

1944

Present: Hearne J.

WADUGODAPITIYA *v.* ISMAIL.In *re* Writ of *Quo Warranto* against H. M. U. ISMAIL.

Writ of quo warranto—Election to Municipal Council—Charge of general bribery—Election may be declared void.

A writ of *quo warranto* lies to set aside an election to the Municipal Council on the ground of general bribery.

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

E. B. Wikremenayake (with him *M. M. Kumarakulasingham*), for petitioner.

H. V. Perera, K.C. (with him *C. E. S. Perera, A. C. M. Ameer* and *H. W. Jayewardene*), for respondent.

Cur. adv. vult.

April 5, 1944. HEARNE J.—

This is a petition for a writ of *quo warranto*. The respondent is the defacto holder of the office of Municipal member for the Huduhumpola Ward No. 15 of Kandy. He was returned as member for that ward at an election held on December 11, 1943. The petitioner was one of the unsuccessful candidates. The petitioner alleged that the respondent was not entitled *de jure* to the aforesaid office on various grounds, but at the hearing of the preliminary objections taken by Counsel for the respondent Counsel for the petitioner stated that his client proposed to confine himself to one ground only—that of general bribery.

The objections were similar to those considered by Soertsz, J. in *Piyadasa v. Goonesinha*¹. It was conceded that in that case, as was eventually found, voters were unscrupulously prevented from going to the polls and that in no sense could it have been said that there was any

¹ (1941) 42 N. L. R. 339

election at all. But where, it was said, as in the present matter, the only ground is general bribery and the Ordinance is silent in regard to general bribery, "it must be assumed that the legislature did not intend that an election could be impeached on that ground". It was argued that, if the respondent's right to hold office could be so impeached, the common law of England on this subject would arbitrarily be incorporated in the common law of Ceylon.

The way in which I regard Municipal Elections in the absence of legislation clarifying the legal position is this. When the Ordinance says that "an election of elected members will be held" it must be taken to mean a free election, not an election which is a sham, not an election in which, whatever the means employed may be, freedom of choice has been destroyed. If a petitioner is able to prove the prevalence of bribery (in the penal code sense of the word, *vide* section 55) on such a scale as to lead a Judge to the conclusion, not on a statistical scrutiny but as a reasonable probability, that but for the bribery the result of the election would or might well have been different, and if for this reason he declares the election to be void, he would in my opinion merely be giving effect to the law of the land in regard to Municipal Elections that they must be *free*. It is a corollary of the argument that the legislature did not intend an election could be impeached on the ground of general bribery that it regards corruption at an election with complacency, and this quite obviously cannot be accepted.

I overrule the objections. The respondent must pay the petitioner's costs of the hearing of the objections in any event. The petitioner must deposit or give security for Rs. 1,500.

Objections overruled.
