the petitions obviously realized, the decision of three Judges of this Court in *Sugathadasa v. Jayasinghe*[1]. That too was an application for Certiorari and Quo Warranto, coupled with an application for Mandamus, filed in consequence of an Order made by the Minister of Local Government under section 277 (1) dissolving the Colombo Municipal Council. The Court there held (to quote from the head note) "that, although a summary dissolution of the Council necessarily affects the legal rights of its members as a body and is independent of considerations of policy and expediency, Section 277 (1) of the Municipal Councils Ordinance does not impose any duty on the Minister to act judicially or quasi-judicially before he exercises his power of summary dissolution. The Minister must be guided only by the merits of the case and is not obliged to give a hearing to the Councillors and consider their objections if any. He is the sole judge as to whether the Council is not competent to perform its duties, provided, however, that there is no misconstruction of the words 'not competent' and there are sufficient circumstances from which it is apparent to him that the Council is not competent to perform the duties imposed upon it."

[1] *(1966) 69 N. L. R. 457.*

Now *Sugathadasa's case*, having been decided by three Judges, is binding upon us. If we disagree with the conclusion reached there, our duty is to refer the present applications to a fuller Bench. But we agree with that decision in spite of the argument presented by Mr. Thiagalingam.

The main plank of his argument was the House of Lords decision in *Ridge v. Baldwin*[1]. He urged that if this authority had been in existence at the time *Sugathadasa's case* was heard, that case would have been decided differently. I am quite unable to agree. *Ridge v. Baldwin* was an action brought by a Chief Constable against the members of a Watch Committee, asking for a declaration that the purported termination of his appointment as Chief Constable was illegal, *ultra vires*, and void. He ultimately obtained the declaration asked for, and the reasons given by the House of Lords were—

(1) that the plaintiff, not being a servant of the Watch Committee, could be dismissed only on the grounds set out in section 191 (4) of the Municipal Corporations Act, 1882 which ran "The Watch Committee . . . . . .may at any time . . . . . dismiss a Constable whom they think negligent in the discharge of his duties, or otherwise unfit for the same;" and the Committee were bound to observe the principles of natural justice, which they had failed to do.

(2) the requirements of the Police Discipline Regulations applied, and as they had not been followed the purported dismissal was a nullity.

In my view this decision has no relevance to the present applications. They have to be decided according to the meaning we give to section 277 (1) of the Municipal Councils Ordinance, which is in entirely different terms from section 191 (4) of the English Act. The disciplinary powers of a Watch Committee cannot be equated with the power given to the Minister of Local Government. The subject matter of the Act considered in *Ridge v. Baldwin* is totally different from the Municipal Councils Ordinance.

The second reason set out above for the decision in *Ridge v. Baldwin* would apply to a case under section 280 of the Municipal Councils Ordinance, but not, in my view, to one under section 277 (1). For section 280 provides (while section 277 (1) does not) for the giving of notice and the holding of an inquiry.

The first reason stems from the view that the Watch Committee acts judicially or quasi-judicially when the dismissal of a Constable from his office, which is a punishment, is decided upon. It does not by any means follow that a Minister acts in the same way when he considers whether a Council should be dissolved. And unless, as Atkin L.J. said in his oft-quoted dictum in *R.v. Electricity Commissioners*[2], he *has to act*

[1] *(1964) A.C. 40.* [2] *(1924) 1 K. B. 171 at 205.*

judicially, Certiorari does not lie to question his Order. The principle laid down by Atkin L.J. has been approved and applied by the Privy Council in *Nakkuda Ali v. Jayaratne*[1], and we cannot possibly disregard it, even though Lord Reid did not quite approve of the interpretation put upon it in that and other cases. Apart from Lord Reid, none of the other noble and learned Lords expressed any opinion on that point.

We are unquestionably bound by the decisions of the Privy Council, and in *Nakkuda Ali's case* it was definitely decided that Certiorari lies only in cases where tribunals or bodies have to act analogously to a Judge. " In truth the only relevant criterion by English Law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, certiorari can be granted, " said Lord Radcliffe in that case. Nothing in *Ridge v. Baldwin* or any other decision has affected the correctness of the rule laid down in this passage.

A difficulty arises sometimes because, as Lord Somervell said in *Vine v. National Dock Labour Board*[2], the " phrase ' quasi-judicial ' suggests that there is a well-marked category of activities to which certain judicial requirements attach. An examination of the cases shows that this is not so. " Thus each case has to be considered as it arises, and the answer depends on the wording of the statute, the subject matter dealt with, and the circumstances under which the power to act is conferred. Our task is made easy in this respect by the judgment in *Sugathadasa's case*, and it is not necessary to go over the same ground again.

Mr. Thiagalingam suggested at the opening stages of his argument that the Minister had acted *mala fide* because the Federal Party were in a minority in this Council. I do not see any grounds for such an allegation, which was not seriously pressed.

He also argued that the Minister made an error of law, disclosed on the face of his affidavit, when he said that he made the order of dissolution upon the material placed before him by the Commissioner of Local Government. It was argued that the report of the Commissioner did not disclose that the Council had acted in any way contrary to the terms of the Municipal Councils Ordinance. It is necessary to point out that we are not acting as an appellate authority examining the correctness of the Minister's determination. The power of making that determination has been given exclusively to the Minister by Parliament. Even if we were to take a different view as to the correctness of it after hearing Mr. Thiagalingam's submissions, it would not be open to us to reverse it ; nor could we say that, because we disagreed with that determination, the Minister has made an error of law.

[1] *(1950) 51 N.L.R. 457.* [2] *(1957) A. C. 488.*

The Commissioner in his report alleged that in some matters the Council had virtually abdicated its powers and duties in favour of the Mayor, and that there had been irresponsible decisions on the part of the Council, such as the suppression or creation of posts on grounds which could not be supported. It is quite impossible for us to say in these circumstances that the Minister's Order, based on his opinion that the Council was not competent, contained an error of law. But even this question would only arise for consideration if Certiorari was the appropriate remedy. I am of the view that it is not, and *Sugathadasa's case* is sufficient and binding authority for that view.

It appears to me that if it had not been for Lord Reid's judgment in *Ridge v. Baldwin*, there would have been nothing for the petitioners to urge in these applications. Even that judgment does not, in my view, shake the correctness of the judgment in *Sugathadasa's case*. For these reasons the applications fail and must be dismissed with costs.

SIVA SUPRAMANIAM, J.—I agree.

Applications dismissed.