

1930

Present : Maartensz A.J.

G. R. KARUNARATNE v. GOVERNMENT AGENT, WESTERN PROVINCE.

In the Matter of an Application for a Writ of *Mandamus*.

Village Communities Ordinance—Election of Committee—Disqualification of members and voters—Presence of relator at meeting—Failure to object—Ordinance No. 9 of 1925, s. 25.

Where application is made to the Supreme Court to set aside the election of a village committee on the ground of the disqualification of committee members or voters, the fact that the applicant was present at the election and raised no objection under section 25 of the Village Communities Ordinance does not preclude him from making the application. His right to lay the information may, however, be impeached on proof that he knowingly acquiesced in the election to which he objects.

An election will not be declared void merely because no notice of the meeting had been given by tom-tom, unless there is proof that the result would have been different, had there been such notice.

APPPLICATION for a writ of *mandamus* to have it declared that the election of the village committee for the Wattala subdivision, held on May 16, 1930, was void, and for a direction on the first respondent to hold a fresh election.

N. E. Weerasooriya (with him L. A. Rajapakse), for applicant.

R. L. Bartholomeusz, for 1st to 7th, 9th, 11th to 13th, 15th to 30th respondents.

D. A. Jayasuriya, for 8th, 10th, 14th, and 31st respondents.

Crossette Thambiah, C.C., for Government Agent, Western Province.

August 8, 1930. MAARTENSZ A. J.—

This is an application for a writ of *mandamus* in which the petitioner moves this Court to declare the election held at

Wattala on May 16, 1930, for the election of committee members for the village committee of Wattala subdivision void, and to direct that a writ of *mandamus* be issued on the first respondent directing him to hold a fresh election.

At the meeting held on May 16, 1930, at Wattala for the purpose of electing a committee, the second to thirty-first respondents were elected members of the committee following upon a resolution that the committee should consist of 30 members. Petitioner alleges that the election was void, as—

(a) The tenth respondent, J. D. Benedict, being under 25 years of age is disqualified to be elected under the provisions of section 18 of the Village Communities Ordinance, No. 9 of 1924.

This is admitted.

(b) The seventeenth respondent, Cyprian E. Perera, is disqualified to be elected as he is unable to read and write Sinhalese, the prevailing language in the subdivision.

(c) About a 100 persons who reside within the Sanitary Board of Paliyagoda who are not entitled to vote at the said election registered their votes for the successful candidates.

(d) Notice of the meeting to be held for the purpose of the said election was not given by beat of tom-tom as required by the Ordinance.

(e) As the meeting was not postponed or time of commencement deferred, as requested by Mr. T. Don Joseph of Pamunugama, the President of the Maha Jana Sabha of that place.

(f) The committee is to consist of 30 members and there being no provisions in the Ordinance for the committee to act through a quorum by the disqualification of the tenth and seventeenth respondents no chairman can be validly elected and the committee is unable to function.

Objection (e) may be disposed of at once. I am not prepared to uphold it as Mr. T. Don Joseph is not the petitioner and I am not satisfied that a number of the inhabitants entitled to vote were unable to be present at the meeting as alleged.

As I have observed, it is admitted that the tenth respondent is under 25 years of age and is therefore disqualified to be elected under section 18 (a) of the Ordinance.

The allegation that the seventeenth respondent is unable to read and write Sinhalese is denied by him.

This is, however, not an application to this Court to declare their election void. Such an application will not lie as the petitioner admits in paragraph 2 of his petition that the second to thirty-first respondents have not accepted office.

The validity of the election of the tenth and seventeenth respondents can only be determined by an information of the nature of a *quo warranto*, and it has been held that such an information cannot be entertained unless the Court is satisfied that the person proceeded against has been in actual possession and user of the office in question. See the cases of *R. v. Whitwell*¹; *R. v. Jones*²; *In re Armstrong*³; *R. v. Slater*.⁴

The disqualification of the tenth and seventeenth respondents cannot affect the election of the other members of the committee. I am at present not called upon to decide how the powers of the committee will be affected by the fact that these members were not qualified to be elected. It is possible that the difficulty might be met by the remaining members of the committee electing duly qualified persons to fill their places under the provisions of section 24 of the Ordinance. It is true this section does not appear to contemplate the case of the election of members who were not qualified to be elected, but

it does contemplate the filling up of a vacancy created by a member refusing to accept office; and if the tenth and seventeenth respondents, if the last is in fact disqualified, refuse to accept office I see nothing to prevent their places being filled up by the remaining members of the committee under the provisions of the section.

The whole election can only be declared void if the meeting at which the committee was elected was not properly constituted by reason of the meeting not being held in accordance with the procedure laid down by the Ordinance.

Petitioner, except for the allegation that the notice of the meeting was not given by tom-tom, does not allege that the meeting was irregularly held. I am therefore unable to distinguish this application from the application which I considered in the Matter of the Application for a Writ of *Mandamus* on the Government Agent of the Northern Province,¹ in which I held that where a Government Agent had summoned a meeting of the inhabitants of a subdivision for the election of a village committee and had complied with the provisions of section 9 of the Village Communities Ordinance, No. 9 of 1924, an application for a *mandamus* directing him to hold another meeting could not be allowed because of an irregularity in the mode of election, which did not render the election a colourable one.

I need not deal with the other objection to the application that the petitioner is precluded by the provisions of section 25 of the Ordinance No. 9 of 1924 from raising an objection to the election of the committee or to the voters who took part in the election. But as the matter was fully argued I shall express my opinion regarding the validity of the objection.

Section 25 enacts :—

- (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

¹(1929) 31 N. L. R. 131.

¹ (1792) 5 Term. Rep. 85.

² (1873) 28 L. T. 270.

³ (1856) 25 L. J. Q. B. 238.

⁴ (1840) 11 Ad. & El. 505.

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.
- (3) An entry shall be made in the minutes of any such question and of the decision thereon.

The petitioner was admittedly present at the meeting and took part in the election of the committee, and it was contended that he should have raised his objection to the election of the tenth and seventeenth respondents and to the voters who are alleged to have no right to vote at the meeting, and that not having done so, he has no right to come to this Court for relief.

I am unable to uphold this contention. The first Village Communities Ordinance, No. 26 of 1871, provided, as was to be expected, a simple procedure for the election of a village committee.

The procedure laid down in the Ordinance of 1871 was not materially altered by the subsequent enactments Nos. 24 of 1889 and 9 of 1924.

The procedure was up to recent times found quite adequate and workable. But, latterly, with the competition for membership of the committee and the office of chairman the procedure has been subjected to critical examination and has been found to be in some respects defective.

For example, the inhabitants were expected to know each others qualifications well and it was not considered necessary to provide for the preparation of lists of persons qualified to be elected to the committee of a subdivision or to vote in that subdivision.

With the growth of the population the inhabitants of a subdivision may not know whether a member proposed for

election to the committee is qualified for not, or can be expected to know whether all persons present are entitled to vote.

In the circumstances a person cannot be precluded from coming to this Court merely because he was present at the meeting. Of course his qualification to act as relator can be impeached if it can be shown that he knowingly acquiesced in the election to which he objects. But he cannot be said to have concurred in an election, if he can show that he did so in ignorance of the circumstances which are alleged to render it invalid.

I accordingly hold that petitioner is not precluded by the provisions of section 25 from coming to this Court merely because he was present at the meeting.

Apart from section 25, his right to lay the information could be impeached by proof that he knowingly acquiesced in the election to which he objects.

The only question left for decision is whether an inquiry should be directed to determine whether notice of the meeting in question was given by beat of tom-tom.

The allegation that such notice was not given is denied by the first respondent and his denial is supported by the reports of the various headmen of the villages comprising the subdivision.

I was at first inclined to direct an inquiry, but on consideration it appears to me that no purpose will be served by an inquiry in which the petitioner will be called upon to prove a negative.

Moreover, this is not a meeting of which no notice at all was given, and, in my opinion, the election cannot be declared illegal unless it is alleged and proved that there would have been a different result if notice of the meeting was given by beat of tom-tom, and there is no such allegation.

I dismiss the application. The petitioner will pay, the costs of the respondents. The second to thirty-first respondents will not be entitled to more than one set of costs.

Application dismissed.