1937

Present : **Hearne J.**

CŪMARASINGHE *v.* ABEYRATNE.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Quo warranto.*

Writ of quo warranto—*Election of Village Committee—Objection to qualification of member on ground of age—Objection overruled by presiding officer—Judicial functions—No writ to canvass decision—Ordinance No. 9 of 1924, s. 18 (a).*

Where at an election for a Village Committee objection was taken that the respondent was disqualified to be elected on the ground that he was under 25 years of age and the presiding officer overruled the objection under section 25 of the Village Communities Ordinance—

Held, that a writ of *quo warranto* would not lie to canvass the decision of the presiding officer as he was exercising functions of a judicial character.

In re Writ of quo warranto *against S. A. de Silva* (*15 C. L. Rec. 206*) followed.

Quaere, whether, if the application had been for a declaration that the respondent, notwithstanding his election, is disqualified from holding office, the writ would lie.

THIS was an application for a writ of *quo warranto* to have the election of the respondent as a member of a village committee set aside on the ground that he was disqualified under section 18 (*a*) of Ordinance No. 9 of 1924 from being elected. At the election the presiding officer overruled the objection. The applicant filed the birth certificate of the respondent showing that he was 21 years of age.

R. C. Fonseka, for petitioner.—Section 18 (*a*) of the Village Communities Ordinance, No. 9 of 1924, disqualifies any person who is under 25 years of age from being elected to a village committee. Respondent's certificate of birth shows he is 21. The presiding officer did not hold a full and sufficient inquiry.

B. H. Aluwihare (with him *Curtis*), for respondent.—The decision of the presiding officer is "final and conclusive"—section 25 of Ordinance No. 9 of 1924. The same section empowers the presiding officer to hold an inquiry then and there as he may "deem requisite". The inquiry held by him must be presumed to be a proper and sufficient one in the absence of evidence to the contrary.

In deciding on the qualification of candidates the presiding officer was acting in a judicial character and not in a ministerial character. His decision in that character, though erroneous, cannot be questioned by *quo warranto*. (*Shortt on Mandamus, p. 132 ; In re* quo warranto *on Chairman, Local Board, Matara*[1]*; In re Writ of* quo warranto *on S. A. de Silva*[2].)

Cur. adv. vult.

September 18, 1937. HEARNE J.—

On June 5, 1937, a meeting was held in the Asgiriya Udasiya pattu division of Matale District in order to elect a village committee in terms of Ordinance No. 9 of 1924. The applicant and the respondent were candidates and the latter was elected.

[1] *4 C. L. Rec. 81.*

[2] *15 C. L. Rec. 206.*

The applicant objected to the election of the respondent on the ground that he was disqualified under section 18 (*a*) of the Ordinance but the presiding officer, the Government Agent, overruled the objection. The respondent's birth certificate has been filed. He is 21 years of age. Under section 18 (*a*) a person shall be disqualified to be elected unless he is over 25 years of age. There is, therefore, now no question that the respondent's age disqualified him from being elected.

The applicant prayed for the issue of a writ of *quo warranto* on the respondent who entered an appearance through Counsel to show cause why the application should not be allowed.

Section 25 (1) and (2) of the relevant Ordinance is as follows :—

(1) " If at any meeting any question shall be raised as to the right of any person to vote or to be elected as member of a committee the Government Agent shall then and there make such inquiry as he may deem requisite and decide whether or not such person has the right to vote or to be elected.

(2) " Such decision shall be final and conclusive ".

In a case dealing with *quo warranto* proceedings and reported in *4 Cey. Law Rec. 81*, Ennis J. said, " The only question of fact is whether section 14 of the Board of Health Improvement Ordinance, No. 13 of 1898, provides that the Chairman shall act judicially on any objection raised to an election. In my opinion section 14 does so provide. It authorizes the Chairman upon being satisfied that the election was not duly and regularly held or any member not duly elected to declare the election void altogether or void as to any particular member. In my opinion the Chairman acting under that section is clearly exercising a judicial function, and applying the rule of *Regina v. Collins*[1] no writ of *quo warranto* will lie ".

In an application for a writ of *quo warranto* against S. A. de Silva reporter in *15 Cey. Law Rec., p. 206,* Poyser J. followed *4 Cey. Law Rec., p. 81,* and quoted *Shortt on Informations* (criminal and quo warranto), *Mandamus and Prohibitions (1st ed.), p. 132,* which is as follows :—

" If there is any person who is appointed by law to discharge, at the election to an office, any functions of a judicial character with respect to it, an erroneous decision of such person in that character cannot be questioned by *quo warranto* ".

Counsel for the applicant was unable to argue that the Government Agent was exercising a ministerial as distinct from a judicial function. Apart from this the words " final and conclusive " appearing in section 25 (2) have been considered by this Court for the purpose of interpreting section 29 of Ordinance No. 11 of 1920 and it was held by Koch J. that they must be given " their due weight ". I, therefore, discharge the rule against the respondent. I do not consider this is a suitable case for costs.

Now the rule which I have discharged and which the applicant asked the Court to make absolute was " that the election of the respondent was null and void " by reason of an erroneous decision made by the Government Agent. Such a rule, if made absolute, would have been, as I have indicated, repugnant to the authorities I have cited. But as

[1] *2 Q. B. D. 30.*

section 18 not only enacts that a person shall be disqualified to be elected but also *to be* a member of a village committee unless he is over 25 years of age—and the respondent is certainly not—it is possible that the application would have had a different result if what was sought was not a declaration that the election of the respondent was void but a declaration that the respondent, notwithstanding his election, is disqualified from holding office. I would, however, point out that this represents my view on a question of law which was not taken, which was outside the scope of the application and on which I had not the advantage of hearing arguments by Counsel.

In the case of *The Queen v. Diplock*[1], it was sought to question the validity of votes given at the election of a coroner. After holding that as the Sheriff exercised judicial functions in his scrutiny of the votes "the validity of votes cannot be inquired into on a *quo warranto*". Cockburn C.J. said, "I am very far from saying that there may not be cases in which a *quo warranto* would lie as to the office of coroner; as where the candidate elected was personally disqualified . . . ."

It is, however, the case of *The King v. Beer*[2], which illustrates my view that even if there has been an election *de facto* and even if the validity of the election cannot be questioned by *quo warranto*, the remedy is nevertheless available for the purpose of calling upon a person, who is *prima facie* disqualified from holding a particular office to show upon what authority he claims to hold such office.

In that case the defendant was called upon to show by what authority he claimed to hold the office of councillor of a borough, the objection being that he was a bankrupt and therefore disqualified. It was held that the election could not be questioned on a *quo warranto*, as an election petition would have been the appropriate remedy for objecting to the election but that nevertheless the remedy by *quo warranto* was available where the disqualification was in respect of holding or exercising the office, as well as being elected thereto. *9 Halsbury (Hailsham ed.), footnote to paragraph 1377, p. 809.*

In his judgment Lord Alverstone C.J. said, "It is true that section 87 (of the Municipal Corporations Act, 1882) says that an election shall only be questioned by election petition where the ground of the objection is disqualification at the time of the election; but I do not think that this extends to the continuous holding of the office by the person so disqualified". And again "Although section 39 of the Municipal Corporations Act, 1882, applies to a disqualification by bankruptcy arising after an election, I think that where there is a continuing disqualification the right to hold the office may still be questioned by *quo warranto*".

Section 18 (*a*) of Ordinance No. 9 of 1924 amounts to a statutory declaration that a person who is not over 25 years of age may not be a member of a village committee, and I venture to think that if an application had been made for a rule that the respondent, though elected, is disqualified from taking his place as a member of the village committee it might very well have been successful.

Application refused.

[1] *L. R. (4 Q. B.) 549.*

[2] *(1903) 2 K. B. 693.*