

1946

Present : Nagalingam A. J.

JAMES, Petitioner, and FERNANDO, Respondent.

APPLICATION FOR WRIT OF *Quo Warranto* AGAINST  
U. SURAMANIS FERNANDO.

*Writ of quo warranto—Village Committee—Person holding contract with the Committee—Disqualification to be elected member—No objection raised on date of nomination—Effect of such failure—Village Committees elected from time to time for the same area—Continuity of existence as a single body—Malice and delay on part of applicant for writ—Quantum of proof necessary—Village Communities Ordinance, No. 60 of 1938 (Cap. 198), ss. 13, 15 (3), 36.*

The respondent was elected as member of a Village Committee that was to function from July 1, 1946. He had entered into a contract with the Committee that was going out of office on June 30, 1946.

Held, that the contract operated as a disqualification within the meaning of section 13 of the Village Communities Ordinance, even though the respondent executed the contract before the date when he was expected to assume or could have assumed office.

Per NAGALINGAM A.J.—“To say that the Village Committees elected (for the same area) from time to time for definite periods are distinct and separate bodies and that the contract with one has no bearing in regard to the qualification necessary for election to a subsequent Village Committee is altogether erroneous”.

Held, further, (i) that writ of quo warranto lay to set aside the election of the respondent, although the fact of his disqualification had not been urged before the Government Agent at the time of nomination ;

(ii) that the application for the writ could not be refused on the ground of the petitioner's malice unless it could be shown that the malice had its origin in something other than a desire to ensure a fair and proper election and amounted to vindictiveness arising from animosity engendered by extraneous circumstances ;

(iii) that a period of less than two months in making the application for the writ did not constitute undue delay.

**A** PPLICATION for a writ of *quo warranto*.

N. E. Weerasooria, K.C. (with him H. A. Koattegoda), for the petitioner.

S. C. E. Rodrigo, for the respondent.

*Cur. adv. vult.*

December 19, 1946. NAGALINGAM A.J.—

This is an application for an information in the nature of a *quo warranto* calling upon the respondent Suramanis Fernando to show by what right he claimed to hold the office of member for Mahagama North Ward of the Village Committee area of Gangaboda pattu.

The circumstances upon which the petitioner relies to found his application are as follows:—On April 9, 1946, the Assistant Government Agent received nomination papers for election of members to the several wards of the Village Committee and the respondent was the only candidate nominated for the Mahagama North Ward and was therefore declared duly elected on that day. It is alleged by the petitioner that the respondent had entered into three separate contracts dated March 9, 1946, April 24, 1946, and May 10, 1946, to repair certain *edandas* or foot-bridges across certain *elas* or water-courses within the area of the said Village Committee. On the date the respondent was nominated and declared duly elected the first contract, namely the one of March 9, 1946, was still subsisting and remained unexecuted. The other two contracts, it will be noticed, are subsequent in date to that of his election.

The petitioner contends that as the respondent was interested in a contract with the Village Committee at the date of his nomination and election, he was disqualified from being so nominated or elected by reason of the provisions of section 13 of the Village Communities Ordinance, Cap. 198 (Ordinance No. 60 of 1938) which declares that every person of either sex who is entitled to vote at the election of members for any of the wards of the village area shall be deemed to be qualified for election as member for any ward of that area if such person, *inter alia*, is not either directly or indirectly except as a shareholder is an incorporated company interested in any contract entered into by any person with the Village Committee of that area. The petitioner also relies upon the fact that after the election of the respondent he was interested in the other two contracts and that by virtue of section 19 of the Ordinance the respondent must be deemed to have vacated his seat, for the section provides that any member of a Village Committee shall be deemed to vacate a seat *ipso facto* if he, *inter alia*, ceases to be qualified as required by section 13. These are the two grounds upon which the petitioner rests his case.

The respondent while not disputing that he had entered into the contracts referred to, takes up the position that as his election was for membership of a new Village Committee that was to function from July 1, 1946, his contract with the Village Committee that was going out of office on June 30, 1946, does not operate as a disqualification within the meaning of either section 13 or 19 (a), especially as he had executed all his contracts before the date when he was expected to assume or could have assumed office. But he goes further and says that assuming that the petitioner's objection is good he is entitled to resist the petitioner's application upon three other grounds, (a) that no objection to his nomination on the ground of his not having the necessary qualification having been taken before the Assistant Government Agent on the date of nomination, his alleged disqualification cannot be made the subject of proceedings in this Court, (b) that the petitioner is actuated by malice in making this application, and (c) that there has been undue delay in preferring this application.

To deal with the main contention, it is obvious that it is based upon a fallacy, to say that the Village Committees elected from time to time

for definite periods are distinct and separate bodies and that the contract with one has no bearing in regard to the qualification necessary for election to a subsequent Village Committee is altogether erroneous. To put the argument of the respondent in another way, the argument is that there is no continuity of existence of a Village Committee, but that a new Village Committee comes into existence on the expiry of the period for which members were elected at the previous election. That a Village Committee is a corporation with perpetual succession is expressly enacted by section 36 of the Ordinance, and though the composition of the membership of a Village Committee may change from time to time, the Village Committee as a body has a continuous existence without losing its individuality as a body at any period of time. The contract, therefore, was with the Village Committee of Gangaboda pattu which was the identical Village Committee both at the dates the various contracts were entered into and at the date when the respondent was to have taken his seat as a member. It would, therefore, be correct to say that the respondent was interested in the contract dated March 9, 1946, with the Village Committee at the date of his nomination, though this observation will not apply to the other two contracts which were entered into after the election of the respondent. Having regard to the contract of March, 1946, the respondent would therefore be one who could not be deemed to have been qualified for election. In view of the conclusion I have reached on this question it is unnecessary for me to consider the objection based upon section 19.

The next question for consideration is whether the respondent's contention that the fact of his disqualification not having been urged before the Assistant Government Agent, the petitioner cannot be permitted to raise that objection in these proceedings is sound. Reliance is placed upon section 15 (3) which provides that nomination papers delivered by or on behalf of a candidate should be scrutinised by the Government Agent who should also dispose of objections raised against any candidate on the ground that he is not qualified to be elected or nominated. The section further provides that the decision of the Government Agent shall be final and conclusive.

Maartensz A.J. had occasion to consider the analogous provisions under the earlier Ordinance No. 90 of 1924 in *Karunaratne v. Government Agent, Western Province*<sup>1</sup> and he arrived at the view that although the applicant was present at the election and raised no objection he was not precluded from making an application to this Court. Wijeyewardene J. considered section 15 (3) of the present Ordinance in regard to a similar objection taken before him in the case of *Mendis Appu v. Hendrick Singho*<sup>2</sup> and arrived at a similar result and expressed himself as in agreement with the views expressed by Maartensz A.J. In view of these decisions it is unnecessary for me to enter upon a discussion of section 15 (3) in regard to the argument advanced before me as I respectfully agree with the views expressed in these decisions.

It has, however, been argued by the respondent that while the decision of Maartensz A.J. may be supported in view of the language

<sup>1</sup> (1930) 32 N. L. R. 169.

<sup>2</sup> (1945) 46 N. L. R. 126.

of the earlier Ordinance which sets out the disqualification of a member rather than the qualification as in the present Ordinance, his reasoning cannot be applied to the provisions of the present Ordinance. It is pointed out that under Ordinance 9 of 1924, section 18 declares that a person shall be disqualified to be elected unless he had certain qualification, but that under the present Ordinance a person is not declared to be disqualified but on the contrary is deemed to be qualified for election if he has certain qualifications; but it is to be noted that in regard to a candidate who may be interested in a contract, the qualification is put in the negative, for it is provided that a person shall be deemed to be qualified for election if such person is not interested in a contract. This qualification may be expressed as a disqualification by transposing the negative to the word "qualified" when it will read as "a member shall be deemed to be disqualified if such person is interested in any contract". I do not think that the difference in language was intended to bring about an alteration in the law on the point. I therefore hold that it is competent to the petitioner to take this objection to the respondent's qualification in these proceedings.

The next point for determination is whether the allegation that the petitioner is actuated by malice is a sufficient ground to refuse the relief claimed by the petitioner. Beyond the bare statement that the petitioner is actuated by malice there are no facts from which the Court can infer that the petitioner is in point of fact actuated by malice. In one sense every petitioner who impugns the election of a candidate may be said to be actuated by malice or ill will towards the candidate but unless it can be shown that the malice has its origin in something other than a desire to ensure a fair and proper election such as vindictiveness arising from animosity engendered by extraneous circumstances, the malice would be no ground for setting aside the election. *Vide Rex v. Wakelin*<sup>1</sup>. I do not think there is any substance, therefore, in this objection either.

There remains for consideration the next ground urged by the respondent, and that is that there has been undue delay in making the application. It was conceded that unless and until the respondent took his seat, an information in the nature of *quo warranto* would not lie. *Vide Rex v. Whitewell*<sup>2</sup>, *Rex v. Jones*<sup>3</sup> and *In re Armstrong*<sup>4</sup>. The respondent took his seat on July 4, 1946, and the application was presented within two months of that date. I do not think that a period of less than two months can be said to constitute undue delay in instituting these proceedings.

In the result, I find that the respondent was disqualified at the date of his nomination and election and that he had no right to take his seat as a member of the Committee. I would therefore make the rule absolute and declare the election of the respondent null and void. The respondent will pay to the petitioner the costs of these proceedings.

*Rule made absolute.*

<sup>1</sup> 1 B. & A. D. 50.

<sup>2</sup> (1792) 5 Term Rep. 55.

<sup>3</sup> (1873) 28 Law Times 270.

<sup>4</sup> (1856) 25 L. J. Q. B. 238.