

1961

Present : T. S. Fernando, J.

G. M. HERATH BANDA, Applicant, and P. S. DISSANAYAKE,
Respondent

S. C. 365 of 1961—Application for a mandate in the nature of a Writ of Quo Warranto on Punchirallegedera Suddahamy Dissanayake, functioning in the office of Chairman, Village Committee of Ambanpola

Local Authorities Elections Ordinance No. 53 of 1946, as amended by Act No. 25 of 1953—Section 9—“Residence”—Meaning of expression “on the date of the preparation or revision of the parliamentary register for the time being in operation”—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 4, 16, 22 (2)—Quo warranto.

The respondent, who was a teacher in a Government school at Ambanpola in the electoral district of Yapahuwa, was residing at Ambanpola till the year 1952. As a result of his being transferred to a school at Gothatuwa in the electoral district of Kolonnawa he took up residence at Gothatuwa and resided there until he retired in January 1960 from service under Government. It was not until 1st July 1960 that he took up residence again in his native village

¹ (1959) 60 N. L. R. 398, at 401.

of Ambanpola. His name, however, and that of his wife appeared not only on the register of electors of the Kolonnawa electoral district certified on December 15, 1960, but also on the electoral list for a ward in which he was resident while he functioned as a teacher at the Gothatuwa school.

At an election held on June 15, 1961, the respondent was elected as the member for Ambanpola ward of the Ambanpola Village Committee.

Held, (i) that the fact that during the time he was teaching at Gothatuwa school he made frequent visits to Ambanpola and took up periodic residence there during the school vacations did not entitle the respondent to the benefit of section 4 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, and to claim that he was resident also at Ambanpola prior to 1st July 1960 so as to qualify him to be on the electoral register for Yapahuwa.

(ii) that the crucial date for determining qualification for membership in terms of section 9 of the Local Authorities Elections Ordinance No. 53 of 1946, as amended by Act No. 25 of 1953, can be fixed only with reference to the register that is in operation as defined by law and not with reference to the date of the commencement of its revision, if such revision has commenced in terms of section 16 of the Parliamentary Elections Order in Council but has not been completed.

APPPLICATION for a writ of *quo warranto* on the Chairman, Village Committee of Ambanpola.

F. A. de Silva, for the applicant.

Izadeen Mohamed, with *H. D. Tambiah*, for the respondent.

Cur. adv. vult.

November 29, 1961. T. S. FERNANDO, J.—

This application involves an interpretation of section 9 of the Local Authorities Elections Ordinance, No. 53 of 1946, as amended by Act No. 25 of 1953, a provision of law which is of practical interest to persons seeking election as members of a local authority. This section as in force at present reads as follows:—

“ Every person who is not disqualified as provided by section 10 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 and the petitioner were candidates for election as the member for Ambanpola ward (ward No. 9) of the Ambanpola Village Committee at an election held on June 15, 1961. The respondent was elected as the member for that ward by a majority of 24 votes and was thereafter elected Chairman of the Village Committee at a meeting held on July 20, 1961. It is not disputed that the respondent has since performed duties as Chairman of the Village Committee.

The petitioner contends that at the time of his election as member for Ambanpola Ward the respondent was not qualified for election as required by section 9 aforesaid in that

- (a) he was not, on the date of the commencement of the preparation of the Parliamentary register for the time being in operation for the electoral district of Yapahuwa in which the electoral area of Ambanpola is situated, qualified to have his name entered on that register ; and
- (b) he was not, on the date aforesaid, resident either in Ambanpola Ward or any other ward of the electoral area of the Ambanpola Village Committee.

Section 4 of the Ceylon (Parliamentary Elections) Order in Council, 1946, which enumerates some of the circumstances in which a person becomes disqualified to have his name entered or retained in any register of electors in any year enacts, inter alia, that a person shall be so disqualified if he has not, for a continuous period of six months in the eighteen months immediately prior to the first day of June in that year resided in the electoral district to which the register relates.

In regard to the residence of the respondent, while it is not denied that the respondent had been resident in the Ambanpola Ward till the year 1952, it is conceded that in 1952, as a result of the respondent who was a teacher in a Government school being transferred as a teacher to a school at Gothatuwa in the Colombo district, the respondent took up residence along with his wife at Gothatuwa and resided there until he retired in January 1960 from service under Government. Gothatuwa is situated in the electoral district of Kolonnawa. It was not until 1st July 1960 that the respondent again took up residence in his native village of Ambanpola. The respondent has stated in his affidavit presented in this case that during the time he was teaching at Gothatuwa school he made frequent visits to Ambanpola and took up periodic residence there during the school vacations. Learned counsel who appeared for him sought to obtain for him, in regard to the qualification to have his name entered in the Parliamentary register for Yapahuwa, the benefit of section 4 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, which is in the following terms :—

“ For the purposes of this Section, continuity of residence in an electoral district shall not be deemed to be interrupted by reason only of absence in the performance of any duty accruing from or incidental to any office, service or employment held or undertaken by any person otherwise qualified to have his name entered on any register.”

This sub-section can be of little avail to the respondent on the present application as, unfortunately for him, not only do the names of his wife and himself appear on the register of electors of the Kolonnawa electoral district certified on December 15, 1960, but their names appear also on the electoral list for the ward (Ward No. 15) of Ambatalen Pahala Village Committee, that being the ward in which they were resident while the respondent functioned as a teacher at the Gothatuwa school. In this state of the facts it is not open to the respondent to maintain the contention that he was resident also at Ambanpola prior to 1st July 1960 so as to qualify him to be on the electoral register for Yapahuwa.

Yapahuwa being one of the new electoral districts created following upon the 1959 delimitation of Parliamentary electoral districts, it has not been disputed that the Parliamentary register in operation on June 15 1961 was the unrevised register which had been first prepared and certified following upon the new delimitation of districts. The first revision could have commenced in terms of section 16 of the Parliamentary Elections Order in Council only on 1st June 1961. It is also not disputed that if the date on which the qualifications required by section 9 had to exist was 1st June 1961 the respondent had the necessary qualifications.

The point requiring determination on this application therefore narrows down to the meaning of the expression "on the date of the commencement or revision of the parliamentary register for the time being in operation" appearing in section 9 of the Act. If the date is in the present case 1st June 1961 this application must fail, while if the date is the date of commencement of the preparation of the parliamentary register in question (which it is agreed is some date anterior to January 31, 1960) the application must succeed.

The parliamentary register that is contemplated in section 9 is the register for the time being in operation. Section 22 (2) of the Parliamentary Elections Order in Council declares that the certified register (i.e. the register certified by the registering officer in terms of section 20 of the Order in Council) shall come into operation on the date of publication in the Government Gazette of the notice of certification. The register in operation on 15th June 1961, as I have stated already, was the register that had been first certified and not the register the first revision of which commenced only on 1st June 1961. At the date of the Ambanpola Village Committee election on 15th June 1961 the Yapahuwa parliamentary register which had been first certified was still in the process of revision. Although at first I was inclined to the view that the date of the commencement of the revision (viz. 1st June 1961) was the date contemplated, it became clear to me on reflection that the crucial date can be fixed only with reference to the register that is in operation as defined by law. I may add that, as pointed out by counsel, a person is required by section 9 to be qualified to have his name entered "in that register", i.e. the register that is for the time being in operation. The conclusion to which one is therefore compelled is that the respondent

to this application was required to have been qualified to have had his name on the register on the date on which the register that was in operation on June 15, 1961 commenced to be prepared or revised, as the case may have been. That register being an unrevised register, the crucial date is the date on which the preparation of that register commenced; if it had been a revised register, then the crucial date would have been the date on which its revision commenced. The underlying intention of the legislature appears to be not to disqualify a person who was qualified to have his name included in the certified register although his name may for some reason or other have escaped inclusion.

The respondent was not in my opinion qualified on the date of the commencement of the preparation of the parliamentary register for Yapahuwa to have his name entered in that register. Nor was he on that date resident within the Ambanpola Village Committee area. For both these reasons the rule nisi that has already issued has to be made absolute and the election of the respondent as member for Ambanpola ward (Ward No. 9) of the Ambanpola Village Committee has to be quashed. I make order accordingly.

The respondent will pay to the petitioner the taxed costs of this application.

Rule made absolute.

