

1955

Present : Swan, J.

B. D. GUNAPALA, Petitioner, and HON. MR. C. W. W.
KANNANGARA (Minister of Local Government), Respondent

S. C. 269—Application for a Mandate in the nature of a Writ of Certiorari to quash an order purported to have been made under Section 61 of the Village Communities Ordinance

Village Communities Ordinance—Section 62—Removal of Chairman of a Village Committee from office—Executive function of Minister—Certiorari.

When the Minister of Local Government, by virtue of the power vested in him by section 61 of the Village Communities Ordinance, removes the Chairman of a Village Committee from office on being satisfied "that there is sufficient proof of" misconduct in the performance of his duties, he performs an executive and not a judicial act. Such act cannot be the subject of a writ of *certiorari*.

APPPLICATION for a writ of *certiorari* on the Minister of Local Government.

Sir Lalita Rajapakse, Q.C., with *G. T. Samarawickreme, G. C. Weerasinghe* and *T. G. Goonesekera*, for the petitioner.

T. S. Fernando, Q.C., Acting Attorney-General, with *V. S. A. Pullenayagam* and *Mervyn Fernando*, Crown Counsel, for the respondent.

Cur. adv. vult.

March 25, 1955. SWAN, J.—

This application was filed on 9.6.54. It came before my brother Gunasekara on 11.6.54 who allowed notice on the respondent. The matter now comes up before me for disposal. Mr. T. S. Fernando who appears for the respondent has taken the preliminary objection that a writ of *certiorari* does not lie.

The petitioner was the Chairman of the Ambagamuwa Village Committee. The respondent by his order dated the 14th May 1954 and published in the *Government Gazette* bearing No. 10,673 dated 21st May 1954 removed the petitioner from office on the grounds of (a) misconduct in the performance of his duties as imposed by the Village Communities Ordinance and (b) abuse of the powers conferred upon him by the Ordinance. The petitioner states that one of the consequences of the order is that under Section 62 of the said Ordinance the petitioner is disqualified for a period of four years from exercising his civic rights as a voter and from being a candidate in an election for a Village Committee. In point of fact as the result of various amendments the petitioner is disqualified from election to membership of a Local Authority for five years but his right to vote at an election is not taken away.

The petitioner in the affidavit supporting his application states that on 22.4.54 the Commissioner of Local Government called upon him for an explanation why he had failed to account for in the cash book a part of the electricity fees collected by the Committee's collector. He duly submitted his explanation on 20.4.54. At no time was there any allegation of misconduct on his part, nor of any abuse of his powers as Chairman. The order removing him from office was made without any inquiry, and without giving him an opportunity to show cause why such an order should not be made.

The respondent and the Commissioner of Local Government have filed two affidavits dated the 11th December 1954. In the affidavit of the respondent it is stated that representations were made to him in or about April 1954 that the petitioner had failed to account for monies that had been received from the consumers in the Bogawantalawa area and he directed an immediate inquiry to be held. An inquiry was accordingly held by an Investigating Officer and it revealed that the petitioner had failed to bring into account a sum of Rs. 694.10 for a period of over seven months until the examination of the books by the Investigating Officer. The respondent directed the Commissioner of Local Government to draw the petitioner's attention to this lapse and to notice him to show cause why action should not be taken against him under Section 61 of the Village Communities Ordinance. The petitioner by his letter dated 25.4.54 showed cause. Having considered the explanation given in that letter as well as all other material before him the respondent was satisfied that there was sufficient proof of (a) misconduct in the performance of the petitioner's statutory duties and (b) abuse of his statutory powers. The respondent therefore in the *bona fide* exercise of the powers vested in him by Section 61 of the Village Communities Ordinance made order removing the petitioner from the office of Chairman of the Village Committee of Ambagamuwa.

Section 61 of the Village Communities Ordinance reads as follows :—

“ If at any time the Minister is satisfied that there is sufficient proof of—

- (a) incompetence and mismanagement, or
- (b) persistent refusal or wilful neglect to perform the duties imposed by this Ordinance, or
- (c) misconduct in the performance of those duties, or
- (cc) persistent disobedience to or disregard of the directions, instructions or recommendations of the Executive Committee, or
- (d) abuse of the powers conferred by this Ordinance,

on the part of the Chairman of a Village Committee
or on the part of the Village Committee, the Minister
may by order published in the *Gazette*—

- (i) remove the Chairman from office, or

- (ii) dissolve the Committee, and direct the Government Agent either to take steps for the election of a fresh Committee or direct the Assistant Commissioner to administer the affairs of that area for such period as may be specified in the order."

Under Section 42 of the Courts Ordinance a writ of *certiorari* would lie not only against regularly constituted judicial tribunals but also against bodies which while not existing primarily for the discharge of judicial functions yet have to act analogously to a judge in respect of certain of their duties. For that statement of the law we have the authority of the Privy Council in the case of *Nakkuda Ali v. Jayaratne*¹.

The first question to consider is whether in acting under Section 61 of the Village Communities Ordinance the respondent was acting in a judicial or quasi-judicial capacity, or whether he was performing what was a purely administrative or ministerial function. If he was acting in an executive or administrative capacity writ of *certiorari* does not lie.

In *Dankoluwa Estates Co. Ltd. v. The Tea Controller*² Soeretsz, J., held that an order made by the Tea Controller under Section 15 (1) of the Tea Control Ordinance was one made by him in an administrative or ministerial capacity and the Tea Controller not being under a duty to act judicially when he made the order is not amenable to the writ of *certiorari*.

In *Nakkuda Ali v. Jayaratne*¹ it was held that upon the proper construction of the words "has reasonable grounds to believe" the Controller of Textiles was not amenable to a mandate in the nature of *certiorari* in respect of action taken under Regulation 62 of the Defence (Control of Textiles) Regulations 1946 as he did not act judicially or quasi-judicially.

In *Bandiya v. The Land Commissioner*³ Gunasekara, J., held that under the Land Redemption Ordinance the Land Commissioner's authority to acquire an agricultural land depended not upon its having been sold or transferred in the circumstances set out in Section 3 (1) but upon his being satisfied that it had been so sold or transferred. If he was so satisfied his acquisition of the land would be an executive and not a judicial act, and could not therefore be the subject of a writ of *certiorari* and prohibition.

On an examination of the Village Communities Ordinance and having regard to the language of Section 61 I would unhesitatingly say that the Minister when he decides to act as empowered by the section is performing an executive function pure and simple. Sir Lalita Rajapakse conceded that it was the Minister who had to be satisfied of the various matters set out in the sub-paragraphs but he argued that the words "*that there is sufficient proof of*" could only mean that he was performing a judicial or quasi-judicial function. I do not think so. One must construe the section as a whole and not emphasize parts of it taken out of their context.

I uphold the preliminary objection. The application is refused with costs.

Applications refused.

¹ (1950) 51 N. L. R. 457.

² (1950) 52 N. L. R. 95.

³ (1941) 42 N. L. R. 197.