

1951

Present: Rose C. J.

W. C. FERNANDO, Petitioner, and I. DE SILVA, Respondent

S. C. 100—IN THE MATTER OF AN APPLICATION FOR A WRIT OF
Quo Warranto ON THE MEMBER FOR WARD NO. 8, URBAN COUNCIL,
 MORATUWA

Quo Warranto—Election of member of Urban Council—Spiritual intimidation of voters—Ground for disqualification—Criminal prosecution is no alternative remedy—Local Authorities Elections Ordinance, No. 53 of 1946.

A writ of *quo warranto* would lie to invalidate an election held under the Local Authorities Elections Ordinance if spiritual intimidation of the voters can be proved. In such a case, an alternative remedy cannot be said to be available to the petitioner in prosecuting the person or persons responsible for the intimidation, if the prosecution would not necessarily assist the petitioner in the avoidance of the election.

An election pamphlet contained words meaning that religious bodies in general and in particular the Roman Catholic Church had stated in clear terms that candidates of a certain political party and their sympathisers should not be voted for. It did not, however, hold out any threat or inducement which could be reasonably said to operate as undue influence upon Catholic or any other members of the electorate.

Held, that there was no spiritual intimidation of the voters.

THIS was an application for a writ of *quo warranto* on a member of the Urban Council, Moratuwa.

H. V. Perera, K. C., with *D. S. Jayawickreme, Sam P. C. Fernando* and *G. T. Samarawickreme*, for the petitioner.

C. S. B. Kumarakulasinghe, with *H. W. Jayewardene*, for the respondent.

Cur. adv. vult.

November 8, 1951. ROSE C.J.—

On 9th December, 1950, an election was held under the provisions of the Local Authorities Elections Ordinance (No. 53 of 1946) for Ward No. 8 of the Urban Council, Moratuwa. Elections were also held on the same day for the remaining 11 wards of Moratuwa. The candidates for Ward No. 8 were Mr. Leonard de Mel who polled 573 votes and the respondent who polled 934 votes. The latter was therefore declared elected.

The petitioner who is a registered voter of Ward No. 8 of the Moratuwa Urban Council prays for the issue of a mandate in the nature of a Writ of *Quo Warranto* on the respondent to show, by what authority he exercises the office of member for Ward No. 8 for the Urban Council, Moratuwa, and for a declaration that the election of the respondent to the said office is void.

The petitioner relies on two matters, a sermon alleged to have been preached by the Rev. Fr. Jerome de Silva at the St. Joseph's Church, Moratuwa, shortly before the election and a pamphlet (P 1) which was distributed on behalf of the respondent to a number of electors a day or two before the polling day. He contends that the joint effect of the sermon and the pamphlet was to deprive the considerable Catholic portion of the electorate of Ward No. 8 of their freedom of choice in their selection of a candidate, in that undue spiritual influence was exercised upon them, and that therefore the present matter falls within that class of case in which spiritual intimidation has been held to invalidate an election.

The principles applicable to such cases can be extracted from a number of Irish cases¹ and are summarized in Mr. Rogers' book on elections (20th edition) at page 347. These principles have been restated and applied in this country by Soertsz J. in *Piyadasa v. Goonesinha*². It is true that the facts of the latter case had to do with general bribery and undue influence but the principles there stated would seem also to be applicable to a case in which spiritual intimidation was alleged. The same principle was applied by Hearne J.—in a case in which general bribery was alleged—in *Wadugodapitiya v. Ismail*³.

The respondent raises a preliminary objection that the relief prayed for should in any event be refused for the reason that this court does not as a rule exercise its discretion in favour of a petitioner, in a matter of this nature, when an alternative remedy is available. It seems to me, however, that this objection cannot be sustained because the alternative remedy suggested, namely a prosecution of the person or persons responsible for the printing and publishing of the pamphlet, would not necessarily assist the petitioner in the avoidance of the election, which is the particular form of relief in which he is principally interested.

¹ *Galway* (1872) 2 O' M. & H. p. 46.

North Durham (1874) 2 O' M. & H. p. 152.

South Meath & North Meath cases (1892) 4 O' M. & H. 130, 185.

North Louth (1911) 6 O' M. & H. p. 103.

Down (1880) 3 O' M. & H. p. 115.

² (1941) 42 N. L. R. 339 at page 342.

³ (1944) 45 N. L. R. 304 at page 305.

The question of the sermon must first be examined. There was a conflict of evidence both as to the date or dates on which the sermon was delivered and the nature of the admonition that was contained in it. I prefer the Rev. Fr. Jerome's version of both matters and I therefore find that the sermon was preached at St. Joseph's Church on Sunday, the 26th of November, 1950, and only on that occasion and that the preacher reminded the congregation that according to the instructions of the Pope Catholics cannot in conscience vote for a Communist or Samasamajist, as the Communist and Samasamajist parties were fundamentally opposed to all religions; moreover, that any one voting for a Communist or Samasamajist would thereby commit a mortal sin and would have to disclose it in his confession.

The witness denies, and I accept his denial, that he referred to leftist "sympathisers".

It is to be noted that the sermon cannot be considered to be applicable to Mr. Leonard de Mel—nor was the contrary contended on behalf of the petitioner—for the reason that Mr. de Mel himself does not profess to be a member of either the Communist or the Samasamajist party and is a member of the Anglican church. As far as the sermon is concerned, therefore, there is no suggestion that any Catholic voting for Mr. de Mel on 9th December, 1950, would commit a mortal sin.

The pamphlet P1 must now be considered. By paragraph 11 of his affidavit sworn on the 3rd of May, 1951, the respondent admits the publication and distribution of P1 by his agents. I accept the evidence of Titus Simon Fernando that on the morning of the 7th of December, 1950, he distributed some 200 of these pamphlets to some 75 houses in the ward. These pamphlets were printed in English on one side and Sinhalese on the other and I am satisfied that the English rendering is, in effect, a faithful translation of the Sinhalese version.

The English version of the pamphlet is as follows:—

" To the Constituents of the Uyana Ward.

" In a few days time you will go to the polls to elect your representative in the Urban Council. This is a sacred duty and your decision should be made with the greatest care. There are definite signs that evil measures are being designed to either influence your decision or to prevent you from attending the polls. I would appeal to you to be wary and not to fall into such evil traps. Wealth and power should not be allowed to cramp your soul and astray you from your path of duty. Your choice must fall on that person who can represent you well. He should be one who is accessible to all and one whose innate desire is to serve the people and the country. Intelligence, ability and past services should be guiding factors in making your selection. You must examine the past services of the candidates. The good and bad must be carefully weighed. You should not rely on mere promises for the future.

" We must be extremely carefull in not supporting leftists and their sympathisers. The leftists have put forward candidates to all wards except Uyana. The reason is obvious. No leftist candidate was

put against the sitting member as Mr. Leonard de Mel is a sympathiser and a supporter of their party. He is frequently seen with the leftists. Messrs. R. P. Fernando and M. E. Fernando are his camp-followers. Although Mr. de Mel calls himself an Independent Socialist his actions clearly indicate that he is a supporter of the leftists. His conduct at the last General Elections is still fresh in our memories. All religious bodies in general and the Roman Catholic Church in particular have expressed in unequivocal terms the manner in which the leftists and their sympathisers should be treated. I hope the constituents of Uyana will bear these in mind and select the proper person.

Yours sincerely,
LLOYD FERNANDO.

Uyana,
Moratuwa. "

It is the second paragraph of which the petitioner complains. It should be noted that the pamphlet contains no reference to mortal sin and, as has already been observed, the sermon at St. Joseph's Church, which does refer to mortal sin, contains no reference to Mr. de Mel. It is, however, suggested on behalf of the petitioner that by falsely stating that Mr. de Mel is a sympathiser of the leftist and by linking that false statement with the statement of the attitude adopted by all religious bodies and in particular the Roman Catholic Church towards leftists and their sympathisers, the respondent is in effect, having regard to the recent sermon at St. Joseph's Church, employing a device to deceive the Catholic element of the electorate into believing that Fr. Jerome's sermon applied to Mr. de Mel and that any one voting for him would thereby be committing a mortal sin.

It thus becomes necessary to examine carefully the statements made in the second paragraph of the pamphlet to see if they can fairly be interpreted in the sense alleged by the petitioner. As regards the statement that Mr. de Mel was a sympathiser and supporter of the leftists, it is common ground between the parties, and I find as a fact, that the elections in all the wards were not conducted on a religious platform at all but, for the most part at any rate, on two parochial issues, the administration of the housing scheme by the respondent, the out-going chairman of the council, and the question as to whether Moratuwa should acquire municipal status. On both these issues Mr. de Mel, on his own showing, adopted the leftist platform, that is to say he criticized the respondent's administration of the housing scheme and opposed the acquisition of municipal status.

That being so, it seems to me to be permissible for his opponent to say in a political pamphlet and for the purpose of that particular election that Mr. de Mel was a leftist sympathiser or supporter. Moreover there is evidence, which I accept, that so soon as the election was over Mr. de Mel actively engaged himself in forwarding the candidature of Mr. R. P. Fernando, who is mentioned in P 1 and who is an established member of the Samasamajist party, for the chairmanship of the council, in opposition to the respondent.

The second substantial matter that is complained of is the statement "All religious bodies in general and the Roman Catholic Church in particular have expressed in unequivocal terms the manner in which the leftists and their sympathisers should be treated." It should be noted in this passage that no reference is made and no threat held out to the voter. It is the candidate only who is referred to. In my opinion the words complained of mean in their present context no more than that religious bodies in general and in particular the Roman Catholic Church have stated in clear terms that leftists and their sympathisers should not be voted for.

On the view that I take of the facts, therefore, I am of the opinion that the pamphlet holds out no threat or inducement which can reasonably be said to operate as undue influence upon Catholic or any other members of the electorate. Nor, as has already been indicated, does Fr. Jerome's sermon have any application to Mr. de Mel.

Having regard therefore to my view of the correct interpretation of the pamphlet, I am not prepared to accede to the proposition that the publishing and distribution of this pamphlet amounted to a fraudulent device in the sense contended for by the petitioner.

That being so, it is in my opinion unnecessary to consider the general question, which was referred to in argument, as to whether and in what circumstances a directive from Rome, of the type which has been considered in the present matter, either in itself or as expounded by some dignitary of the Catholic Church in Ceylon, might invalidate an election in an electoral district in which there is a considerable Catholic vote on the ground that the Catholic voters had been deprived of their freedom of choice.

For the reasons that I have given the application must be refused and the rule discharged. The petitioner will pay the costs of these proceedings.

Application refused.
