

1977 Present: Tennekoon, C.J., Vythialingam, J. and Tittawella, J.

NANDA MATHEW, Petitioner *and* COMMISSIONER OF
ELECTIONS *et al*, Respondents.

S.C. 502/77

Writ of Mandamus – Discretion of Court.

The Writ of Mandamus is not a writ of right and is not issued as a matter of course. The grant of a mandate in the nature of a Writ of Mandamus is, as a general rule a matter for the discretion of the court. Petitioner must show prejudice or adverse effect in order to succeed.

APPPLICATION for a mandate in the nature of a Writ of Mandamus.

V. S. A. Pullenayagam with Dr. N. Tiruchelvam, Asoka Somaratne and Mrs. Shanthi Gnanakaran for the petitioner.

Ian Wickremanayake, Solicitor-General with *G. P. S. de Silva* Deputy Solicitor-General and *D. C. Jayasuriya* State Counsel for the 1st and 2nd respondents.

Cur. adv. vult.

July 11, 1977. TENNEKOON, C.J.

The petitioner seeks a mandate directing the Commissioner for Parliamentary Elections to print his name on the ballot papers as “Caluadewagey Nanda Mathew” and not as “Mathew, Caluadewagey Nanda”. After hearing arguments we refused the application. We now state our reasons.

The President’s proclamation dissolving the first National State Assembly of the Republic fixed the 6th of June 1977 as the day of nomination of candidates for the general election of members of the next National State Assembly. On that day, the petitioner, who describes himself in the caption at the head of his petition to this court and in the affidavit which accompanies it as Caluadewagey Nanda Mathew, duly submitted a nomination paper for the Electoral District of Kolonne. Section 28 of the Ceylon (Parliamentary Elections) Order in Council (hereinafter referred to as the Order in Council) enacts that every nomination paper “shall be substantially in the form G” in the Schedule. It also requires the written consent of the candidate to be annexed to or endorsed on the nomination paper. Form G contains a space

for entry of the name of the candidate coupled with certain instructions as to how the name should be stated. Form G in this regard reads as follows:-

1. Name of candidate in full (give name, christian or "ge" or other names in full; surname or "ge" name first.....

In the nomination paper of the petitioner his name was given thus:

"Caluadewagey Nanda Mathew"

There were no objections taken to the nomination paper under section 31(1) of the Order in Council either by the returning officer or by any other person. It is to be noted that under subsection (1) (a) of section 31 a possible ground of objection is -

"that the description of the candidate is insufficient to identify the candidate".

There being more than one candidate duly nominated the returning officer adjourned the election for a poll to be taken on the 21st of July 1977. There were four other candidates nominated for the Kolonne Electoral District. So far as the petitioner was concerned he indicated to the returning officer, in terms of subsection (1c) of section 35 of the Order in Council, that he did not want omitted or specified by initial only, any of his names mentioned in his nomination paper.

Upon the Commissioner receiving the returning officer's report under section 35(2), he published a notice in terms of section 35(5) in the Government Gazette bearing date 28th June 1977 and in the newspapers of 28th June 1977. Sub-paragraph (c) of section 35(3) requires the notice to contain "the names of the candidates in the order in which they will be printed on the ballot papers" and among other things "the symbol allotted to each candidate."

To ascertain the order in which names of candidates are to be arranged on the ballot paper one has to look at section 40(2) which reads:

"Every ballot paper shall contain a list of the candidates in Sinhala, Tamil and English, described, subject to the provisions of subsection (1c) of section 35, as in their respective nomination papers, and arranged alphabetically in Sinhala in the order of their surnames or "ge" names and if there are two or more candidates with the same surname or "ge" name, of their other names...."

The Commissioner's notice under section 35(3) gave the names of the candidates for the Kolonne Electoral District as:-

D. J. R. Dissanayake
Mathew, Caluadewagey Nanda
S. D. Wanigatilaka
W. S. Seni Wijesinghe
P. O. Wimalanaga

in that order, together with the allotted symbol against each name. The petitioner's name it will be noted appears as Mathew, Caluadewagey Nanda. On the 28th of June he wrote to the Commissioner and objected to his name being stated as "Mathew, Caluadewagey Nanda", and requested that it be stated as "Caluadewagey Nanda Mathew" which is the description of himself given in his nomination paper. It is to be noted in passing that if the petitioner's name is put on the ballot paper as Caluadewagey Nanda Mathew, his name, following the order of letters in the Sinhala alphabet would come first and not second as happens when the name 'Mathew' is placed first. The Commissioner refused to comply with this request by his letter of 29th June 1977 in which he merely stated: "Reference your letter of 28th June 1977, I have to refer you to section 35(1c) and 40(2) of the Ceylon (Parliamentary Elections) Order in Council 1946".

In the present application petitioner prays for a Mandate in the nature of a Writ of Mandamus directing the Commissioner to print the name of the petitioner as Caluadewagey Nanda Mathew in the ballot papers as this is what section 40(2) of the Order in Council requires him to do.

It would appear from the affidavit of the Commissioner and from what was stated without contradiction at the bar:—

(i) that the polling for the General Election is fixed for the 21st of July 1977,

(ii) that all ballot papers including the ballot papers for the Electoral District of Kolonne have already been printed and issued to the returning officers,

(iii) that these ballot papers for the Electoral District of Kolonne contain the petitioner's name as "Mathew, Caluadewagey Nanda" placed second,

(iv) that ballot papers for Kolonne have already been issued to persons entitled to be treated as postal voters,

(v) that some postal ballot papers would already have come back and been placed in the postal ballot box,

(vi) that the petitioner in giving his written consent on the nomination paper signed as “Nanda Mathew”,

(vii) that the petitioner was a candidate at the General Elections held in March 1965 and in May 1970 and that at both these General Elections the petitioner’s name appeared on the ballot paper as “Mathew, Caluadewagey Nanda”,

(viii) that the petitioner and his father both use the name “Mathew” as their surname, the petitioner being thus generally known as “Nanda Mathew” and his father as “Cyril Mathew”.

From these facts it is clear that the process of election of a member for the Kolonne Electoral District which commenced on the 6th June with the acceptance of nomination papers, is still continuing; the election has been adjourned to the 21st of July for a poll to be taken; polling has in some respects commenced, for postal ballot papers have been placed in the hands of those entitled to vote by post and some have already voted.

In these circumstances, I take note of the fact that the petitioner does not state in his petition or in his affidavit that the Commissioner’s alleged failure to state his name as required by section 40(2) is such a non-compliance with the Order in Council as is likely to affect the result of the Election. Counsel for the petitioner was repeatedly asked whether the statement of his name as “Mathew, Caluadewagey Nanda” is likely to cause the least prejudice to the petitioner in contesting the election. Counsel’s reply was that that was not his case and that he has come to court to see that the Commissioner observes the letter of the law and that it is unnecessary and irrelevant to show any possible prejudice.

Let me say at once that in some cases of failure to comply with the mandatory provision of the Order in Council the prejudice to some party will be self-evident. That would depend on the nature of the provision. Here, in the background of the facts that are before us there is no reason to assume that the petitioner is going to be prejudiced in any way. Thus this application is nothing more than what petitioner’s counsel described it, an application to order the Commissioner to comply with the letter of the law irrespective of all other considerations.

The Writ of Mandamus is not a Writ of right and is not issued as a matter of course. Thus the grant of a Mandate in the nature of a Writ of Mandamus is, as a general rule, a matter for the discretion of the court.

In stating the nature of a Writ of Mandamus the following passage occurs in Halsburys ‘Laws of England’:¹—

“The Writ of Mandamus is a high prerogative writ of a most extensive remedial nature and is in form a command issuing from the High Court of

¹Hailsman Ed. Vol. 9 page 744.

Justice directed to any person....requiring him to do some particular thing therein specified which appertains to his office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue **to the end that justice may be done**, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right". (stress added).

Assuming without deciding that the petitioner is right in his contention that section 40(2) requires the Commissioner to take petitioner's name as "Caluadewagey Nanda Mathew" and not as "Mathew, Caluadewagey Nanda" for the purpose of printing the ballot papers, it is necessary that the court must be satisfied, before it will grant the application that the petitioner's interest is not merely in a clinical demonstration that the Commissioner is wrong and he is right, but also that justice demands, in the situation that exists, that the Commissioner be ordered to comply with the law. In the absence of even the slightest hint that the Commissioner's action would or may have an adverse effect on him in some way, I think the discretion of the court must necessarily be resolved against the petitioner.

We were accordingly of the view that the application must in the exercise of the courts discretion be refused and it was accordingly refused.

VYTHIALINGAM, J. – I agree.

TITTAWELLA, J. – I agree.

Application refused.