

1941

Present : Keuneman J.

In re GUNATHILAKE.

APPLICATION FOR A WRIT OF QUO WARRANTO.

Village Communities Ordinance (Cap. 198), s. 22—Failure to elect members—Mistake with regard to the date of meeting—Nomination by Executive Committee of Local Administration.

The words "fail to elect" in section 22 of the Village Communities Ordinance must be interpreted to mean as "do not elect".

They do not imply wilful failure.

The relevant words of the section are as follows:—

Where for any reason the voters of all or any of the wards of a village area fail to elect any member on the date fixed for the meeting or any adjourned meeting of the voters, for the purposes of a general election or a by-election it shall be lawful for the Executive Committee to nominate such number of duly qualified persons as may be necessary to constitute or complete the Village Committee.

THIS was an application for a writ of *quo-warranto*.

H. W. Thambiah, for the petitioner.

R. C. de Fonseka, for respondents.

H. H. Basnayake, C.C., for Attorney-General on notice.

Cur. adv. vult.

March 25, 1941. KEUNEMAN J.—

Both these applications were heard together and can be decided together.

The facts are as follows:—

The petitioner is a resident of the pattu in question and is the sitting member for one of the wards, and was a candidate for the office of Chairman of the Committee in question.

The Assistant Government Agent, Matale, originally issued a notice intimating that the election of members for four wards of the village area in respect of which there were contests would take place on May 9, 1940.

It may be noted that both the petitioner and Mr. Gunathilake, the Chairman, had been elected to their respective wards without any contest.

No further notice issued from the Assistant Government Agent as regards the date, but about the 3rd or 4th of May the Headman made it known that the election would be held on the 6th of May and not on the 9th. It seems fairly clear that this was due to a mistake on the part of the officer appointed to act as Presiding Officer.

This officer arrived on the 6th of May and purported hold an election of members to represent the four wards I have mentioned. It is clear that these elections were invalid, as due notice had not been given and the mistake was realized very early. On the 7th or 8th of May, the Headman again announced that the elections held on the 6th were invalid, and that the meeting would again be held on the 9th of May as originally notified. On the 9th of May, the candidates and their supporters arrived at the

place of meeting, but no meeting was held apparently because the Presiding Officer did not arrive. It was then announced by the Headman that the elections held on the 6th May were invalid and that the Assistant Government Agent would fix another date for the meeting.

No other meeting was, however, notified, but the Executive Committee of Local Administration purporting to act under section 22 of the Village Communities Ordinance (Cap. 198) nominated four members for the four wards in question, one of these members being Mr. K. Punchirala, the respondent in the second application.

Thereafter, the first meeting of the Committee was held, and at that meeting the four persons so nominated were present and functioned as members. At this meeting, Mr. Gunathilake was elected Chairman by a majority of two votes, the defeated candidate being the petitioner.

These are the circumstances under which the applications are made.

Mr. Thambiah for the petitioner argues that the nomination by the Executive Committee of Local Administration was bad, and that the subsequent election of the Chairman was in consequence vitiated.

Section 22 of the Ordinance is as follows:—

“Where, for any reason, the voters of all or any of the wards of a village area fail either to nominate any candidate on the date fixed for the nomination of candidates, or to elect any member on the date fixed for the meeting or any adjourned meeting of the voters, for the purposes of a general election or a bye-election, it shall be lawful for the Executive Committee to nominate such number of duly qualified persons as may be necessary to constitute or to complete the Village Committee, as the case may be; and the Village Committee or the member or members so nominated shall be deemed, for all the purposes of this Ordinance, to have been duly elected”.

Counsel for the petitioner argued that there was no failure on the part of the voters to elect on the 9th of May, as no opportunity was given to them to have the meeting, owing to the absence of the Presiding Officer. He urged that under section 14 (1) the election must be held at a meeting of the voters, and that under section 16 (1) the meeting must be presided over by the Government Agent or by a person appointed by him. He contended that there was no wilful failure on the part of the voters to elect.

Mr. Basnayake for the Attorney-General contended that the word “fail” in this context did not imply wilful failure. He also emphasized the words “for any reason” appearing in the section, and argued that these words covered a failure to elect under the circumstances arising in this case. Counsel further depended on the case of *Rex v. Southwark Borough Council*¹.

In this case the words “failed to exercise their power” were read as meaning “have not exercised their power”, and not as implying that the non-exercise of the power must be due to a neglect or default.

¹ 124 L. T. 623.

Bankes L. J. acknowledged that the word "fail" may have different meanings having regard to the context in which that word is used. But he thought the meaning I have already indicated made the scheme workable, and the other meaning would render it unworkable.

Scrutton L.J. dealt with the matter as follows :—

"I do not say that the word 'fail' can never include wilful default, but in this case where to read 'fail' simply as 'not to exercise' makes a workable scheme, and where to read in the words 'wilful default' will mean that in every case it will have to be decided by somebody whether it was wilful default, and it will not be known who are the appointed members until that is decided, I have no doubt that one must take the simple language as it is and determine it."

It may be noted in the case in question that a mistake was made not by the body which had power to nominate and was alleged to have failed to do so, but by the Town Clerk who summoned a meeting for the wrong date.

On consideration of sections 14 and 16 of the Village Communities Ordinance, I am unable to find that the Government Agent, who has fixed the date of the election and given the required notice of not less than one month, has power to refix the date, though he has power under section 16 (2) to adjourn a meeting once fixed. In this case the Government Agent has not exercised his power of adjournment, and, accordingly, unless the Executive Committee can exercise the right of nomination, the four wards in question will not have any representatives during the continuance of this Committee. This is, at any rate, an undesirable result, and will hamper the successful working of the Village Committee.

Further, on examination of the language of section 22, I am inclined to interpret the words "fail . . . to elect" as "do not elect". It is to be noted that the section refers to a failure "on the date fixed for the meeting" and not to a failure at the meeting. The insertion of the words "for any reason" gives emphasis to this view. These words, in my opinion, cover a situation such as the present, and I do not think a wilful failure is contemplated. The members nominated under the section are "deemed, for all the purposes of the Ordinance, to have been duly elected". In this view, I think the scheme is workable.

It is a matter for the gravest regret that the mistake of the Presiding Officer should deprive the voters of these four wards of their right to elect their representatives, and it must be hoped that a mistake of this kind will never be repeated. But I do not think that can affect the legal interpretation I have to give to the words of the section.

The applications fail and are dismissed, and the rules discharged with costs.

Rule discharged.