

1952

Present : Pulle J.

IN RE S. N. RAJAH (Elections Officer, Jaffna)

*Application for a Writ of Mandamus on D. S. Ratnadurai,
Returning Officer, Jaffna*

*Mandamus—Election for ward of Municipal Council—Application for recount of
ballot papers—Necessary parties—Local Authorities Elections Ordinance,
No. 53 of 1946, s. 68.*

An Elections Officer is not a necessary party to an application for a writ of *mandamus* in which relief is sought against the Returning Officer or the Counting Officer in respect of an election held under the Local Authorities Elections Ordinance.

MOTION for the discharge of one of the respondents in an application for a writ of *mandamus*.

Walter Jayawardene, Crown Counsel, in support of motion.

C. S. Barr Kumarakulasinghe, with *T. W. Rajaratnam*, for the petitioner respondent.

Cur. adv. vult.

October 10, 1952. PULLE J.—

The motion on which I am asked to make an order is at the instance of the 2nd respondent to an application for a writ of *mandamus*. The petitioner was the unsuccessful candidate at an election held on the 1st December, 1951, for Ward No. 13 of the Jaffna Municipal Council. The 3rd respondent was the successful candidate who won by a majority of seven votes. The ballot papers were counted twice by the 1st respondent who discharged the dual functions of Presiding Officer and Counting Officer. It is alleged against him that he failed to discharge the duty cast on him personally to count the ballot papers. The relief sought by the petitioner is a mandate on the 1st respondent ordering a recount of the ballot papers.

No relief is sought against the 2nd respondent but it is stated that he has been made a party to give him notice of the proceedings. The petitioner alleges that after the counting the 1st respondent handed the counted ballot papers, the rejected ballot papers, the counterfoils and the marked register to the 2nd respondent, who is described as the Elections Officer, in terms of section 68 of the Local Authorities Elections Ordinance, No. 53 of 1946. The 2nd respondent moves that he be discharged from the proceedings.

There is no statutory requirement that an Elections Officer should be made a party to any proceedings in which relief is sought against the Returning Officer or the Counting Officer. It is not argued for the petitioner that in order to enable the court effectually and completely to adjudicate upon the questions involved it is necessary that the 2nd respondent should be a party. If for any reason the petitioner thought it desirable to give notice to the 2nd respondent that he has applied for a writ of *mandamus* against the 1st respondent, he could have done so without making him a party to the case.

I would, therefore, allow the motion and discharge the 2nd respondent from the proceedings. He will be entitled to his costs.

Motion allowed.