

1967 Present: H. N. G. Fernando, C.J., and Siva Supramaniam, J.

K. P. GUNADASA, Petitioner, and R. D. T. RAJAPAKSE
and 2 others, Respondents

*S.C. 324/66—Application for a Mandate in the nature of a Writ
of Quo Warranto under section 12 of the Courts Ordinance*

*Village Committee—Quorum for election of Chairman—Computation—Village
Communities Ordinance (Cap. 257), ss. 17 (1), 17 (5), 18, 26.*

Section 18 of the Village Communities Ordinance provides as follows:—

“No election of a Chairman shall be held at any meeting summoned under section 17, unless there is present a quorum consisting of not less than half the number of the members elected to the Committee.”

Held, that if, prior to the time of the meeting, a member of the Committee has been removed from office by order of the Minister under powers vested in him, such non-existent member cannot be counted in computing “the number of the members elected to the Committee.”

APPPLICATION for a writ of *quo warranto*.

E. Gooneratne, for the petitioner.

E. R. S. R. Coomaraswamy, with *D. T. P. Rajapakse*, for the 1st respondent.

M. Kanagasunderam, Crown Counsel, with *Ananda de Silva*, Crown Counsel, for the 2nd and 3rd respondents.

Cur. adv. vult.

May 26, 1967. H. N. G. FERNANDO, C.J.—

The 1st Respondent to this application was unanimously elected to the office of Chairman of a Village Committee at a meeting at which there were present 12 members of the Committee. The validity of his election is now sought to be challenged on the sole ground that the election was not held in accordance with s. 18 of the Village Communities Ordinance, which provides as follows:—

“No election of a Chairman shall be held at any meeting summoned under section 17, unless there is present a quorum consisting of not less than half the number of the members elected to the Committee.”

The area for which the Committee is constituted consists of 25 Wards, and accordingly the total number of members of the Committee as fully constituted would be also 25 (s. 8 of the Ordinance). But at the time when the disputed election of a Chairman was held, only 24 members were in office, one member (the former Chairman) having been removed from the office by order of the Minister under powers vested in him. The

substantial contention for the petitioner has been that s. 18, in requiring a quorum of *not less than half the number of members elected to the Committee*, required the presence at the meeting of at least 13 members, i.e., not less than half the total number of members (25) who could or should be elected to represent all the Wards. For the Respondents it was argued that “number of members elected” means the members for the time being elected.

Section 17 (5) provides that, where there is a vacancy in the office of Chairman, the Assistant Commissioner shall summon a meeting by notices served in accordance with sub-section (1). That sub-section requires a notice to be served “on each elected member” of the Committee. Since there was at this stage no member representing the Ward for which the former Chairman had been the member, notices under sub-section (1) had to be served on the 24 other members, and a 25th notice could not issue, for the obvious reason that there was no person entitled to receive it. If then s. 17 (1) required notices to be served only on *24 elected members*, it is only reasonable to suppose that when s. 18 fixed not less than *one half of the number of members elected* as the quorum, the intention was to require the presence at the meeting of not less than one half of the 24 members on whom the notices had to be served. The variation of language between “elected members of the Committee” (s. 17 (1)) and “members elected to the Committee” (s. 18) is too slight to admit the construction that these two phrases should be given different meanings.

In any event, the language of s. 18, in its ordinary grammatical meaning, does not admit of doubt. If one Ward of a Committee has no member at any given time, then it would be unreasonable to hold that, nevertheless, a non-existent member must be counted in computing “the number of members elected to the Committee”. If such had been the intention of the Legislature, s. 18 should have been quite differently phrased.

The only doubt as to the meaning of s. 18 arises not intrinsically, but because of different language used in s. 26 :—“the number of members of the Committee in office on the day of the meeting”. This language was introduced into what is the present s. 26 by an amendment of 1952 of what was the former s. 21 (5) of the Ordinance in the edition of 1938. It has not been possible to ascertain why the change of language was necessary. But such a change, in a Section other than s. 18, affords no sufficient ground for giving to s. 18 a meaning different from that which s. 18 plainly bears.

I hold that the 1st Respondent was duly elected Chairman of the Committee. The application is dismissed with costs in sums of Rs. 157·50 payable to the 1st Respondent and the 2nd Respondent respectively.

SIVA SUPRAMANIAM, J.—I agree.

Application dismissed.