

1961

Present : T. S. Fernando, J.

M. D. CHANDRASENA and two others, Petitioners, and S. F.
DE SILVA (Director of Education), Respondent

*S. C. 541—Application for a mandate in the nature of a Writ of
Quo Warranto*

*Quo warranto—Proof of usurpation of public office necessary—Meaning of term “public
office”—Manager of an unaided school—Does not hold public office—Education
(Amendment) Ordinance No. 26 of 1947, s. 15—Assisted Schools and Training
Colleges (Special Provisions) Act, No. 5 of 1960, ss. 5, 6.*

A writ of quo warranto does not lie against a person usurping an office which is not of a public nature. Accordingly, it does not lie against the Director of Education if he purports to exercise the functions of manager of an unaided school contemplated in section 5 of the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960.

APPPLICATION for a writ of quo warranto on the Director of Education.

H. V. Perera, Q.C., with E. B. Wikramanayake, Q.C., G. T. Samarawickreme and W. T. P. Goonetilleke, for the petitioners.

V. Tennekoon, Crown Counsel, with B. C. F. Jayaratne and H. L. de Silva, Crown Counsel, for the respondent.

Cur. adv. vult.

August 21, 1961. T. S. FERNANDO, J.—

The petitioners who claim to be members of the General Committee of the Buddhist Theosophical Society Limited, said to be the proprietor of Ananda College and Dharmaraja College, two schools conducted at Colombo and Kandy respectively, allege in their petition that the respondent who is the Director of Education has, as from 1st December 1960, without any authority or warrant in law purported to exercise the powers, duties and functions of manager of the said schools and has thereby unlawfully usurped the office of manager of the said schools. They therefore claim to be entitled to apply to this Court for the issue of a mandate in the nature of a Writ of Quo Warranto on the respondent.

Notice having issued from this Court on the respondent after an ex-parte hearing of argument on behalf of the petitioners, a preliminary objection was taken before me on behalf of the respondent that the office the respondent is alleged to have usurped is that of manager of an unaided school, and that such an office is not a public office.

It is not disputed that both these Colleges were assisted schools within the meaning of the Education Ordinance, No. 31 of 1939, as amended by the Education (Amendment) Ordinance, No. 26 of 1947. Ordinance No. 26 of 1947—vide section 15—defines an unaided school as a school which is not a Government school or an assisted school. The Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960 which came into force on 17th November 1960 made provision for the appointment of the Director of Education as the manager of every assisted school other than a school which the proprietor has elected before 1st December 1960 to administer as an unaided school. The petitioners contend that the proprietor of the two schools in question, viz. The Buddhist Theosophical Society Limited, has elected in terms of section 5 of Act No. 5 of 1960 to administer the schools as unaided schools, and that therefore as from 1st December 1960 these two schools ceased to be assisted schools and had to be administered as unaided schools. Learned Crown Counsel who appears for the respondent, while

not admitting that the schools are now unaided schools, has urged that, irrespective of the correctness of this contention, no writ as prayed for by the petitioners lies against the respondent.

In order to ascertain in what circumstances and under what conditions the Supreme Court may be moved for a prerogative writ we have to resort to the relevant rules of English common law—see *Nakkuda Ali v. Jayaratne*¹. The jurisdiction of the Court in respect of the issue of the prerogative writ of Quo Warranto against persons usurping office is limited to the case of persons who have assumed the powers or performed the duties and functions of an office of a public nature—see Halsbury's Laws of England (Simonds ed.), Vol. 11, page 146. On behalf of the respondent it has been pointed out that the statute nowhere refers to a manager of an unaided school, and that section 6 of Act No. 5 of 1960 which imposes certain duties in respect of the administration of an unaided school has imposed those duties not on any manager of such a school, but on the proprietor thereof. The proprietor of an unaided school may, for his own purposes or for convenience of administration, employ a person as manager, but where a person is so employed he does not in my opinion become the holder of an office of a public nature. He performs private, as distinguished from public, functions. Even if the duties now imposed by section 6 on the proprietor had been imposed by the statute on a person employed by the proprietor as the manager of the unaided school, the mere requirement that certain things shall be done and certain other things shall not be done by the person designated does not suffice, in my opinion, to constitute that person the holder of an office of a public nature. Moreover, under the English common law an information in the nature of a quo warranto lay and now an injunction restraining a person from acting without authority in respect of any particular office lies only if that office satisfies certain conditions. The office must be held under the Crown or have been created by the Crown, either by charter alone or by statute. Halsbury's Laws of England (Simonds ed.) Vol. 11, page 146 (*supra*). I have already indicated above that the office of manager of an unaided school is not one created by statute.

For the reasons indicated shortly above, the preliminary objection raised on behalf of the respondent is entitled to succeed. I would uphold it and discharge the rule nisi with costs, limited to a sum of Rs. 315/- payable by the petitioners.

Rule discharged.

¹ (1950) 51 N. L. R. 461.