

1971 Present: H. N. G. Fernando, C.J., and Thamotheram, J.

N. ANTHONIPILLAI, Petitioner, and A. G. RAJASOORIAR,
Respondent

*S. C. 676/69—Application for a Mandate in the nature of a Writ
of Quo Warranto*

*Local Authorities Elections Ordinance (Cap. 262)—Section 9, as amended by s. 4 of
Act No. 9 of 1963—Disqualification of a person for membership of a local
authority when he is a member of any other local authority—Whether quo
warranto lies.*

The election of a person as a member of a local authority when he is already
a member of any other local authority is liable to be declared null and void
by a writ of *Quo Warranto*. In such a case the provisions of section 9 of the
Local Authorities Elections Ordinance, as amended by section 4 of Act No. 9 of
1963, are applicable.

Sundara Banda v. Pathirana (73 N. L. R. 100) distinguished.

APPPLICATION for a writ of *quo warranto*.

K. N. Choksy, with *M. Devasagayam*, for the petitioner.

H. W. Jayewardene, Q.C., with *C. Chellappah*, for the respondent.

Cur. adv. vult.

September 19, 1970. H. N. G. FERNANDO, C.J.—

The Respondent to this application was a candidate at an Election of
members of the Jaffna Municipal Council. After that Election was held
he was declared to have been elected as the member for Ward No. 1 of
the Council.

Section 9 of the Local Authorities Elections Ordinance (Cap. 262), as amended by s. 4 of Act No. 9 of 1963, provides that a person shall not at any time be qualified to be elected as a member of a local authority, if such person at that time "is a member of any other local authority". It is not contested in this case that the Respondent was, at the time of his election as a member of the Jaffna Municipal Council, already a member of the Village Council of Pulopallai. *Prima facie*, therefore, he was disqualified for election to the Jaffna Council.

Counsel for the respondent has argued, however, that the Writ of Quo Warranto will not lie against a person who was disqualified for election at the time of his election. Counsel relied on two recent decisions of this Court.

In *Sundara Banda v. Pathirana*¹ it was held that the Writ will not lie to remove from office a person elected as a member of a Village Council on the ground that he was not ordinarily resident within some Ward of the village area. The judgment relied on the fact that although the requirement of "ordinary residence" is prescribed in s. 8 of Cap. 262, s. 9 does not provide that a person who does not fulfil that requirement is disqualified from being elected as a member of a local authority. For this reason the Court was of opinion that "the Legislature does not appear to have regarded non-qualification under s. 8 as a ground on which an election shall be declared void".

The present case is however different, for s. 9 (as amended in 1963) expressly provides that a person is disqualified for election if he is a member of another Local Authority.

In *Martin Perera v. Madadombe*², this Court held that the Writ will not lie on the ground that an election of a member of a Local Authority was procured by general undue influence and/or general treating. Thus there did not arise in that case the question whether or not the Writ will lie in cases where it is sought on the ground that a person is disqualified from membership by s. 9. The judgment states that ss. 9 and 10 make it manifest that a person who is disqualified by s. 9 cannot lawfully hold a seat or office as a member of a Local Authority, and that the jurisdiction to oust such a person must undoubtedly be exercised if a Court is satisfied that no alternative or effective procedure is provided by Statute Law. The arguments during the present hearing did not establish that there is such an effective alternative.

For these reasons we made order declaring the election of the respondent to be null and void.

THAMOTHERAM, J.—I agree.

Application allowed.

¹ (1970) 73 N.L. R. 100.

² (1969) 73 N.L. R. 25.