Present : Dricberg J. 1928.

In the Matter of an Application for a Writ of *quo warranto.*

WIJEYRATNE *v.* OBEYESEKERE.

Writ of quo warranto—*Election of Village Committees—Notice of adjourned meeting—Legal defect—Motives of applicant—Village Communities Ordinance, No. 9 of 1924, s. 10 (2).*

Where a meeting, which had been duly summoned for the election of a Village Committee under the Village Communities Ordinance, No. 9 of 1924, was adjourned by the presiding officer, who did not at the time of adjournment notify the time and place of the adjourned meeting as required by section 10 (2) of the Ordinance,—

Held, that the election could not be set aside on the ground of a legal defect, unless the Court was satisfied that the application was a *bona fide* one and was directed to relive a real grievance.

APPLICATION by way of *quo warranto* to set aside the election of a Committee for the village of Kosgoda held under the Village Communities Ordinance, No. 9 of 1924.

The application was made on the ground that the presiding officer in adjourning a previous meeting had not announced, as required by section 10 (2) of the Ordinance, the date of the adjourned meeting.

H. V. Perera (with *Deraniyagala*), for the respondent.—We object to the writ being made absolute on the following grounds :—

(1) Lack of *bona fides.*
(2) Delay.
(3) Acquiescence of the applicant in the proceedings.

This application is brought by the applicant in bad faith because his party did not get in. His motives are bad, and a Court will not encourage an application in a writ in these circumstances. (*Short on Mandamus, p. 251.*)

He has delayed to come to court. Delay is a circumstance that must be taken into consideration against the accused. (*Short on Mandamus, p. 250.*)

The applicant was present at the proceedings and took part in them. He did not object to the proceedings which he seeks to attack. He acquiesced in them. He cannot now come to Court and say they are bad when he has not objected to them there. This action is being instigated by another, and the applicant is seeking to use the powers of the Court to satisfy his injured feeling.

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Basnayake, for petitioner.—The question of delay cannot be said to arise in this case. Even three months cannot be said to be delay in these circumstances. Some of the applicant's affidavits are in the very month of the elections. We cannot ask for a writ of *quo warranto* until the respondents are in office. (*The King v. Whitwell.*[1])

The question of *bona fides* should be taken into consideration. If the requirements of the law are satisfied, the *bona fides* (*Rex v. Benny* [2]) of the relator need not be considered.

The word " acquiescence " does not occur in *Short on Mandamus* in relation to writs of this nature. " Concurrence " is the word he uses. A person present at an election cannot be said to concur in it. He may vote against a particular candidate who is elected and he cannot be said to have concurred in his election. (*Rex v. Huxam,*[3] *The King v. Clarke,*[4] *The King v. Symmons,*[5] *The King v. Trevenen,*[6] *The King v. Stewart,*[7] *The King v. Smith.*[8])

October 12, 1928. DRIEBERG J.—

The petitioner asks that the election of a Committee for the village of Kosgoda held under the Village Communities Ordinance, No. 9 of 1924, on April 28, 1928, be declared *null* and *void*.

The meeting was first held on March 3, 1928. This was not one held in the ordinary course. I am informed by Mr. Perera that the previous election, which was for a Committee to hold office from July, 1927, was declared *void* by the Supreme Court in the case reported in *29 N. L. R. 129*. It is only necessary to refer to this, for it would appear from it that the Committee elected at this election would enter on office immediately and not on July 1 following.

At a meeting on March 3 six Committees were proposed. The first Committee of thirty-five names was proposed by C. M. Wickremesinghe and included the petitioner. After recording votes for C. M. Wickremesinghe's Committee and apparently part of the votes for another Committee, the presiding officer, Mr. Schrader, the Government Agent of the Southern Province, found it impossible to proceed with the meeting owing to the disorder which prevailed from voters not carrying out his direction for their remaining in separate and distinct places indicated by him. This appeared to be due to C. M. Wickremesinghe among others disobeying orders of the presiding officer. C. M. Wickremesinghe himself proposed that the poll be adjourned and this was seconded. The presiding officer accordingly adjourned the meeting, but he

[1] *Irvin Rep. vol. 5, p. 85.*
[2] *1 Bar. & Ad. 684.*
[3] *4 Jurist 1133.*
[4] *1 East 38.*
[5] *4 T. R. 223.*
[6] *2 Bar. & Ad. (1818-1819), p. 339.*
[7] *3 East 213.*
[8] *3 T. R. 573.*

did not, as required by section 10 (2) of the Ordinance, announce then the time and place of the adjourned meeting. The application to set aside the election is based solely on non-compliance with this provision.

On March 19 the Government Agent duly advertised the adjourned meeting for April 28. On April 28 C. M. Wickremesinghe was present and also the petitioner. No objection was taken to the regularity of the meeting though the petitioner admits that he became aware of requirements of the Ordinance on April 26.

The proceedings of April 28 show that C. M. Wickremesinghe took various objections to the admission of certain people as voters. After these objections had been considered Wickremesinghe complained that the headman was interfering with his voters and he and another shouted to the people to leave. He applied to the presiding officer to withdraw his motion, but the latter said that he saw no justification for that as everything was going on smoothly till this sudden commotion. No votes were registered for Wickremesinghe's Committee, but another Committee was declared duly elected. It appears that this Committee since that time has held meetings, collected taxes and rates, and expended considerable sums of money for village works.

I have referred to the part played by C. M. Wickremesinghe in this matter because the affidavit for the respondents which is not met on this point by a counter affidavit, states that the present application is at the instance of Wickremesinghe as he was once unseated from the office of Chairman.

The question is whether under the circumstances which I have related and others to which I shall refer later, the election is liable to be set aside for non-observance of the provisions of section 10 (2).

The principles on which an election may be set aside on a proceeding *quo warranto* are now well settled, and it cannot be now urged that if there is a legal defect in the election the Court is bound to set it aside. " This proposition," said Lord Denman C.J. in *King v. Parry*[1] " is wholly untenable. Every case (and they are most numerous), which has turned upon the interest, motives, or conduct of the relator, proceeds upon the principle of the Court's discretion. However clear in point of law the objection may have been to the party's abstract right to retain his office, yet the Court has again and again refused to look at it or interfere upon one or other of these grounds."

In the Winchelsea cases[2] which are not available to me, but which are referred to in *King v. Parry* (*supra*), Lord Mansfield treated the discretionary power of the Court, not as a matter disputed or requiring proof, but as a settled principle to be applied ;

[1] *6 Add. & E. 810.* [2] *1 Sir W. B. 634 ; 4 Burr. 1962, 2022, 2120.*

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and in *Burr, p. 2123*, he stated the grounds on which the Court in those cases proceeded in their application of the principle. Firstly, "the light in which the three relators, now informing the Court of this defect of title, appear; from their behaviour and conduct relative to the subject-matter of their information, previous to their making this motion." Secondly, "the light in which the application itself manifestly shows their motives, and the purpose which it is calculated to serve." Thirdly, "the consequences of granting the information."

A further condition is to be found in the case of *Regina v. Ward*[1] where Lord Blackburn said in dealing with irregularities in an election: "We think, however, that seeing that the mistake committed here has produced no result whatever; that the same persons have been elected who would have been elected if the election had been conducted with the most scrupulous regularity; and that the defendant's title if bad at all, is only bad as I may say on special demurer; we ought, in the exercise of our discretion, to refuse leave to disturb the peace of the district by filing this information."

It is necessary therefore that the application should be a *bona fide* one directed to relieve a real grievance.

The petitioner states that many voters who were present on March 3 did not attend on the 28th, and that although he was present on the 28th, he did not take an active part in the proceedings of the day as he knew they were irregular. If he was acting *bona fide* I should have thought that he would have drawn the attention of the presiding officer to the irregularity.

The respondents say, and their affidavit is uncontradicted on this point, that C. M. Wickremesinghe and the petitioner actively canvassed at the adjourned meeting and only left it when they found that they had little support; that so far from questioning the regularity of the meeting the petitioner supported the candidature of C. M. Wickremesinghe and issued printed posters soliciting votes for him.

This application was not made until July 24, three months after the election.

There is in this case the further element of concurrence and acquiescence in the election, which is also a ground for refusing to set it aside. I have referred to the part played by C. M. Wickremesinghe at the second meeting as the petitioner has not denied the averments of the respondents that this application is made really at the instance of Wickremesinghe.

I limited the argument in this application to the affidavit of the petitioner and the counter affidavit of the respondents. Other affidavits were submitted by the petitioner, which I could not consider as copies of them had not been served on the respondents.

[1] *(1873) L. R. 8, Q. B. 210.*

Mr. Basnayake relied on the case of *Rex v. Smith*,[1] where objection was taken to the election of a mayor on the ground that he had not complied with a certain statute which required that he should have taken the sacrament according to the rites of the Church of England within one year next before his election. The Court set aside the election and held that the relators were not disqualified by reason of their having concurred in the election of the defendant, the defect being one not in the form of conducting the election but in the non-compliance with a positive requirement of the law regarding the qualification of a person elected to be a corporate office.

The provision that the date of the adjourned meeting should be declared when the adjournment is decided on cannot be regarded as anything more than a rule for the conduct of an election. A notice so given is not more formal and certainly not more effective than the written publication of the notice required for the initial election, which would have the advantage of conveying notice to those who were not present at the first meeting.

It is not possible therefore to regard this requirement of section 10 (2) as one of the same nature as that dealt with in *Rex v. Smith* (*supra*).

In my opinion this application cannot succeed. It is not a *bona fide* one made to obtain redress against a real grievance and the conduct of the petitioner disentitled him to relief of this nature.

I therefore discharge the rule issued by this Court. The petitioner will pay the costs of the first, third, fourth, sixth, eighth, ninth, eleventh, thirteenth, fourteenth, and thirty-fourth respondents.

Rule discharged.

[1] *3 T. R. 573.*