

1960

Present : T. S. Fernando, J.

B. L. SEEMON SINGHO, Petitioner, and K. M.
WICKREMASINGHE, Respondent

*S. C. 36 of 1960—In the matter of an Application for a Mandate in the
nature of a Writ of Quo Warranto*

*Urban Council — Disqualification for membership — Local Authorities Elections
Ordinance, No. 53 of 1946, s. 10 (1).*

A person who is in the position of a sub-contractor in respect of a contract entered into by another person with a local authority is not necessarily disqualified thereby by section 10 (1) of the Local Authorities Elections Ordinance from sitting and voting as a member of that local authority.

A and B were two brothers. A entered into a contract with an Urban Council to supply the petrol and lubricants required by the Council for its lorries. The address set down by A in his tender form was admittedly the premises in which B carried on the business of a Shell Petrol Service Station. It was also common ground that all the petrol and lubricants supplied by A upon the contract were made available to the Council from a petrol service station of which B was the authorised dealer.

It was contended that the contract was (a) held or enjoyed by B himself indirectly or (b) held by A on account of or for the use or benefit of B.

Held, that B was not disqualified by section 10 (1) of the Local Authorities Elections Ordinance from being elected as a member of the Urban Council.

APPPLICATION for a writ of *quo warranto*.

E. R. S. R. Coomaraswamy, with E. B. Vannitombi, for the petitioner.

H. W. Jayewardene, Q.C., with C. D. S. Siriwardene, for the respondent.

Cur. adv. vult.

July 26, 1960. T. S. FERNANDO, J.—

This application canvasses the eligibility of the respondent, the Chairman of the Kalutara Urban Council, to sit and vote as a member of the said Council. The ground upon which the qualification of the respondent has been challenged is contained in Section 10 (1) of the Local Authorities Elections Ordinance, No. 53 of 1946, the relevant part of which I reproduce below :—

“ No person shall, at any time, be qualified to be elected under this Ordinance, or to sit or to vote, as a member of any local authority, if such person at that time directly or indirectly, *himself or by any other person whatsoever in trust for him or for his use or benefit or on his account* holds or enjoys, in the whole or in part, any contract or agreement or commission made or entered into with or accepted from any person for or on account of such authority :”

The facts relevant to the ground upon which the application is based may be set down as follows :—At an ordinary general meeting of the Urban Council of Kalutara held on 18th October 1958 presided over by the respondent as Chairman, the Council decided, on the recommendation of what has been described as the Tender Committee, to accept a tender by one S. M. Wickremasinghe to supply the petrol and lubricants required by the Council for its lorries. S. M. Wickremasinghe is the brother of the respondent, and the address set down by the tenderer in the tender form was 762, Galle Road, Bambalapitiya, which is admittedly the premises in which the respondent carries on the business of a Shell Petrol service station. The period stipulated in the contract for the supply of oil and lubricants covered the entirety of the year 1959. It is common ground that all the petrol and lubricants supplied by S. M. Wickremasinghe during this period on the contract entered into by him with the Council consequent upon the acceptance of his tender were made available to the Council from a petrol service station situated at No. 799, Main Street, Kalutara, of which station the respondent was at all material times the authorised dealer. The respondent continued to hold the office of Chairman of the Council during the year 1959 and at an election of members of the Council for the three-year period of 1960 to 1962 was, on the 28th of November 1959, again elected a member. It is this election of the respondent in November 1959 that forms the subject of challenge on this application.

Upon the facts above set out, it has been urged on behalf of the petitioner that the 1959 contract was (a) held or enjoyed by the respondent himself indirectly or (b) held by S. M. Wickremasinghe on account of or for the use or benefit of the respondent. On the other hand, it has been submitted that there is no requirement that a person contracting to supply oil and lubricants should himself be a dealer in such products and that there is no reason why a successful tenderer should not obtain all supplies necessary to enable him to perform his obligations under the contract from some other person. It is submitted that the obtaining by the successful tenderer of the necessary supplies from his brother cannot have the effect of conferring on the latter the character of a contractor with the Council. It is contended that, putting the case for the petitioner at the highest, even if the respondent is considered to have put himself in the position of a sub-contractor he does not thereby attract to himself the disqualification for membership of the Council contemplated by the statute. Mr. Jayewardene, for the respondent, has invited my attention to the old case of *Thompson v. Pearce*¹ which related to an action brought under an English statute (22 Geo. 3, c. 45) to recover penalties from a member of the House of Commons for sitting in the House whilst being disqualified. The relevant wording of the disqualifying section (section 1) bears a close correspondence to the wording of the Ordinance we are concerned with in the present case and is as follows :—

“ That any person who shall directly or indirectly himself, or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission shall be incapable of being elected, or of sitting or voting as a member of the House of Commons, during the time that he shall execute, hold or enjoy any such contract, agreement or commission ”

The facts upon which the case came to be decided were shortly that a General Nichols, colonel of an infantry regiment, received an order from Government to clothe his men. It was the duty of the colonel to clothe his men; the colonel received as part of his office an emolument for clothing his men; if the men deserted with their clothes the loss fell on the colonel. The colonel by his agents placed an order with the defendant, a clothier, to furnish his regiment with army clothing. During the pendency of the contract between the colonel and the defendant the defendant was elected a Member of the House of Commons. Dallas C.J. in deciding in favour of the defendant stated :— “ the defendant receives nothing from government; he never looks to government for payment of a farthing; he looks only to General Nichols ”

¹ (1819) 1 Brod & B 25; 129 Eng. Rep. 632.

The clothier is paid, not by the government, but by the person who has given him an order in his trade or business; and this extraordinary position is made, that because these are articles which have application to the public service, the tradesman is disqualified as a contractor with government. Let us see how far this argument would go. The army clothier pays the tailor, the draper, the button-maker, and the lace-maker under him; and they employ subordinate persons under them. Everything, which each of these parties furnishes, has an application to the service of the public; and all of them according to this comprehensive argument, would be considered as contractors with the public, and so be disqualified from sitting or voting in parliament. I cannot think that such was the intention of the Act; and am therefore of opinion that it is impossible to consider the defendant's case as falling within this statute." Richardson J. in the same case observed that, if it could be considered that General Nichols was a contractor with government within the meaning of the Act, he would still think that the defendant, or a sub-contractor, was not liable to the penalties imposed by the statute. "The Act", to quote his own words, "can only extend to those who come immediately in contact with government; if it were otherwise, a large proportion of competent persons must, in time of war, be excluded from sitting in parliament."

Mr. Jayewardene appeared to me to be equating the position of the respondent to that of a sub-contractor, and I am unable to say that on the evidence in the case he was not right in so doing. It is not necessary for me to decide in this case whether a person who appears to fall into the category of a sub-contractor is always entitled to be free of the disqualification imposed by the Ordinance in question. One can conceive of cases where the garment of a sub-contractor can be removed in circumstances where his real character of the contractor may be revealed. But have we that spectacle here? The burden of satisfying this Court that the respondent is disqualified by the statute is upon the petitioner. The petitioner has succeeded in showing only that the respondent and the contractor are brothers, that the contractor uses the respondent's business premises as an address for correspondence and that all the supplies in pursuance of the contract have been channelled from the stocks of the respondent. The case set up by the petitioner raises at best but a suspicion that the contract in question was held or enjoyed indirectly by the respondent himself or that it was for the use or benefit or on account of the respondent. In this situation the duty of this Court is clear, and that is to discharge the rule with costs. I must add that counsel before me were agreed that costs should be fixed at a sum of Rs. 1,575, and they are accordingly so fixed.

Rule discharged.