

1960

*Present: T. S. Fernando, J.*

A. SABARATNAM, Petitioner, and S. SINNATHURAL,  
Respondent

*S. C. 54 of 1960—Application for a Mandate in the nature of a Writ of Quo  
Warranto under section 42 of the Courts Ordinance*

*Town Council—Election of Vice-Chairman—Equal division of votes—Chairman  
cannot exercise casting vote then—Requirement of drawing lot—Town Councils  
Ordinance, No. 3 of 1946, ss. 33 (3), 33 (4), 33A (2) (b), 33A (2) (g), 39,  
40 (3)—Local Authorities (Election of Officials) Act, No. 39 of 1951, s. 7—Quo  
warranto.*

When, at any meeting held by a Town Council for the purpose of electing a Vice-Chairman, there is an equal division of votes, the Chairman has no right to exercise a casting vote. When the division of votes is equal, section 33A (2) (g) of the Town Councils Ordinance prevails over section 40 (3), and the correct procedure is to decide the question by lot to be drawn as prescribed by section 33A (2) (g).

**A**PPPLICATION for a writ of *quo warranto*.

*S. Sharvananda*, with *M. Shanmugalingam*, for the petitioner.

*H. Wanigatunga*, with *H. Mohideen*, for the respondent.

*Cur. adv. vult.*

June 10, 1960. T. S. FERNANDO, J.—

In these proceedings the petitioner seeks to question the validity of the election of the respondent as Vice-Chairman of the Town Council of Point Pedro alleged to have taken place on 30th January 1960. The decision of this application involves an interpretation of sections 33 and 40 of the Town Councils Ordinance, No. 3 of 1946, and of section 33A of the same Ordinance introduced by the enactment of section 7 of the Local Authorities (Election of Officials) Act, No. 39 of 1951.

The facts relevant to the application may be set down as follows:—

At a general election held for the purpose of election of the members of the Town Council for the period of three years 1960 to 1962, eight persons including the petitioner and the respondent were duly elected as members. Section 33 (1) of the Town Councils Ordinance (hereinafter referred to as the Ordinance) requires the Government Agent to convene the first meeting of a newly elected Town Council. Such a meeting was duly convened for the 12th January 1960 and, in accordance with the requirement of section 33 (3), the Government Agent presided at that meeting, and one N. Nadarasa was elected Chairman. Section 33 (4) enables the election of a Vice-Chairman to take place at the first meeting, but advantage does not appear to have been taken of the possibility of electing the Vice-Chairman on the same day, and the election of the Vice-Chairman was taken up only at the next meeting of the Council. The next meeting was held on 30th January 1960 and the election of the Vice-Chairman was one of the items on the agenda for that meeting. According to the confirmed minutes of the meeting of the 30th January, a certified copy of which has been produced in the proceedings before me by the respondent, after the other items in the agenda had been disposed of, the meeting took up for consideration the last item of the day which was the election of the Vice-Chairman. Two candidates, viz., the petitioner and the respondent, were duly proposed and seconded for election to this office, and the minutes read that the proposals were voted upon and the voting turned out to be four members in favour of each candidate. The minutes further read that "the votes being equal, the Chairman gave his casting vote in favour of Mr. S. Sinnathurai". The minutes also show that one of the members immediately questioned the legality of the Chairman exercising a casting vote instead of the question being decided by lot.

The petitioner alleges in his affidavit that the members present determined the mode of election to be by open voting. This averment is denied by the respondent in his own affidavit where he adds that "the

items of the agenda were decided upon by the voting of the members in open session according to law". It was contended by learned Counsel for the respondent that the statement that the members themselves determined at the meeting that there should be open voting in respect of the election of the Vice-Chairman is untrue; he stated that in respect of this item as well as the other items on the agenda for the meeting of the 30th January voting took place in the ordinary way (i.e., open voting) without any resolution of the members being passed at any stage determining the method of voting. In entering upon a consideration of the validity of the impugned election I must therefore proceed on the basis that no resolution of the members as contemplated in section 33A (2) (b) of the Ordinance has been had at this meeting. The question whether there was or was not a resolution in respect of the mode of election does not, however, appear to me to make any material difference to the question before me having regard to the view I have formed of the legality of the claim that the Chairman at the meeting had a right to a casting vote.

As would be apparent from the foregoing, the petitioner contends that the Chairman had no right to exercise a casting vote while on behalf of the respondent it is asserted that the Chairman had the right by virtue of section 40 (3) of the Ordinance which was left unamended by Act 39 of 1951. Section 40 (3) is in the following terms:—

“Where the votes of the members present at any meeting are equally divided in regard to any question, the Chairman, Vice-Chairman or other member presiding at the meeting shall, in addition to his vote as a member, have a casting vote. Provided that in every case where the votes of the members are equally divided on the question of the election of a Chairman, such question shall be determined by lot and for the purpose of such determination lots shall be cast or drawn in such manner as the Government Agent in his sole discretion may decide.”

If the election sought to be challenged in the present proceedings had taken place prior to the enactment of Act No. 39 of 1951, then, not being an election of a Chairman, the Chairman of the Council who was required by section 33 (4) to preside at the meeting would have had a right to exercise a casting vote had the members been equally divided. Is the position in regard to the existence of such a right in the Chairman the same after the amendment introduced in the shape of section 33A? The petitioner contends that, after the introduction of section 33A, whenever the election of a Vice-Chairman may take place—whether it be at the first meeting after a general election, at an ordinary meeting or at a special meeting—section 33A (2) (g)<sup>1</sup> makes it imperative that,

<sup>1</sup> Section 33A (2) (g) of the *Town Councils Ordinance as amended by Section 7 of the Local Authorities (Election of Officials) Act, No. 39 of 1951*:—“Where there are two candidates at any voting and the number of votes cast is equally divided and the addition of one vote would entitle one of the candidates to be elected as Chairman or Vice-Chairman, the determination of the candidate to whom the additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the presiding officer in such manner as he shall direct”.

where the number of votes cast for the respective candidates for the office of Vice-Chairman is equally divided and the addition of one vote would entitle one of the candidates to be elected as Vice-Chairman, the determination of the candidate to whom the additional vote shall be deemed to have been given shall be made by lot.

Mr. Wanigatunga conceded that if the Town Council had proceeded to elect its Vice-Chairman at the first meeting held on 12th January, as it lawfully could have done, then, notwithstanding that section 33 (4) of the Ordinance which requires the Chairman just elected to take over from the Government Agent and preside at the election of the Vice-Chairman, section 33A (2) (g) would have prevailed, that the presiding officer (viz., the Chairman of the Council) would have had no right to exercise a casting vote and that the determination would have had to be made by lot. He argued, however, that except at the first meeting after a general election, the Chairman's right to a casting vote given by section 40 (3) is unaffected, whatever be the nature of the question that comes to be voted upon by the members. He appeared to say that, as the legislature has left it open to the Council to decide to elect a Vice-Chairman either at the first meeting after a general election or at a later meeting, if it does not decide to proceed to such an election at the first meeting, the Chairman has the right to a casting vote. As I pointed out to Counsel at the beginning of the argument, if the argument is sound it means that the question whether the Chairman shall have a casting vote on this matter of the election of the Vice-Chairman is virtually left to the discretion of the Chairman himself. Unless the plain meaning of the relevant sections of the Ordinance compels me to reach such a conclusion, it would in my opinion be wholly unreasonable to impute to the legislature an intention to permit the Chairman virtually to decide this matter himself.

Act 39 of 1951 is an Act amending the law relating to local authorities in order to make new provisions regarding, inter alia, the mode of election of the Mayors or Chairmen and the Deputy Mayors or Vice-Chairmen of such authorities. An examination of its provisions reveals that the legislature introduced in respect of the election of Mayors and Deputy Mayors of Municipal Councils and the Chairmen and Vice-Chairmen of Urban Councils and Village Committees provisions similar to those introduced in respect of Town Councils by the new section 33A of the Ordinance. I can find no indication in section 33A of a limitation or restriction of the procedure of determination by lot in the event of an equal division of votes in the matter of the election of a Vice-Chairman to the case of such an election taking place at the first meeting after a general election. It is an accepted rule of interpretation of statutes that, if the co-existence of two sets of provisions would be destructive of the object for which the later was passed, the earlier would be repealed by the later.—*vide* Maxwell on Interpretation of Statutes, 10th ed., page 168. In the case of an equal division in the voting on the question of the election of a Vice-Chairman, section 33A (2) (g) has the effect of withdrawing from the Chairman his right to a casting vote conferred by section

40 (3) of the Ordinance. At any meeting of the Council the Chairman appears to have a casting vote on any question that arises for division except where the question is that of the election of a Vice-Chairman. Such election may take place at the first meeting after a general election, at an ordinary meeting or a special meeting convened in terms of section 39 of the Ordinance ; the Chairman is required to preside at all proceedings held for the election of the Vice-Chairman—section 33 (4) ; but at such election the Chairman has no right in view of section 33A (2) (g) to exercise a casting vote.

As the election of the respondent was effected by the Chairman exercising a casting vote instead of by the drawing of lots, the election has been held contrary to the express provisions of the relevant statute and is therefore, in my opinion, invalid.

For the reasons I have set out above, I declare the election of the respondent as Vice-Chairman of the Council on 30th January 1960 void and that the petitioner is entitled to the remedy prayed for by him. The rule nisi issued on the respondent is made absolute. The respondent is ordered to pay the costs of the petitioner fixed at Rs. 250.

*Rule nisi made absolute.*

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