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**WERAGODA  
VS.  
DAYANANDA DISSANAYAKE AND OTHERS**

COURT OF APPEAL.

SRIPAVAN, J.

SISIRA DE ABREW, J.

CA 330/06.

MARCH 16, 17, 20, 21, 22-2006.

*Writ of Certiorari-Colombo Municipal Council-Local Authorities Elections Ordinance-Amended by Act No. 25 of 1998-section 28, section 28 (1-5)-section 31 (1) bb, section 69-section 12(1) section 20 (1), section 88-589.*

Youth candidate not eighteen years of age on the relevant date-rejection of nomination paper by returning officer-validity?– Does the disqualification of a candidate before the election invalidate or affect the nomination paper of a political party-what is the relevant date?– Who is a youth candidate?

The returning officer rejected the nomination paper of the United National Party on the basis that one of the youth candidates nominated in the said nomination paper is not 18 years of age as at 1.6.2004-the relevant date, and that in the circumstances, the nomination paper did not contain the total number of youth candidates as required to be nominated.

**HELD:**

- (1) The defined circumstances in which a nomination paper could be rejected are set out in section 31-Local Authorities Elections Ordinance as amended by Act, 25 of 1990.
- (2) Of the 7 grounds spelt out, one of the grounds is section 31(1) (bb) - rejection of a nomination paper that does not contain the total number of youth candidates as required to be nominated under section 28(1A).
- (3) Section 28 (A) read with section 31 (1) (bb) yield results which are mandatory in nature and capable of a strict construction empowering the returning officer to consider not only the total number but also whether youth candidates fall within section 89. If the mandatory requirement as to the age is not complied with, then the returning officer has the power to reject the nomination paper in terms of section 31 (1) (bb).

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- (4) The process of revising the electoral register commences under section 12 (1) and comes to an end with the application under section 20 (1) of 44 of 1980. Accordingly the electoral register for the year 2004 came into operation with effect from 1.6.2005, and continues to be the operative electoral register in terms of section 20 (2) of Act 44 of 1980.
- (5) The youth candidate was only 17 years 3 months 2 days as at 1.6.2004 which is below the age stipulated in section 89.

*Per Sripavan, J.*

“When the language of the law admits no ambiguity and is very clear, it is not open to the Court to put its own glass in order to bring out some other meaning which is artificial or unnatural and not borne out by such language”.

**APPLICATION** for Writs of Certiorari and/or Mandamus.

*Faiz Musthapha, PC with Upul Jayasuriya, Ronald Perera, Sanjeewa Jayawardena, Ms. Faiza Marker* for petitioner.

*C. R. de Silva, PC, S. G., with A. Gnanathan, D. S. G., W. J. S. Fernando, D. S. G., and N. Palle, SSC* for 1st, 2nd, 3rd, 4th and 20th respondents.  
*Manohara De Silva* for 9th Respondent.

March 24, 2006.

**K. SRIPAVAN, J.**

The petitioner who is the General Secretary of the United National Party on 16th February 2006 submitted the nomination paper of his party to the second respondent in order to contest the election for the Colombo Municipal Council. It is alleged in paragraph 18 of the petition that the petitioner verily believes that the second respondent purported to reject the nomination paper upon the erroneous basis that one of the youth candidates nominated in the said nomination paper, namely, Dickwella Muthukumara Palavinnige Supun Lakmal (hereinafter referred to as “Lakmal”) was not eighteen years of age as at 1st June 2004, which the second respondent contended was the relevant date for ascertaining as to whether the said candidate falls within the classification of a “youth” Learned President’s Counsel for the petitioner urged that the summary rejection of

the nomination paper was on a misconceived basis that the entire nomination paper was fatally vitiated in as much as it did not contain the total number of youth candidates as required to be nominated under section 28 (1A) of the Local Authorities Elections Ordinance as amended. The second respondent in his statement of objections avers that after the rejection of the nomination papers he addressed all persons who were present and gave reasons for the rejection of their nomination papers. It is noted that the letter dated 17th February 2006 marked P6 sent to the petitioner by the second respondent did not indicate the grounds of rejection of the nomination paper.

The rejection of the nomination paper undoubtedly affects the rights of the petitioner and the candidates whose names appear in the nomination paper intending to contest at the election. Therefore, the Returning Officer is under a legal duty to furnish reasons for the rejection of the nomination paper. This is considered to be a good practice for Returning Officers to formulate their grounds of rejection and for those affected to be informed of such reasons. The significance of a reasoned decision as distinct from one which is unreasoned is that it allows an affected person to make an early assessment as regards the likelihood of a challenge by judicial review. In *Breen Vs. A. E. U.*<sup>(1)</sup> at 191, Lord Denning M. R. argued that fairness might require the giving of reasons as a fundamental of good administration. In *Lanka Multi Moulds (Pvt) Ltd Vs Wimalasena, Commissioner of Labour and Others*<sup>(2)</sup> at 152 Fernando, J observed that "if the citizen is not made aware of the reason for a decision he cannot tell whether it is reviewable, and he will thereby be deprived of one of the protections of the Common Law which Art. 12 (1) now guarantees. Today, therefore, the conjoint effect of the machinery for appeals, revision, judicial review and the fundamental rights jurisdiction, is that as a general rule tribunals must give reasons for their decisions." On the same issue, Wade on *Administrative Law -9th Ed.* at page 945 remarked that "the duty to state reasons is normally held to be mandatory so that a decision not supported by adequate reasons will be quashed or remitted to the deciding authority". The failure to give proper and adequate reasons may be considered as an error on the face of a record even if the duty to give reasons is not mandatory. I do not make any further observation on this matter as the reason for the rejection of the nomination paper has now been disclosed to court and to the petitioner.

The defined circumstances in which a nomination paper could be rejected are set out in section 31 (1) of the Local Authorities Elections Ordinance as amended by Act No. 25 of 1990. Seven grounds of rejection are spelt out therein. One of the grounds referred to in section 31 (1) (bb) is that “the returning officer shall, immediately after the expiry of the nomination period, examine the nomination papers received by him and reject any nomination paper that does not contain the total number of youth candidates as required to be nominated under subsection 1 A of section 28.”

In terms of section 28 (1A), 40% of the total number of candidates nominated in such nomination paper shall consist of youth. The Commissioner of Elections acting in terms of Section 28 (1B), by publication in the Gazette specifies the total number of youth candidates to be nominated in respect of each local authority. Section 89 defines “youth” as follows:-

“Youth” means a person not less than eighteen years of age as at 1st June of the year in which the revision of the operative electoral register commenced under the Registration of Electors Act No. 44 of 1980 and not more than thirty five years of age as on the last day of the nomination period specified under this Ordinance in respect of the election at which he seeks to be a candidate.”

Section 28 (2) provides that the nomination paper submitted must be substantially in the form set out in the first schedule to the Ordinance. One of the requirements of the nomination paper as set out in the first schedule is that the Secretary of a recognized political party or the Group Leader of an independent group must certify that all youth candidates whose names appear in the nomination paper are within the age limit stipulated in section 89. This imperative requirement of certification as regards the youth candidates has been inserted for some useful purpose and it must be construed in the light of the purpose and object of the Ordinance itself. “The significance of this requirement is brought to zenith by the provision in Section 28 (5) that the signature should be attested by a Justice of the Peace or by a Notary Public” - per His Lordship S. N. Silva, C. J. in *Ediriweera, Returning Officer Vs Kapukotuwa, General Secretary, United National Party*<sup>(3)</sup> (2003) 1 S. L. R 228 at 234. It is clear from the provision contained in section 28 (1A) that the candidates referred to under Group II of the nomination list shall consist of youth (emphasis

added). The court must therefore advance and promote the object of the legislation keeping in mind the purpose and the context in which the provision relating to “youth candidates” has been used both in the Ordinance and in the nomination paper. It is therefore apparent that the law requires that all the candidates referred to under Group II of the nomination paper must satisfy the definition of “youth” as contained in Section 89. Further, the use of the words “such nomination paper shall be delivered to the returning officer.” in section 28 (5) necessarily imply that the nomination paper meets the requirements contained in subsections 1A, 2, 4, 4A and 5 of section 28. Accordingly, the statute makes it incontrovertibly clear that a youth candidate named in Group II of the nomination paper must fall within the stipulated age limit as contained in section 89. The intention of Parliament from the words used in the Elections Ordinance strongly suggests that the court must apply them as they stand in order to achieve a result more in conformity with presumed parliamentary intention. The primary rule of construction is to intend the legislature to have meant what they have actually expressed. The object of all interpretation is to discover the intention of the legislation. The words “...as required to be nominated under subsection (1A) of section 28” used in section 31 (1) (bb) admit only one meaning, namely the total number of candidates nominated under Group II shall consist of youth candidates. When the language of the law admits of no ambiguity and is very clear, it is not open to the court to put its own gloss in order to bring out some other meaning which is artificial or unnatural and not borne out by such language. Section 28 (1A) read with section 31 (1) (bb) yield results which are mandatory in nature and capable of a strict construction empowering the returning officer to consider not only the total number but also whether youth candidates fall within the definition of section 89. If the mandatory requirement as to the age is not complied with, then the returning officer has the power to reject the nomination paper in terms of section 31 (1) (bb).

Learned President’s Counsel for the petitioner however contended that a youth who is under eighteen years of age attracts the disqualification set out in section 9 and the legislature never intended to include “disqualification of a candidate” as one of the grounds on which a returning officer may reject the nomination paper. In any event, counsel urged that disqualification of a candidate before the election will not invalidate or affect the nomination paper of a political party as provided in section 69A. I am unable to agree with this submission of the learned President’s Counsel for the reason that the returning officer acting under section 31 (1) has

jurisdiction to determine whether a candidate referred to in Group II of the nomination list is a “youth” candidate within the meaning of section 89. This could be done by the returning officer upon a visual examination of the nomination paper and the other relevant documents tendered along with such nomination paper. In exercising his jurisdiction, the returning officer is obliged to act in strict obedience to the law which imposes on him a simple and definite duty in respect of which he has no choice.

I shall now proceed to consider whether Lakmal was not less than eighteen years of age as at 1st June of the year in which the revision of the operative electoral register commenced under the Registration of Electors Act No 44 of 1980 as provided in section 89. It is not in dispute that Lakmal was born on 28th February 1987 and the revision of the electoral register for the year 2004 commenced in terms of section 12 (1) of Act No. 44 of 1980 on 1st June 2004 as evidenced by Y1. After the revision, on 1st June 2005 the register was certified in terms of section 20 (1) of Act No. 44 of 1980 and a notice was published in the gazette as evidenced by P8 that the register was open for inspection at the Election Office. The process of revising the electoral register commences under section 12 (1) and comes to an end with the certification under section 20 (1) of Act No. 44 of 1980. Accordingly, the certified register for the year 2004 came into operation with effect from 1st June 2005 and continues to be the operative electoral register in terms of section 20 (2) of Act No. 44 of 1980. No evidence has been placed to establish that this certified register has been superceded by another register certified under section 20 (1) of Act No. 44 of 1980. Therefore, I conclude that the revision of the operative electoral register commenced on 1st June 2004 as reflected in Y1. Taking into consideration the date of birth of Lakmal, he was only 17 years 3 months and 2 days as at 1st June 2004 which is below the age stipulated in section 89. Thus, I hold that the second respondent did not commit any error of law in rejecting the nomination paper submitted by the petitioner.

In view of the foregoing, the petitioner’s application is dismissed in all the circumstances without costs

**DE ABREW, J.** – *I agree.*

*Appeal dismissed.*