

1930

Present : Lyall Grant J.

ATTORNEY-GENERAL v. SANGARAPILLAI.

In re Tellippallai Village Committee Election.

Village Committee—Meeting of inhabitants—Resolution dividing subdivision into wards—Regularity—Case stated by Attorney-General—Ordinance No. 9 of 1924, s. 24 (2).

Where, at a meeting held under the Village Communities Ordinance for the election of a Village Committee, it was resolved to divide a subdivision into wards and the inhabitants of each ward were given the right to return a certain number of members,—

Held, that the resolution dividing the subdivision into wards was irregular and the election of a Village Committee under the circumstances was void.

Where the election of a Village Committee is declared invalid, members co-opted by the committee under section 24 (2) of the Village Communities Ordinance should also vacate office.

CASE stated by the Attorney-General for the opinion of the Supreme Court under section 23 (4) (a) of the Village Communities Ordinance, No. 9 of 1924, as amended by Ordinance No. 4 of 1930. The application was with reference to an election held under the Village Communities Ordinance for the subdivision of Tellippalai. At a meeting of the inhabitants of the subdivision convened by the Government Agent it was unanimously resolved that the subdivision should be divided into wards and that only those

persons who were inhabitants of the particular ward should vote for the persons to be appointed to represent the ward and that the persons eligible for election should be confined to the ward. It was contended that such a method of election was contrary to the provisions of the Ordinance. The purpose of the application was that steps may be taken by the Government Agent under section 23 (4) (a) for the election of another committee.

J. E. M. Obeyesekere, C.C., for the Attorney-General.—In the case reported in *31 N. L. R. 347* the Supreme Court considered the validity of this same election upon an application for a writ of *quo warranto*. In the course of its judgment the Court expressed a doubt as to whether a subdivision could be further divided into wards for the purposes of an election. It is submitted that such a proceeding is irregular and invalidates the entire election. Under section 6 (1) of Ordinance No. 9 of 1924 the Governor in Executive Council can subdivide a chief headman's division into villages or groups of villages. There is no provision in the Ordinance for a further subdivision into wards. The committee has to be elected by all the inhabitants of the subdivision who are not disqualified under section 18. Every single inhabitant, not so disqualified, has a vote as regards the election of every single member of the committee. To subdivide the subdivision into wards and to assign a given number of members for each ward is tantamount to depriving, let us say, inhabitants of ward A of the votes they undoubtedly have as regards the election of members to represent, for instance, wards B and C. This is to introduce a disqualification which is not to be found in the Ordinance, *vide* section 18. It is in fact a definite violation of section 14, and is therefore illegal. The election is consequently invalid.

A. Gnana Pragasam, for thirteenth respondent.—Statutory division into wards is provided for in the Municipal Councils Ordinance (sections 24, 25 of 6

of 1910), the Local Government Ordinance (section 26 of 11 of 1920), and the Local Boards Ordinance (section 10A of 13 of 1898). There is no provision for such division in the Village Communities Ordinance, No. 9 of 1924.

Subramaniam, for other respondents.— Resolution for division into wards was unanimous. No prejudice was caused to any voter. Division is not obnoxious to the provisions of the Ordinance—see section 18 of the Local Government Act of 1894 and Statutory Rules thereunder. At any rate, persons later elected to fill vacancies were duly elected—see section 23 (4) (d) of the Ordinance.

August 7, 1930. LYALL GRANT J.—

This is a case stated by the Attorney-General for the opinion of the Supreme Court as to the validity of the election of a committee under the Village Communities Ordinance. The application is made under section 23, sub-section (4) (a), of the Village Communities Ordinance, No. 9 of 1924, as amended by the Village Communities Amendment Ordinance, No. 4 of 1930. Notice of the case was served upon the members of the committee, who were then elected, and counsel has appeared both on their behalf and on behalf of those members who have been subsequently appointed by virtue of the provisions of the principal Ordinance.

The contention of the Attorney-General is that the election is invalid and the purpose of the application is that steps may be taken under sub-section (4) (c) for the Government Agent holding another election for the purpose of electing another committee in all respects as if the committee whose election has been declared invalid were about to go out of office.

The facts as stated in the application are as follows:—In pursuance of a notice issued by the Government Agent of the Northern Province on March 19, 1929, a meeting of the male inhabitants of the subdivision of Tellippalai was held on April 30, 1929, at 9.30 a.m. at the

American Mission compound at Tellippalai for the following purposes:—

- (a) To elect a village committee to consist of not less than six persons for such subdivision to hold office for three years from July, 1929.
- (b) To decide whether the power of making rules should be delegated to such committee; and
- (c) To decide whether the Chairman of such committee should be elected by the committee or whether the Chief Headman of the division should be *ex officio* Chairman.

The said Government Agent, who presided at this meeting, explained the object of the meeting to those male inhabitants who had assembled, and they proceeded to pass the following resolutions:—

- (a) That 24 members be elected to constitute the village committee of Tellippalai subdivision.
- (b) That the Chairman for the subdivision shall be elected by the members from among those elected.
- (c) That each Police Vidane's division votes separately for its allotted number. But for this purpose the inhabitants of Keerimalai Police Vidane's area be allowed to vote with those of Tellippalai South-west, and the members to be elected must be from the Police Vidane's division concerned.
- (d) That the number of 24 members be allotted as follows:—

Tellippalai North-west	...	3
Tellippalai South-west	with	
Keerimalai	...	6
Tellippalai East	...	9
Maviddapuram	...	6
- (e) That the inhabitants delegate the power to make rules to the committee.

What happened at the election has already been discussed before this Court on an application for a writ of *quo warranto* which came before me on January 21 this year and which is reported in 31 N. L. R. 347.

The facts relevant to the present application are that an election was held under the Village Communities Ordinance for the subdivision of Tellippalai. That subdivision was one made by the Governor in Executive Council under sections 4, 5, 6, and 7 of the Ordinance. A meeting of the inhabitants was convened by the Government Agent, and, at that meeting, it was unanimously agreed that the subdivision should be divided into wards and that only those persons who were inhabitants of the particular ward should vote for the persons to be appointed to represent that ward, and that the persons to be so elected must be from the ward.

In my judgment on the application referred to, I expressed a doubt as to whether the subdivision could properly be divided into wards for the purpose of the election, and it is now represented by the Attorney-General that such a division is contrary to the provisions of the Ordinance and renders the election invalid.

It was pointed out in the first place that the Ordinance makes provision for the subdivision of the Island, for purposes of local Government by Village Committees, into Chief Headmen's divisions and for further subdivision. In every case this is done only by order of the Governor in Executive Council under the sections above referred to and becomes operative only on Proclamation in the *Gazette*. Section 22 makes provision for meetings for the election of a committee. Sub-section (2) of that section provides that "such election shall be held at a place within the subdivision and shall proceed in such manner, and be subject, so far as the same are applicable, to such conditions as are in this Ordinance provided in the case of meetings of inhabitants. Except that voting shall be by ballot if so provided for by rules made under section 29 of this Ordinance."

The method of proceeding and voting at meetings of inhabitants is dealt with in section 12. Sub-section (12) (1) provides, "At any such meeting the proceedings shall be held in the vernacular, and every

inhabitant of such subdivision as aforesaid, who is present thereat, shall be entitled to vote, unless he has been convicted, within five years, before the date of the meeting, of theft, fraud, forgery, perjury, or of any infamous crime whatever". Sub-section (2) provides that "All questions or resolutions shall be determined by a majority of the votes of those present and entitled to vote".

The argument advanced by the Crown was that the effect of a resolution to vote by wards was to deprive some inhabitants of the subdivision of their right to vote in certain cases, and further, that the question of the election of particular committee members would not be determined by a majority of those present and entitled to vote. In other words, the Ordinance provides that each inhabitant of the subdivision is entitled to vote for each member, and that the effect of the resolution was to deprive him of his right. A further result would be that a person otherwise entitled to be elected under the Ordinance for a particular ward would be disqualified, and this would be a disqualification additional to those prescribed by section 18 of the Ordinance and impliedly inconsistent with section 18 (b).

On behalf of the respondents it was argued that the division into wards was not obnoxious to the principles of the Ordinance. Reference was made to the Statutory Orders made by the Local Government Board under the Local Government Act of 1894. It was argued that section 3, sub-section (5), of that Act provided that a Parish Councillor should be elected by the parochial electors of the parish, but that rules have been framed by the Local Government Board recognizing the division of the parish into wards or polling districts. It must be noted however that section 3, sub-section (6), of the Local Government Act of 1894 provides that the election of Parish Councillors shall, subject to the provisions of the Act, be conducted according to rules framed under the Act, for the purpose, by the Local Government Board. One

finds therefore an express power given to the Board to make rules for the conducting of elections. No corresponding power exists in our Ordinance, nor is it suggested that any such rules have been made.

I do not, however, think that counsel was correct in assuming that in England the division into wards is made by the Local Government Board. Such division is made by the County Council under the express provisions of section 18 of the Local Government Act.

Another argument advanced in support of the validity of the election was that as the resolution was unanimous it amounted to no more than an agreement by each person present to abstain from voting in particular cases. It appears to me to amount to more than this. It must be held that the resolution was intended to bind not only those persons who actually voted for it but all the inhabitants of the subdivision, and I think the contention of the Attorney-General is correct, that the effect of the resolution was to deprive voters of a right to which they were entitled by law. If the Legislature had intended to provide for voting by wards, as has been done in England, it would have been easy for it to do so. The Legislature has not done so and it seems to me that the provisions of the Ordinance are inconsistent with the assumption that it intended to allow this method of voting.

It was further argued that even if this be so, the irregularity is so slight that in the public interest it is undesirable that the election should be declared invalid. Reference was made to the case of *Karthigesu v. Government Agent of the Northern Province*,¹ where this Court refused to grant a *mandamus* against the Government Agent directing him to hold a fresh election, in circumstances similar to the present. I do not think that there is very much analogy between an application for a *mandamus* and a case stated by the Attorney-General under the Ordinance of 1930. Presumably the Attorney-General, as representing the Government, has

thought that in the public interest the election ought to be declared invalid and that a new election should be held.

It has been pointed out on behalf of the Crown that the effect of the order recently made disqualifying the members of Telliappallai East had had the effect of disenfranchising that part of the subdivision, as the principal Ordinance makes no provision for the election of members to take their place. It is, therefore, considered desirable that the whole election should be declared invalid in order that a new committee may be properly elected.

I agree that in the circumstances it is desirable that this Court should declare that in its opinion the election is invalid.

It was further argued on behalf of those members who had been subsequently elected under the provisions of section 24 of the Ordinance that their election was valid notwithstanding any invalidity in the original election. Counsel referred to section 23, sub-section (4) (*d*), which reads: "All proceedings held or taken, and all acts, matters, or things performed or done by any committee whose election has been declared invalid under this sub-section, or by the members or any of the members thereof, in accordance with the provisions of this Ordinance and prior to the date on which such election was declared invalid, shall be deemed for all purposes whatsoever to have been duly held, taken, performed, or done, as the case may be."

I do not think that this sub-section contemplates the remaining in office of co-opted members. Sub-section (*c*) provides for the holding of an election for the purpose of electing another committee in all respects as if the committee whose election has been declared invalid were about to go out of office. It is obvious that if the election had not been declared invalid and the Council were about to go out of office in the ordinary way the co-opted members would go out of office with the others. The effect of sub-section (*c*) is that they go out of office with the others on the election being declared invalid.

¹ (1929) 31 N. L. R. 141.

The declaration I now make applies equally to all members of the committee.

This does not seem to be a case in which any costs should be awarded. Sub-section (b) provides that “no order as to costs shall be made against the Attorney-General, nor unless, in the opinion of the Court, any party to the proceedings has been put to expense or inconvenience by reason of the unnecessary or unreasonable opposition or delay of any other party”. I do not think it can be said in the present case that any party has been put to expense by reason of unnecessary or unreasonable opposition. This is the first time that the Ordinance of 1930 has been applied and several new questions both in regard to that Ordinance and in regard to the interpretation of the principal Ordinance have had to be decided.
