1969 *Present :* H. N. G. Fernando, C.J., Sirimane, J., and Samerawickrame, J.

W. T. MARTIN PERERA, Petitioner, *and* M. R. M. W. MADADOMBE, Respondent

S. C. 348/1968—Application for a Mandate in the nature of a Writ of Quo Warranto under Section 42 of the Courts Ordinance

Local authorities—Election of a member of a local authority—Whether its validity can be challenged on ground of general undue influence and/or general treating—Quo Warranto—Village Councils Act, s. 15—State Council (Elections) Order in Council, 1931, ss. 48, 74—Local Authorities Elections Ordinance (Cap. 262), ss. 9, 9 (1)(k), 10, 24 to 69, 79, 81, 83—Interpretation of statutes—Introduction of a single section of an Act into another Act—Effect on interpreting the latter Act.

General undue influence or general treating is not a ground under the Local Authorities Ordinance to challenge, by way of *Quo Warranto* proceeding, the validity of the election of a member for the ward of a Village Council. The principle that an election must be free, in the sense that votes of electors must not be influenced by general bribery or general undue influence, is not recognized by the implications to be inferred from section 69 of the Local Authorities Elections Ordinance.

***Piyadasa v. Goonesinha* (42 N. L. R. 339) overruled.**

Where a single Section of an Act is introduced into another Act, it must be read in the sense which it bore in the original Act from which it was taken. Accordingly, section 69 of the Local Authorities Elections Ordinance must be given the same meaning as the "model" section 48 of the State Council (Elections) Order in Council, 1931, unless it can reasonably bear a different meaning in its own context.

APPLICATION for a writ of *quo warranto* on the respondent who was, at an election held in June 1968, declared elected as a member for the Ward of a Village Council.

Miss Maureen Seneviratne, with *W. M. Oliver Perera* and *Miss Nirmala Sandrasagara*, for the petitioner.

Fritsz Kodagoda, with *Neil Dias*, for the respondent.

H. L. de Silva, Crown Counsel, for the Attorney-General, on notice.

Cur. adv. vult.

December 4, 1969. H. N. G. FERNANDO, C.J.—

This is an application for issue of a Mandate in the nature of a Writ of Quo Warranto on the respondent who was at an election held in June 1968 declared elected as a member for the Ward of a Village Council.

1°—J 13733—2,255 (5/70)

The ground of the application for the Writ is that the election of the respondent was invalid as the election was procured by general undue influence, general treating, and/or contravention of specific provisions of the Local Authorities Election Ordinance, Cap. 262. No argument was addressed to us that the Writ should issue on the third of these grounds.

In the case of *Perera v. Wickramatunga* [1] an application for a Writ of Quo Warranto against a Municipal Councillor averred grounds of undue influence and general intimidation. The application was refused by a Bench of two Judges, the Court holding that such averments "do not afford a legal ground for declaring on a Writ of Quo Warranto that the respondent has no right to hold the office of member of the Colombo Municipal Council to which he was elected at a general election". A more precise statement of the reason was that Cap. 262 "did not include provisions to invalidate an election on grounds of general corrupt or illegal practice." The decision just mentioned was followed by another Bench of two Judges in an unreported case (Application No. 40—S. C. Minutes of 15th November, 1966).

The present case has been listed before a Bench of three Judges because it appeared to me desirable to settle the conflict between the two decisions just cited, and a series of earlier decisions by single Judges holding that a Writ of Quo Warranto would lie against a member of a local authority if his election is held to have been invalid on grounds such as general treating or general intimidation. In the case of *Piyadasa v. Goonesinha* [2] Soertsz J. considered an objection that Quo Warranto does not lie to question a Municipal Election on the ground of either general undue influence or general bribery. The objection there taken was founded on the fact that the Colombo Municipal Council (Constitution) Ordinance (Cap. 194 of the 1938 Edition) was silent in regard to general bribery and general undue influence, and it was argued that it must be assumed that the Legislature did not intend that the election could be impeached on such grounds. Soertsz J. however cited certain observations made in English Election Cases that "freedom of election is at common law absolutely essential to the validity of an election", and also that "it would be absurd and unnatural to contend that there could be a valid election which was not a free election"; and he himself proceeded to state that "our Ordinance bases itself on the English principle when it penalizes individual acts of bribery and of undue influence and that presupposes that we here abhor an election procured by general bribery and general undue influence and regard it as obnoxious to the law just as much as the inhabitants of England and other countries". This decision of Soertsz J. was followed in a number of other cases.*

[1] *(1966) 69 N. L. R. 176.*
[2] *(1941) 42 N. L. R. 339.*
[3] *(1941) 43 N. L. R. 36.*
[4] *(1944) 45 N. L. R. 304.*
[5] *(1951) 53 N. L. R. 154.*
[6] *(1945) 46 N. L. R. 522.*
[7] *(1951) 53 N. L. R. 460.*

No examination was made during the argument of the present case of the relevant provisions of the Ordinance under which the election in *Goonesinha's* case was held; but because Counsel for the petitioner has justifiably relied on the decision in that case, we have to consider whether the opinion expressed by Soertsz J. should be adopted in construing the law now contained in Cap. 262 of our Enactments.

Section 9 of Cap. 262 provides for the disqualifications for membership of any Local Authority, including a Village Council. Section 10 thereafter declares that "where any member of a local authority is, by reason of the operation of any of the provisions of Section 9, disqualified from sitting or voting as a member of such authority, his seat or office shall *ipso facto* become vacant". Sub-section (2) of s. 10 provides that "where the seat or office of a member of a local authority becomes vacant by reason of the operation of the provisions of sub-section (1), the provisions of the enactment by or under which such authority is constituted shall apply for the purpose of filling up the vacant seat or office in like manner as they would have applied if such member had resigned his seat or office".

It seems fairly clear therefore that if a member of a local authority becomes disqualified for such membership at some time after his election, there is in Cap. 262 express provision to the effect that he will thereby vacate his seat, and also that the vacancy must be filled under the procedure prescribed in the relevant Statute for a case of resignation. In the case of a Village Council, that procedure is to be found in s. 15 of the Village Councils Act. That section provides that in the event of a member of a Village Council resigning his office, a bye-election shall be held for the purpose of filling up that vacancy. Part IV of Cap. 262 will then apply for the purpose of the holding of the bye-election. Since there is thus express statutory provision for the unseating of a member who becomes dis-qualified after the time of his election, it does not appear that in such a case there will be a need either for some person to seek, or for this Court to grant, relief by way of a Writ of Quo Warranto.

It is not equally clear however whether s. 10 of Cap. 262 is applicable in a case in which a person has been elected as a member of a local authority despite the fact that he was disqualified at and before the time of his election. In fact it may even be correct that s. 10 does not provide a perfectly efficient means of unseating a member who after his election becomes subject to some disqualification. But one matter at least is definitely stated in ss. 9 and 10 of Cap. 262, namely that a person who is subject to any of the disqualifications specified in that section is not qualified to sit or to vote as a member of any local authority and will vacate his office. In other words, it is made manifest that such a person cannot lawfully hold a seat or office as a member of a local authority. That being so, the jurisdiction of this Court to oust such a person from the seat or office by the issue of a Writ of Quo Warranto must undoubtedly be exercised if the Court is satisfied that no alternative and effective

procedure is provided by the relevant Statute law for ousting him. I am of opinion for these reasons that the jurisdiction of the Court *may be necessary and available* in order to give full effect to the provisions of ss. 9 and 10 of Cap. 262. This opinion however is only a recognition of the principle of the English Common Law that, if a person who is disqualified by a Statute to hold a statutory office nevertheless usurps that office, the Writ of Quo Warranto was available to oust him. But the Writ would not be issued unless the Statute itself clearly disentitles a person from holding the office.

This discussion of ss. 9 and 10 serves to underline the point that in the present case the Writ cannot issue, unless the provisions of Cap. 262 make it clear that the election of a member of a local authority will be invalid if his election was procured by general undue influence and/or general treating.

The provisions of Cap. 262 which are relevant in this connection have now to be considered. Section 24 provides that every election "shall be held in the manner hereinafter provided by this Ordinance", and s. 25 provides for the date of the holding of such an election. Thereafter ss. 26 to 68 contain a series of requirements as to the manner in which an election shall be held. There then follows s. 69, which it is convenient to cite in full :—

> "No election shall be invalid by reason of any failure to comply with the provisions of this Ordinance relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election."

Although s. 69 does not positively declare that an election will be invalid for any specified reason, I can assume for present purposes that such a declaration is implied in this section ; on this assumption the declaration thus implied may properly be stated thus :—

> "If there is in the case of any election a failure to comply with any of the provisions of this Ordinance relating to elections, *and*
>
> if it appears that the election was not conducted in accordance with the principles laid down in such provisions, *and*
>
> if it appears that thereby the result of the election was affected,
>
> the election shall be invalid."

In so far as the provisions of ss. 24 to 68 are concerned, it is not difficult to point to some principles which are laid down in these sections, and I bear in mind the fact that the principle of rules of law is not usually stated in the rules themselves, but has to be derived from what is so stated. For example, when s. 26 requires that the Elections Officer must publish a notice of his intention to hold an election and fix a nomination day, the section recognises the principle that the electors must know that an election is pending and be able to exercise their right

to nominate candidates. Again, in the case of a contested election s. 38 requires the Elections Officer to publish a notice specifying the names of the candidates, the date of the poll and the situation of the polling station, and thus recognises the principle that the electors have the right to know for whom they may vote and when and where they may exercise the franchise. When ss. 52 to 53A regulate the issue of ballot papers and the manner of voting by means of such papers, they recognise the principle that electors have the right to vote, and that they must be permitted effectively to exercise that right. The provisions in ss. 59 to 65 recognize the principle that the vote of every elector who has effectively exercised his right has to be duly taken into account for the purpose of ascertaining which candidate has received the majority of the votes and also the principle that it is the will of the majority which must prevail and be declared at the end of the election.

On the assumption I have made as to the implications of s. 69, it can well be clear to a Court that a particular election was not conducted in accordance with one or other of the principles to which I have referred, and if it further appears that the result of the election was affected in consequence, the Writ of Quo Warranto may issue on the ground that the member elected at the election was not duly elected.

Returning now to the observations of Soertsz J., the question for our decision is whether the principle that an election must be free, in the sense that votes of electors must not be influenced by bribery or intimidation, is recognised by and falls within the implication to be inferred from s. 69, and that a breach of that principle can invalidate an election.

The first condition in the declaration to be implied in s. 69 is that there must be *a failure to comply* with some provision of the Ordinance. This expression is appropriate to a case where a public officer does not perform an act or duty which some provision of the Ordinance requires him to perform, because if so the officer clearly fails to comply with that provision. But the expression is inappropriate to a case where there has been bribery at an election; for every case of bribery constitutes *a breach or contravention* of s. 79 of the Ordinance. There are numerous instances in our Statute law where the expression *failure to comply* (with a provision of the Statute) occurs; but I know of no Statute in which it is used otherwise than for the purpose of referring to a case where a person has omitted to do some act required by law or has not done such an act in the proper manner or at the proper time. On the other hand, there are equally numerous instances of such expressions as "commits a breach of" or "contravenes", and such expressions are almost invariably used for the purpose of referring to positive acts done contrary to some statutory prohibition. Having regard to the sense in which the expression "failure to comply" has been used by the Legislature of this country for a hundred years, I greatly doubt whether in s. 69 of Cap. 262 that expression was used to connote anything other than breaches of statutory duties. Moreover, expressions in a statute must be given their plain meaning, as ordinarily understood. I certainly do not agree that it is good English,

or even technically correct English, to say of a voter who takes a bribe that he "has failed to comply" with s. 79 of Cap. 262, or to say of a murderer that he "has failed to comply with" s. 296 of the Penal Code.

The second condition in the declaration to be implied in s. 69 is that the election was not *conducted* in accordance with some principle. It is perfectly clear that sections 24 to 68 of Cap. 262 deal with the *conduct* of an election, and entrust various officers at different stages with the duty of *conducting* elections. If therefore any such officer does not comply with some provisions of those sections, it may properly be said that the election was not conducted in accordance with the principles which underlie those provisions. It is thus manifest that s. 69 was intended to apply in such a case. But can it properly be said that the giving and taking of bribes to and by voters forms part of the *conduct* of an election?

It is of course correct that different categories of persons *participate* in an election. The officials participate by holding or conducting the election; the candidates participate by offering themselves for election and by doing the acts necessary to be candidates, e. g. by presenting nomination papers and appointing polling agents and counting agents; the electors participate by claiming ballot papers and thus casting their votes. To take the case of an elector, he can in no sense be regarded as "conducting" an election; it is precisely because the officials duly conduct an election that an elector is able to participate in the election by casting his vote. If such participation constitutes part of the conduct of the election, then equally the purchase of a ticket in a National Lottery would constitute part of the conduct of the Lottery. Again, the motive which influences an elector to vote for a particular candidate cannot in my opinion be properly regarded as a matter involved in the conduct of the election, any more than the motive for a particular speech at a meeting can be regarded as being involved in the conduct of a meeting.

As for a candidate, it may in a limited sense be proper to say that he participates in the conduct of an election. The term election in the present context means "choosing by vote", and the conducting of an election is accordingly the conducting of the process by which electors are able to cast their votes. It is a necessary step in this process that persons should offer themselves for the electors to make their choice. To this extent the submission of a nomination paper by a candidate may be regarded as part of the conduct of the election. But just as much as the motive which influences an elector to vote for a particular candidate is not a part of the conduct of the election, the more remote activity of influencing (whether by fair or illegal means) the choice of an elector forms no part of the *conduct* of an election.

I note in this connection that s. 24 of Cap. 262 refers to the manner in which an election *shall be held*. Even if the word "held" may have a wide connotation which can include within its scope the activity of influencing voters, the word "conducted" used in s. 69 does not ordinarily

have so wide a meaning. In s. 41 also, the language is that the poll *shall be conducted*, and the provisions of ss. 42 to 65 refer to matters properly within the scope of the conduct of the poll. But here again there is no justification for regarding the motive of an elector or any matter which influences that motive as being a part of the conduct of the poll.

If it is permissible to imply from Section 69 of Cap. 262 an intention of the Legislature that an Election will be invalid for some reason, then (as I have shown) the language of the section leads clearly to the inference that the contemplated reason for invalidity is that the election was not conducted by the proper officials in accordance with the principles of ss. 24 to 67. Once that inference is reached, a Court must hesitate to institute a search for some further hidden intention. "Where the litoral reading of a Statute . . . . produces an intelligible result . . . . there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament" (Lord Parker L.C.J. in *R v. Oakes*.[1]

The argument for the petitioner (adopting the opinion of Soertsz J.) has been that, because ss. 79 and 81 of Cap. 262 prohibit bribery or undue influence at an election, the principle of the English Common Law that an election is invalid on such grounds is recognised in our law. I have thus far explained my reasons for the opinion that s. 69 of Cap. 262 does not appear even by implication to recognize such a principle. Section 83 gives further support for that opinion, for its effect is that, upon conviction of the offence of bribery or undue influence, a person becomes disqualified from sitting or voting as a member of a local authority. Since this disqualification is adopted in s. 9 (1) (*k*), the consequence is that if a member is so convicted, he will by reason of s. 10 vacate his seat. The Legislature has thus clearly declared its intention that the seat of a member becomes vacant *if he is convicted* of an offence of bribery or undue influence. In the face of this express declaration, the omission of the Legislature to declare that an election is void on grounds of general bribery or general treating is significant. As Goddard C.J. said in *R v. Wimbledon Justices*[2]:—

> "Although in construing an Act of Parliament the Court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there, and, if the statute has created a specific offence, it is not for the Court to find other offences which do not appear in the statute."

In the present case, the relevant provisions of Cap. 262 clearly declare that the respondent will lose his seat *if he is convicted* of an offence of bribery or undue influence, and thus (adapting the language of Lord Goddard) it is not for the Court to find that he will also lose his seat if acts of bribery or undue influence are proved in a proceeding for a Writ of *Quo Warranto*.

[1] *(1959) 2 Q.B. 354.*

[2] *(1953) 1 Q.B. 381.*

During the course of the argument, I attempted more than once to refer to a rule of interpretation, the validity of which is to me self-evident. But Counsel for the petitioner impatiently disagreed with my opinion that there is such a rule and that it is applicable in the present case. Hence it is well to preface my discussion of this rule by citing the dictum of a Judge of undoubted eminence. In *The Mayor of Portsmouth v. Smith*[1] Lord Blackburn said :—

> "Where a single section of an Act is introduced into another Act, it must be read in the sense which it bore in the original Act from which it was taken, and consequently it is perfectly legitimate to refer to all the rest of the Act in order to ascertain what the section meant, though those other sections are not incorporated into the new Act."

In 1946, when Cap. 262 was enacted, our law relating to State Council Elections was contained in the State Council (Elections) Order in Council, 1931, and it is readily apparent that there was much borrowing from that Order in Council when the Local Authorities Elections Ordinance of 1946 (now Cap. 262) was being drafted. Applying the rule as enunciated by Lord Blackburn, s. 48 of the Order in Counil was *introduced into* Cap. 262 as s. 69, together with other Sections of the Order in Council, and it is therefore *perfectly legitimate to refer to all the rest* of that Order in Council *in order to ascertain what s. 69 of Cap. 262 means.* Section 69 must be given the same meaning as the "model" s. 48 of the Order in Council, unless of course it can reasonably bear a different meaning in its own context.

The first step in applying this rule of interpretation is to ascertain whether the model section was intended to declare by implication that a State Council Election would be invalid by reason of general bribery or general undue influence, and for this purpose s. 74 of that Order becomes immediately relevant :—

> "74. The election of a candidate as a member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the election Judge, viz.:—
>
> (*a*) That by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate whom they preferred ;
>
> (*b*) Non-compliance with the provisions of this Order relating to elections if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election ; "

[1] *(1885) 10 App. Cas. at p. 371.*

Section 74 (*a*) of the Order in Council thus expressly provided that a State Council election may be declared to be void on an election petition on the ground of general bribery or general intimidation. Since that was achieved in s. 74, there was no occasion for the Legislature to entertain any intention that section 48 should also have the effect that an election will be void on such a ground. It is clear therefore that s. 48 did not carry that implication.

The second step is to inquire whether there is in the context of Cap. 262 any provision which can permit a Court to give to its s. 69 a wider or different meaning or implication than the meaning or implication of the model section. Such an enquiry has revealed not only that there is no provision in Cap. 262 which might support the construction now sought to be placed on s. 69, but also that the Legislature in enacting Cap. 262 appears to have deliberately refrained from adopting the provision in s. 74 (*a*) of the Order in Council that an election will be void on the ground of general bribery or general undue influence.

Furthermore, the dictum of Lord Blackburn justifies reference in the present case *to all the rest* of the Order in Council. The Legislature in s. 74 first dealt in paragraph (*a*) with the avoidance of elections procured by general bribery or general intimidation. Having first provided for such cases in paragraph (*a*), the Legislature must fairly be assumed to have specified in paragraph (*b*) a second and distinct ground of avoidance, namely that an election was not conducted in accordance with certain principles. In thus referring to such principles, only after first disposing of the specific grounds of bribery and intimidation, the Legislature made it clear that the ground of a breach of principles did not include the grounds already dealt with in paragraph (*a*).

Moreover, the language of paragraph (*b*) of s. 74 of the Order in Council was substantially identical with that of s. 48 of the Order. If then paragraph (*b*) of s. 74 was not intended to apply in cases of general bribery or general intimidation, equally the same language in s. 48 of the Order was not intended to apply whether directly or by implication to any such cases.

The " perfectly legitimate " references which have now been made to the provisions of the State Council (Elections) Order in Council have served to confirm the construction of s. 69 of Cap. 262 which I have already reached without reference to those provisions ; if s. 48 of the Order in Council could not apply in a case of general bribery or general intimidation, then equally the rule enunciated by Lord Blackburn requires me to construe s. 69 of Cap. 262 in the same sense.

There is lastly the contention on which Counsel for the petitioner principally relied, that the Court should not now depart from the construction of Soertsz J. in *Goonesinha's* case, namely that the prohibition by Statute in Ceylon of individual acts of bribery or undue influence at elections was sufficient to establish the recognition by our law of the English principle that general bribry or general intimidation will invalidate an election. This contention is essentially a resort to the maxim *stare decisis* and/or to the maxim *communis error facit ius.*

The principles which govern the application of these maxims have been stated instructively in judgments which I now cite :—

". . . . . if we find a uniform interpretation of a statute upon a question materially affecting property, and perpetually recurring, and which has been adhered to without interruption it would be impossible for us to introduce the precedent of disregarding that interpretation. Disagreeing with it would thereby be shaking rights and titles which have been founded through so many years upon the conviction that that interpretation is the legal and proper one, and is one which will not be departed from" (Lord Westbury in (1871) L.R. 5 English & Irish Appeals, p. 304 at 320).

"Firstly, the construction of a statute of doubtful meaning once laid down and accepted for a long period of time ought not to be altered unless your Lordships could say positively that it was wrong and productive of inconvenience. Secondly, that the decision upon which title to property depends or which by establishing principles of construction otherwise form the basis of contracts ought to receive the same protection. Thirdly, decisions affecting the general conduct of affairs, so that their alteration would mean that taxes had been unlawfully imposed or exemption unlawfully obtained, payments needlessly made or the position of the public materially affected, ought in the same way to continue." (Lord Buckmaster in (1919) A.C. 815 at p. 874).

"There is well-established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision." (Lord Evershed, M.R.in 1958, 1 Ch. at p. 603).

I am quite satisfied that the principles thus stated afford no ground for now holding that the decision of Soertsz J. in *Goonesinha's case* must be accepted by the present Bench, despite its own opinion that that decision was wrong.

If I may adopt the language of Lord Evershed, the petitioner in the instant case can succeed only "*on the basis that many persons have arranged their affairs*" on the decision in *Goonesinghe's case*. But it is absurd to contend that anyone's affairs were arranged on the basis that a writ of *quo warranto* will lie to challenge on some ground the validity of the election of a member of a local authority.

The application is dismissed with costs fixed at Rs. 105.

SIRIMANE, J.—

I agree.

SAMERAWICKRAME, J.—

I agree.

Application dismissed.