

1965

Present : H. N. G. Fernando, A.C.J.

V. S. GUNADASA SILVA, Petitioner, *and* A. P. JAYASURIYA
and another, Respondents

*S. C. 191/65—Application for a Mandate in the nature of a Writ of Certiorari
in terms of Section 42 of Courts Ordinance*

*Certiorari—Chairman of Urban Council—Order of Minister removing him from office—
Administrative character of the Order—Urban Councils Ordinance, s. 184—
Local Authorities (Elections) Ordinance (Cap. 262), s. 9 (3) (c).*

Where the Minister of Local Government, by virtue of the power vested in him by section 184 of the Urban Councils Ordinance, makes an order removing from office the Chairman of an Urban Council, the order is essentially an administrative order and is not any the less valid even if it be correct that the resulting electoral disqualification imposed on the Chairman by section 9 (3) (c) of the Local Authorities (Elections) Ordinance can legally attach only to an order made by the holder of a judicial office.

APPPLICATION for a writ of *certiorari* to quash an Order made by the Minister of Local Government.

H. W. Jayewardene, Q.C., with *Lakshman Kadirgamar*, for the Petitioner.

Nimal Senanayake, for the 1st Respondent.

R. S. Wanasundere, Crown Counsel, for the 2nd Respondent.

Cur. adv. vult.

September 3, 1965. H. N. G. FERNANDO, A.C.J.,—

This is an application to quash an Order, made by the Minister of Local Government and published in the *Gazette* of February 12th 1965, in purported pursuance of Section 184 of the Urban Councils Ordinance, removing from office the Chairman of an Urban Council.

One consequence of the Order is that, by reason of Section 9 (3) (c) of the Local Authorities (Elections) Ordinance (Cap. 262), the deposed Chairman becomes disqualified for a period of five years from being elected as, or voting at any election of, a Senator or Member of Parliament or a member of any local authority. Counsel for the petitioner has argued that, because such a disqualification follows upon the Order for removal from the office of Chairman, the Order itself is one made in the exercise of judicial power; for that reason, he invited me to defer a decision in this application until a bench of five Judges of the Court renders its decisions in a series of cases in which is involved the question of the validity of orders made by certain tribunals not appointed by the Judicial Service Commission.

Counsel had to concede that an Order under Section 184, *simpliciter*, is a purely administrative one referable to the intention of the Legislature that the Minister is entrusted with the supervision of the administration of local authorities and with the executive power to be exercised in the course of such supervision. This being in my opinion the dominant purpose of Section 184, an order under that Section is essentially an administrative order properly within the functions of the Minister. Even if it be correct that the disqualification created by Section 9 (3) (c) of the Local Authorities (Elections) Ordinance can legally attach only to an order made by the holder of a judicial office, the validity of the Order for removal from the office of Chairman is not thereby impaired. In so far, therefore, as the Order has the effect of removal from office, I must hold that the Minister was duly empowered to make it. The petitioner can take such steps as he may be advised to do if it is thought that the Minister's Order cannot deprive him of electoral and voting rights.

To turn now to the facts of this case, petitions alleging maladministration on the part of the present petitioner, as Chairman of the Urban Council, were received by the Commissioner of Local Government. These were referred in April 1964 to the petitioner for his explanations,

which he duly furnished. The documents show that by an order made on 26th April 1964, an Assistant Commissioner of Local Government was directed to hold an inquiry into the allegations in the petitions. The Assistant Commissioner decided to commence his inquiry on 28th April 1964. There is in the affidavits some conflict of testimony regarding the day on which the petitioner was informed of the date of the inquiry. But even if it be correct that (as he avers) he was only thus informed on 27th April, the point is not in my opinion material, for the inquiry continued on 29th April, 8th May, 13th May and 16th May; so that he had ample opportunity to present his side of the case before the inquiry terminated, even if he was unprepared when the inquiry commenced on 28th April. I note in this connection that his report on the two petitions had previously been furnished and that he was therefore not previously unaware of the allegations which had been made against him.

On 28th April 1964, the Assistant Commissioner held two sessions. At the commencement of the morning session, he recorded the "charges" made in one of the petitions. At the commencement of the afternoon sessions he recorded the "allegations" made in the second petition. On each occasion there were present the Chairman and the signatories to the petition under consideration. There is no averment in the affidavit of the Assistant Commissioner that the petitioner was made aware of the precise "charges" and "allegations" which were recorded; but it is reasonable to assume, in the absence of any contrary averment at this stage, that the inquiring officer did announce, at least for the benefit of the "accusers", the accusations which were to be the subjects of his inquiry. I have no doubt that the present petitioner was thus made aware of the precise grounds of maladministration to which the inquiry related.

Counsel relied strongly on an averment by the petitioner that the inquiring officer had stated that the inquiry was only a preliminary one. The inquiring officer admits in his affidavit that *he may have made* such a statement. Counsel has therefore argued that, although the petitioner did have an opportunity at the inquiry to defend himself against the charges under investigation, it was not a *fair* opportunity, because the petitioner was led to expect that there would be a subsequent investigation. This point has certainly caused me some anxiety, which however is very nearly dispelled by circumstances to which I am about to refer.

The record of the proceedings on 8th May 1964 commences with a note of a question put by the petitioner to the inquiring officer, in answer to which the latter stated that the purpose of the inquiry was to find out whether there was any truth in the allegation made against the petitioner and whether there had been other instances of maladministration. According to this note, the inquiring officer had on an earlier occasion informed the petitioner to the same effect. I have no reason to doubt the good faith of the inquiring officer, who conducted the investigations on the order of his superior, who maintained what appears

to be a careful record of the investigation, and who thereafter submitted a report running into fifteen closely typed pages. If, as I must hold, the petitioner was aware that the purpose of the inquiry was to ascertain the truth of the allegations (indeed the inquiry was otherwise without purpose), then he must reasonably have known that any explanations he had to offer would be entertained and considered. The inquiring officer's report states that, in the case of all but two of the witnesses, the petitioner had the right to cross-examine, and the record shows that at various stages the petitioner made statements, questioned witnesses, and referred to files. Counsel's submission that the petitioner was not represented by lawyers at the inquiry is of little force in view of the fact that no application appears to have been made by the petitioner for a lawyer to represent him. What natural justice required was that the petitioner should have had an opportunity to defend himself. His case, at its highest, can only be that, because of some misunderstanding on his part, he did not take full advantage of the opportunity which was in fact afforded to him.

By the Minister's letter of 9th December 1964 the petitioner was called upon to show cause why he should not be removed from office. The grounds for removal were set out in full detail. In regard to two at least of these grounds, the omissions allegedly constituting maladministration were not denied by the petitioner in his reply to the Minister; but he explained that the Chairman should not be held responsible for those omissions, which had arisen through the fault of the Council's officers. The Minister presumably did not agree with that explanation, and in my opinion the Minister was entitled so to disagree.

The petitioner's reply to the Minister's letter of 9th December contains explanations regarding very many of the grounds for the removal specified by the Minister. It would be unreasonable for us to suppose that these explanations were not considered by the Minister before he made the Order of removal on 21st February 1965. Here again, therefore, the petitioner was given an opportunity to defend himself before the Order of removal was made.

Finally, there was the submission that, in his reply to the Minister, the petitioner requested an opportunity to produce the Council's files in his defence, but was not allowed that opportunity. It seems to me that, in regard to at least some of the grounds for removal, production of files would have been of no avail to the petitioner; if, on grounds of policy, the Minister was entitled (as I think he was) to hold the Chairman guilty of maladministration because he had failed to maintain adequate supervision over the performance of the duties of the Council's officers, nothing in any Council file could serve to negative the charge of maladministration. Moreover, if the production of the Council's files could have assisted the petitioner, he had ample opportunity to produce them during the investigation which was conducted on five dates of inquiry.

The application is dismissed, with costs fixed at Rs. 315/- payable to the first respondent.

Application dismissed.