

1936

*Present : Abrahams C.J.*JUNAID *v.* MEERAN PILLAI*S.C. 703—Appeal under Section 24 of Ordinance No. 60 of 1935.**Colombo Municipal Council (Constitution) Ordinance—Objection to name in revised list of one ward by voter in another ward—No status—Ordinance No. 60 of 1935, s. 23 (1) and (2).*

A voter whose name appears in the revised list of those entitled to vote in one ward of the Municipality has no status to object to a person whose name appears in the revised list for another ward.

APPEAL from an order of the Municipal Commissioner, Colombo.

C. Nagalingam (with him *J. E. A. Alles*), for petitioner, appellant.

L. A. Rajapakse (with him *S. A. Marikar*), for objector, respondent.

November 24, 1936. ABRAHAMS C.J.—

This is an appeal against the decision of the Municipal Commissioner, Colombo, who expunged the appellant's name from the Municipal list of New Bazaar West Ward on the objection of a voter whose name was on the list for New Bazaar East Ward. The ground for the objection was that under section 14 (2) (g) of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, the appellant did not have the necessary property qualification. The appellant submitted that under the terms of section 23 (2) of the above-named Ordinance the objector had no status to lodge his objection. This was over-ruled by the Commissioner, hence this appeal.

Section 23, sub-section (1) and (2), are the relevant sections in the Ordinance, and they read as follows :—

“23 (1) Every person duly qualified in any year to vote, who has made due application under section 21 to have his name placed in the lists for the year, or transferred from one list to another, or marked

with the double qualification mark, or whose name was inserted in the lists for the previous year, and who finds at the time when the new or revised lists are open to inspection under section 22 that his name is omitted from such lists, or is not so transferred, or is not marked with the double qualification mark, and who claims to have his name inserted or transferred or so marked (such person being hereinafter referred to as 'the claimant') may apply to the Commissioner to have his name inserted or transferred or so marked.

(2) Every person whose name appears in any such new or revised lists at the time when they are open to inspection, and who objects to the name of any other person appearing therein or being marked with the double qualification mark (such first-mentioned person, being hereinafter referred to as 'the objector') may apply to the Commissioner to have the name or the double qualification mark of such other person erased therefrom".

It is pointed out on behalf of the appellant that under section 14 (8) of the Ordinance no person is entitled to vote in more than one ward nor is any person entitled to have his name entered into the new or revised list of more than one ward, and he submits that it was therefore not open to a person whose name is in one of the revised lists to object to a person whose name is in one of the other revised lists.

The Municipal Commissioner gave his decision in these terms:—

"Reading section 23 (1) I see that that sub-section speaks for the lists for the year ; obviously meaning the list for the whole Municipality. The next sub-section goes on to speak of such new or revised lists. I can find no reason for restricting these to the list or lists for any particular ward. If I did so, it would be interpolating into the Ordinance words that do not exist there".

I am of the opinion that this decision was wrong and that the Commissioner has been led into error by a too narrow construction of the expression 'lists', since this word although used in the plural must clearly be paraphrased as 'one of the lists'. The proper rendering of that part of sub-section (2) down to the word 'therein' is as follows:—
 "Every person whose name appears in any one of such new or revised lists at the time when those lists are open to inspection and who objects to the name of any other person appearing therein". Now the ordinary grammatical meaning of the word 'therein' is 'in that place', that is to say, in the place which has been previously mentioned in the sentence in which the word appears. What is that place? Clearly as indicated one of such new or revised lists. If the respondent's contention is to prevail, then the words above referred to would have to read as follows:—
 "Every person whose name appears in any one of such new or revised lists at the time when the lists are open to inspection and who objects to the name of any other person appearing in that list or in any other of the revised lists". That is obviously giving to the word 'there in' a meaning which it does not in ordinary grammar bear.

It has been urged very strenuously for the respondent that in the construction of sub-section (2) the intention of the legislature should be considered. That is of course so, but the intention of the legislature

by the ordinary rules of interpretation is to be gathered first and foremost by the grammatical meaning of the words which it thought fit to employ. But even if one considered, without resorting to interpretation, what was the probable intention of the legislature, I am of opinion that it was manifestly such as is borne out by the construction which, in my opinion, sub-section (2) obviously bears. The person who can object that the voter is disqualified, if such objector is to be a voter at all, should obviously be a voter in the same ward because his vote may be in danger of being cancelled by that of an unqualified voter, whereas no such danger exists, so far as he is concerned, if that unqualified voter is in another ward. Counsel for the respondent admits, if I understood him aright, that that was the intention of the legislature, but he says that that is not the only intention because every voter in Colombo, no matter for what ward he is qualified to vote, has an interest in a proper Municipal Government of this city and ought to be allowed to object to any voter in any ward who is disqualified, for instance if he is serving a term of imprisonment (see disqualification (c) of section 14 (2)). I suppose by this is meant that if there were a majority of disreputable voters it might have the effect of bringing into power a disreputable candidate. I think this is too far fetched for serious consideration, and in addition I might point out that out of the seven grounds for disqualifying a voter only two relate to his character, one relates to his sanity, one to his nationality, one to his minority, one to residence, and one to property. So that in the majority of cases, it may be observed, even the above-mentioned argument can have no application.

I allow the appeal and I direct that the appellant's name shall be inserted as a duly qualified voter on the list of voters for the New Bazaar West Ward, Colombo, with costs to the appellant here and at the inquiry before the Commissioner.

Appeal allowed.
