

1968

Present: Alles, J., and Wijayatilake, J.

P. L. E. ALWIS, Petitioner, and W. M. P. B. UNNATENNE,
Respondent

S. C. 144/68—*In the matter of an Application for a mandate in
the nature of a Writ of Quo Warranto*

*Local Authorities Elections Ordinance (Cap. 262), as amended by Act
No. 15 of 1965—Sections 8, 9, 10, 69—Meaning of term “ordinarily
resident” in s. 8—Unseating of a member of a local body on the
ground of want of proper residential qualification—Circumstances
when it will not be ordered by Court—Distinction between non-
qualification and disqualification—Quo warranto.*

Section 8 of the Local Authorities Elections Ordinance, as amended
by Act No. 15 of 1965, visualises the case of a candidate having
more than one residence, provided that he is usually resident in
a ward of the electoral area.

The amended section 69 of the Local Authorities Elections
Ordinance prevents applications of a purely technical nature being
made to unseat a member of a local body. Accordingly, even if,
technically, there was a failure to comply with section 8 in regard
to residence, under section 69 an election is not invalid if it was
conducted in accordance with the principles laid down in the
Ordinance and the non-compliance with section 8 did not affect
the result of the election. In such a case a writ of *quo warranto*
will not be issued.

APPPLICATION for a writ of *Quo Warranto*.

Izzadeen Mohamed, with S. C. Crossette-Thambiah, for the
petitioner.

Felix R. Dias Bandaranaike, with Nihal Jayawickrama, for the
respondent.

Cur. adv. vult.

September 17, 1968. ALLES, J.—

In this application for the issue of a mandate in the nature
of a writ of *quo warranto* on the ground that the respondent
was *not qualified* to be elected or hold office as a Member of the
Municipal Council of Kandy, the petitioner has prayed, *inter alia*,
for a declaration that the election of the respondent is void under
the Local Authorities Elections Ordinance. If that prayer cannot
be allowed, the question whether the writ lies in a case of this
kind is only of academic interest.

At the Municipal Council elections held on the 19th February 1968, the respondent was elected to represent the Buwelikade Ward in the Kandy Municipal Council. According to section 8 of the Local Authorities Elections Ordinance (Cap. 262) as it originally read :

“ Every person who is not disqualified as provided by section 9 shall be qualified at any time for election as a member for any ward of an electoral area if—

(a) he was, on the date of the commencement of the preparation or revision of the parliamentary register for the time being in operation for any electoral district in which that electoral area or any part thereof is situated, qualified to have his name entered in that register ; and

(b) he was, on the date aforesaid, resident in that ward or any other ward of the same electoral area.”

The respondent had complied with paragraph (a) of section 8 since his name was entered in the relevant Register for the Senkadagala electorate. In regard to paragraph (b), the Ordinance was amended by Act No. 15 of 1965 to read—

“ (b) he was, on the first day of June in the year of the commencement of the preparation or revision of that register, *ordinarily* resident in that ward or any other ward of the same electoral area.”

The amendment therefore visualises the case of a candidate having more than one residence and it contemplates that the candidate should usually be resident in a ward of the electoral area. Section 69 of the Ordinance was also amended to provide that an election shall not be declared invalid by reason of any failure to comply with *any provision of the Ordinance* relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions and that such failure did not affect the *result* of the election. These amendments appear to have been passed with the object of preventing applications of a purely technical nature being made to unseat a member of a local body thereby hampering him in the discharge of his duties, as a member of such body.

Where the result of the election has not been affected by the failure relied upon by the petitioner and such failure is one which does not fall within the ambit of section 9, which states the grounds of disqualification, the Courts should be slow to interfere with the democratic right of the electors to select the candidate of their choice. This appears to be the main object of extending section 69 to all provisions of the Ordinance.

According to the affidavit filed by the respondent supported by that of his witnesses, he stated that he was a Member of the Municipal Council of Kandy since 1961 representing the Watapuluwa Ward and that since 1961, although his permanent residence was at Tennekumbura, outside the limits of the Municipal Council limits of Kandy where he lives with his wife and family, he had been resident for three days in the week at premises No. 8, Watapuluwa, where his mother lived; and she had set apart a portion of the premises for his use which he occupied during these three days. He therefore maintained that he was ordinarily resident within the Watapuluwa Ward of the Senkadagala electorate and that therefore he was qualified for membership to represent a ward in the Kandy Municipal Council. In 39 N.L.R. 409, Maartensz, J. in similar circumstances held that there was no law that prevented a person from acquiring a residential qualification in a place other than that where his wife and family reside if the object of his change of residence was to enable him to acquire that residential qualification. Even if there be a strict non-compliance with section 8 in regard to residence, I am of the view that under section 69 of the Ordinance the election was not invalid since it was conducted in accordance with the principles laid down in the Ordinance and the failure did not affect the result of the election.

Learned Counsel for the respondent submitted that there was a distinction between *non-qualification* as stated in section 8 and *disqualification* as stated in section 9 of the Ordinance. The provisions of section 9 would seem to indicate that on grounds of public policy the Legislature had laid down certain grounds of disqualification. When a person is disqualified under section 9, his seat or office becomes *ipso facto* vacant under section 10 and under section 10 (2), steps may be taken by the authorities to fill the vacant seat. I am inclined to agree with the submission of Counsel for the respondent that a seat does not *ipso facto* become vacant by the want of qualification under section 8 read with section 69 and that it will not be open to this Court to declare the election of the respondent invalid as prayed for in the prayer to the petitioner's application as there is nothing to show that the alleged failure affected the result of the election. It is therefore unnecessary to consider the various points that have been raised by Counsel for the petitioner. He has referred to a series of cases showing the development of the law in England relating to elections, but, in my view, they are not quite appropriate in the context of the present application.

This, therefore, is not an appropriate case which calls for the exercise of the discretionary powers of this Court for the issue of a mandate in the nature of a writ of quo warranto. The application is dismissed with costs which I fix at Rs. 152.50.

WIJAYATLAKE, J.—I agree.

Application dismissed.

