Present: Dalton J. 1928

In the Matter of an Application for a Writ of *Mandamus* on the Government Agent, Southern Province.

MADANAYAKE *v.* SCHRADER *et al.*

Mandamus—*Validity of Village Committee elections—Propriety of motive—Unreasonable delay—Ordinance No. 9 of 1924.*

The Supreme Court may refuse to grant a writ of *mandamus* either where there has been delay on the part of the applicant or where the Court is not convinced of the propriety of his motives.

Where an application for a *mandamus* was made to test the validity of the election of a Village Committee eight months after the date of the election,—

Held, that the application was not made within a reasonable time.

AN application for a writ of *mandamus* on the Government Agent of the Southern Province to hold a meeting of the inhabitants of Akmeemana in the Galle District, under the provisions of Ordinance No. 9 of 1924, for the purpose of electing a new Village Committee.

Weeraratne, in support.—The meeting held is invalid, and therefore the Committee functioning is not duly elected. The provisions of the Ordinance No. 9 of 1924 have not been duly complied with. The requirements of the Ordinance are peremptory, and if those requirements are not observed the election is void. Vide *Application for Writ on Government Agent, Northern Province.*[1]

Section 22 of the Ordinance requires a meeting for the election of a Committee to be summoned within three months of the dissolution of the existing Committee.

H. V. Perera (with *M. C. Abeyewardene*), for the respondents.—The remedy sought is misconceived. There is a Committee already functioning. The office is *de facto* full. The proper application should therefore have been for a writ of *quo warranto*—vide *Ukku Banda v. Government Agent, Southern Province.*[2] A writ of *mandamus* is a high prerogative writ. It cannot be applied for as a matter of right. The granting of it is purely a matter of discretion. The Court will therefore scrutinize the motive and the circumstances underlying this application. *Hals., vol. X., p. 78.*

The applicant's motives are clearly open to question. He is merely a substitute for Ukku Banda, whose application to this Court was refused—*vide Shortt on Mandamus, p. 251.* The costs of the

[1] *(1927) 28 N. L. R. 323.* [2] *29 N. L. R. 168.*

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previous application have not yet been paid. The *bona fides* of the applicant are questionable. He took part in the election which he seeks to set aside. In short, he is acting in collusion with Ukku Banda. The application has been unduly delayed. Very nearly six months were allowed to elapse since the election, *i.e.*, about one-sixth of the life of the Committee. Meantime important works have been undertaken and are in progress. The granting of the writ prayed for will disorganize everything already attempted.

Weeraratne, in reply.—The remedy is not misconceived. *Mandamus* is the proper remedy, inasmuch as the election is merely colourable, if not void .

Vide *Regina v. Mayor of Leeds*[1]; *Rex v. Mayor of Oxford*.[2]

February 7, 1928. DALTON J.—

The petitioner, Carunasena Madanayake, by petition filed on November 21, 1927 applied to this Court for a writ of *mandamus* on the Government Agent of the Southern Province to hold a meeting of the inhabitants of the subdivision of Akmeemana in the Galle District, under the provisions of Ordinance No. 9 of 1924, for the purpose of electing a new Village Committee. The matter first came before this Court on November 23, when this Court (Schneider J.) allowed notice to issue on the Government Agent. By its order of that date it was also directed that notice of the application be issued to members of the "existing Committee," whose names were to be supplied. That has now been done, Counsel appearing for the Government Agent, and also for the 3rd, 5th, 8th, 9th, 10th, 11th, 12th, 13th, and 14th respondents, who resist the application. The 4th, 6th, and 7th respondents appear and consent to the order asked for.

The facts disclosed in the petition are that the petitioner is an inhabitant of Akmeemana. A meeting was held there on March 10 by the Government Agent, on which day a Committee was elected, to come into office on July 1, 1927. Petitioner states that election is invalid, and on August 1 he and sixteen others requisitioned the Government Agent to call a meeting of inhabitants to elect a new Committee. By letter of August 4 the Government Agent informed one Ukku Banda that a meeting had been held and a Committee had already been appointed. The next step was the filing of this petition on November 21 to compel the Government Agent to hold the meeting.

It is also agreed that Ukku Banda had sought, by an information in the nature of *quo warranto*, a declaration that the election of the present respondents, other than the Government Agent, was invalid and that it be set aside, and on July 26 this Court discharged the

[1] *11 Ad. & E. 512.* [2] *6 Ad. & E. 349.*

rule on the ground that the parties had not been in possession of office, Ukku Banda being directed to pay the costs of nine of the respondents.

In the proceedings before me respondents have filed an affidavit alleging that petitioner was, to the best of their recollection, present and took part in the proceedings by voting at the meeting of March 10, that he has been instigated by Ukku Banda to commence these proceedings, and that their costs in the earlier proceedings have not yet been paid. There is also evidence, which is uncontested, to show that the Committee has functioned since July 1, held several meetings, collected taxes, appropriated fine moneys received from the Village Tribunal, obtained grants from the Government, expended considerable sums on village works and on the payment of salaries, and entered into a contract for the construction of a bridge. Petitioner, by affidavit, denies he was present at the meeting on March 10, but that he only became aware of it two days later. He denies he has been instigated by Ukku Banda to commence these proceedings. His Counsel wished to make out he had no association with Ukku Banda at all, but unfortunately the letter of August 4 from the Government Agent, which he sets out in full in his petition and which supplies the foundation for these proceedings by him, is actually addressed to Ukku Banda. That gives very strong support to the allegation of the respondents respecting the motives of the petitioner, and I am not satisfied that petitioner is acting *bona fide*.

Mr. Fonseka, for the Government Agent, and Mr. Perera, for the respondents, have argued that the proper remedy of the petitioner, if any, is by *quo warranto*, as the office of Committee men is *de facto* full. For the petitioner, however, it is urged that the proper remedy is by *mandamus*, in view of the fact that the election is alleged to be merely colourable, in fact void. This is a difficult question, as no very precise test of a merely colourable as distinguished from an illegal election can be extracted from the English authorities. (*Shortt on Mandamus, p. 290.*) I have come to the conclusion, however, on the facts here, that it is not necessary for me to decide this question, for I am able to proceed upon the assumption that the remedy is properly sought by *mandamus*. The question, then, has to be decided whether petitioner is entitled to the remedy he seeks. It is not a writ of right, and it is not issued as a matter of course. (*Halsbury's Laws, vol, X., p. 78*). It is a matter within the discretion of the Court, although certain rules have been laid down in the decided cases for guidance in future cases. It does not follow, however, as pointed out by Darling J. in *Regina v. Leicester Union*,[1] that, if a Court in a particular case thinks it not advisable to grant a writ of *mandamus* any kind of principle is thereby

[1] *(1899) 2 Q. B. at p. 638.*

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established. In *Regina v. Church Wardens of All Saints, Wigan*,[1] Lord Chelmsford says: "A writ of *mandamus* is a prerogative writ, and not a writ of right, and it is in this sense in the discretion of the Court whether it shall be granted or not. The Court may refuse to grant the writ, not only upon the merits, but upon some delay, or other matter, personal to the party applying for it." With that view Lord Hatherley agreed, adding: "upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it, matters connected with delay or possibly with the conduct of the parties."

Petitioner, if he was not actually present at the meeting held on March 10 and taking part in it as alleged by the respondents at the latest was fully aware of the meeting two days later, but he did not take these steps until November 21, allowing a period of eight months to elapse. The life of the Committee only extended to three years from July 1, and it has already undertaken several important duties and works in the interests of the general community which must have been known to petitioner. In seeking to explain this delay petitioner was in an obvious difficulty. It was apparent that he wished to disassociate himself from anything Ukku Banda had done, but Counsel had to admit that he took no steps until a few days after Ukku Banda's application had been dismissed. If he was acting quite independently of Ukku Banda, his delay prior to August is unexplained, as is the presence of the letter to Ukku Banda in the body of his petition. If he was not acting independently of Ukku Banda, that fully explains the time of his request to the Government Agent, and the presence of the Government Agent's reply to Ukku Banda in his petition to this Court, and his motives at once become open to question. Even after that, there was further delay from August 4 to November 21. It is not possible to lay down any rule as to the time within which parties should move, but here was a public body to the knowledge of petitioner doing important work, levying taxes, making contracts, paying salaries, &c., all of which according to him was quite illegal, and he sits by for some months and allows the work to go on without objection. In *Groughton and Others v. Commissioners of Stamp Duties* [2] it was held that an application for a *mandamus* upon the Commissioner to state a case setting out the grounds of his assessment duty was not brought within a reasonable time when made nine years after the assessment. On the other hand, in cases arising under the Public Health Acts of 1848 and 1875, and rates raised thereunder, Kennedy L.J. points out in *Croydon Corporation v. Croydon Rural Council* [3] that it can safely be deduced from reported cases that, if no proceedings have been taken to enforce a claim

[1] *(1876) 1 A. C. at p. 620.* [2] *(1899) A. C. 251.*
[3] *(1908) 2 Ch. at p. 336.*

for debt within six months after the debt has become due and ascertain, there must be some very special circumstances to justify the Court in granting a *mandamus*. Having regard to all the circumstances, I am not satisfied that applicant here has moved within a reasonable time. I am, further, not satisfied with his motive for moving. There is very strong ground for concluding that he is here merely a substitute for Ukku Banda, who has failed to pay an order for costs made against him in favour of the present respondents resisting this application. He may, it is true, himself, as an inhabitant of Akmeemana, have a strict legal right, but the Court will not use its discretionary powers to enable him to assert it " when not convinced of the propriety of his motives " (*Shortt, p. 251*). One must not be astute to discover reasons for not applying this great constitutional remedy for error and misgovernment (*see* the words of Martin B. in *Rochester Corporation v. Regina*)[1]; on the other hand, an applicant must satisfy the Court that he has established such a reasonable case as to justify the exercise of its discretion in his favour.

On the footing, therefore, that applicant is entitled here to proceed by *mandamus*, I am not satisfied that this is a case in which such a writ should issue. The application must therefore be refused, and the rule will be dicharged with costs.

Application refused.

[1] *(1858) E. B. & E. at p. 1030.*