

1961

Present: H. N. G. Fernando, J.

V. PERUMAINAR, Petitioner, and K. MARUTHALINGAM,
Respondent

S. C. 98—Application for a Writ of Quo Warranto

Quo warranto—*Village committee—Election of a member—Failure of officials to mark some of the ballot papers—Effect thereof on the validity of the election—Local Authorities Elections Ordinance, ss. 53, 54(3), 64, 69.*

The election of a person as the member for a certain ward of a Village Committee would be invalid if it is shown that the result of the election was affected by the fact that, on a recount of the ballot papers, certain ballot papers were rejected by the Returning Officer on the ground that they did not bear the official mark required by section 54 (3) of the Local Authorities Elections Ordinance.

APPPLICATION for a writ of *quo warranto*.

M. Tiruchelvam, Q.C., with *T. W. Rajaratnam* and *Robert de Silva*, for the Petitioner.

H. L. de Silva, Crown Counsel, for the 2nd and 3rd Respondents.

V. Arulambalam, for the 1st Respondent.

September 29, 1961. H. N. G. FERNANDO, J.—

At the election to which this petition relates the first count of the ballot papers was as follows:—for the petitioner 65 votes, for the 1st respondent 64 votes, rejected 2 votes. The affidavit dated 2nd February, 1961, of the Returning Officer (which was filed in relation to application No. 552) was to the effect that two ballot papers were rejected because they were unmarked.

Owing to the closeness of the contest the Returning Officer recounted the ballot papers. Before doing so he checked the ballot papers for the official mark required by section 54 (3) of the Ordinance. In the course of checking he found three ballot papers which did not bear the official mark. On the recount the result was as follows:—for the petitioner 62 votes, for the 1st respondent 64 votes, rejected 5 votes. In view of the matters stated in the affidavit of the Returning Officer, I think it is fair to assume that of the rejections there were two cases where voters had failed to mark their ballot papers and three cases where the officials had failed to apply the official mark on the ballot papers.

Quite correctly, upon the recount the Returning Officer had to declare the 1st respondent elected. He however states in his affidavit that the three ballot papers rejected for lack of the official mark appeared to him

to be otherwise genuine ballot papers. The 1st respondent has not questioned the correctness of this statement of the Returning Officer. *Prima facie*, therefore, the petitioner has successfully established that three of the ballot papers issued to voters at the election had not been marked by the officials conducting the election as they were required to do by section 53. It is clear also from the matters stated in the Returning Officer's affidavit that the three persons to whom those three ballot papers were issued had cast their votes in favour of the petitioner. Accordingly, but for the duty cast on the Returning Officer by section 64 of the Ordinance to reject those three ballot papers, the petitioner would have gained the majority of votes. Having regard to this material, it would seem *prima facie* that the failure of the officials duly to comply with section 54 (3) may well have affected the result of the election.

Section 69 provides that an election shall not be invalid by reason of a failure to comply with a provision such as section 54 (3) "if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure had not affected the result of the election." I am satisfied that once a non-compliance has been established by a petitioner, the burden of showing that the non-compliance had not affected the result of the election would be on those who seek to support the candidate who was declared returned. Even if that view be not correct, in the present case it *prima facie* does appear that the result of the election was affected.

I make order declaring that the 1st respondent was not duly elected on 5th December, 1960, as the member for Ward No. 3 of the Village Committee of Delft.

Application allowed.

