

1943

Present : Soertsz J.

RAJAKARUNA v. A. G. A., KALUTARA.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus*
ON THE ASSISTANT GOVERNMENT AGENT, KALUTARA.

Urban Councils Ordinance. No. 61 of 1939, s. 9 (2) and (7)—Insertion of name in list of voters and candidates—Conclusive nature of list—Sole evidence of qualification—Writ of Mandamus.

The respondent, in compliance with section 9 (1) of the Urban Councils Ordinance, prepared a list of persons qualified to vote and of persons qualified to be candidates for election and exhibited those lists as he was required to do by the section. The petitioner's name appeared in neither of these lists and he wrote a letter to the respondent requesting the respondent to insert his name "in the above list". The respondent understood his request to mean in the list of voters, as candidates for election are voters with additional qualifications.

Held, that the respondent had acted in conformity with the requirements of the Ordinance and that the lists certified by him constituted the sole evidence of the qualifications of the petitioner.

Held, further, that the decision of the respondent on petitioner's claim was, by virtue of section 9 (2), final and conclusive.

In these circumstances a writ of *Mandamus* does not lie against the respondent.

THIS was an application for a writ of *Mandamus* against the Assistant Government Agent, Kalutara.

A. P. de Zoysa (with him S. S. Kulatileke), for the petitioner.

R. R. Crosette-Thambiah, C.C., for the respondent.

Cur. adv. vult.

November 30, 1943. SOERTSZ J.—

This is an application for a writ of *mandamus* to the Assistant Government Agent at Kalutara to order him to insert the name of the petitioner in the list of persons qualified to be candidates for election in respect of Ward No. 9 in the Kalutara Urban Council area.

It is claimed by the petitioner, and it is not denied by the respondent, that the petitioner has the qualifications necessary for the insertion of his name in that list, but the respondent contends that the non-appearance of the petitioner's name is due entirely to the petitioner's own default and that he may not now question the final and conclusive effect given to the list certified by the respondent by section 9 (7) of the Urban Councils Ordinance, No. 61 of 1939.

The material facts from which the question before me has arisen are these: The respondent, having in compliance with section 9 (1) of the Ordinance prepared a list of persons qualified to vote as specified in section 7 and of persons qualified to be candidates for election as specified in section 8, exhibited those lists on July 30, 1943, that is to say, "not later than three months before the election" as he was required to do by section 9 (1). The petitioner's name appeared in neither of these lists. On August 17, 1943, that is well within the time fixed by the respondent for claims and objections to be made in respect of the lists he had exhibited, the petitioner wrote the letter R 1 requesting the respondent to insert his name and that of another "in the above list". The heading of the

Railway Station Ward No. 9

letter is _____ . In the context the words "in the

Kalutara North

above list" reasonably interpreted mean "in the list of voters", for candidates for election are voters with certain additional qualifications. If the petitioner desired to have his name inserted in both lists, one would have thought that he would have said "in the above lists". That, at any rate, is how the respondent understood the petitioner's application and he allowed it and inserted the petitioner's name as that of a claimant seeking to have it entered in the list of voters. The petitioner's assertion in paragraph 5 of his affidavit that his name was posted "as a claimant for insertion in the list of voters and members" is denied by the respondent and is not borne out by the office copy of the list. Perhaps this is another instance of the wish being father to the thought. In these circumstances it is clear that the respondent acted in conformity with the requirements of the Ordinance and that therefore in virtue of section 9 (7) the lists certified by him are final and conclusive and constituted the sole evidence of the qualifications of the petitioner. One may not go behind those lists, even if one is satisfied as one is in this case, that, in point of fact, the petitioner had the necessary qualifications

to have his name inserted in the list of candidates as well. Section 9 (2) also stands in the way of the petitioner's claim, for upon the material before me it is established that the decision given by the respondent on the petitioner's claim was that his name should be inserted in the list of voters. That decision is "final and conclusive" by that subsection.

The petitioner has been careless to an extraordinary extent and must suffer the consequences in which he is involved.

A writ of *mandamus* does not lie in a case in which the law and the facts are such as they are shown to be in this case. I refuse the application with costs.

Rule discharged.
