

Present: Lyall Grant J.

1930.

In the Matter of an Application for a Writ of *quo warranto* against
Chairman, Village Committee of Tellippalai.

*Village communities—Election of committee members—Basis of caste—
Irregularity—Ordinance No. 9 of 1924, s. 18.*

Where, in proceedings under the Village Communities Ordinance for the election of a village committee, the inhabitants of a sub-division resolved to allot members on a basis of caste,—

Held, that the proceedings were irregular and the election of members void.

THIS was an application for a writ of *quo warranto* against the chairman and nine members of the village committee of Tellippalai subdivision. The petitioner, who was a resident of the

1930. subdivision, objected to the election of the respondents as members of the village committee on the ground that the nine seats set apart for the subdivision were allotted according to caste. It was alleged that such a basis of division was unconstitutional.

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Gnanaprakasam (with *Tiyagaraja*), in support.

H. V. Perera (with *Subramaniam*), *contra*.

February 3, 1930. LYALL GRANT J.—

This is an application for a writ of *quo warranto* against the chairman and nine members of the village committee of Tellippalai subdivision.

The petitioner is a resident of Tellippalai East and qualified to vote for the election of a village committee as well as to be elected one of the members. The petitioner takes objection to the regularity of the election of the second to tenth respondents, and he also takes objection to the election of the first respondent as chairman.

His first objection to the regularity of the village committee members' election is that the nine seats were allotted to four particular castes, and that only persons belonging to these castes were allowed to be elected. It is alleged that this is unconstitutional.

His second objection is that the resolution in regard to castes and the subsequent proceedings were illegal and contrary to the preliminary resolutions which were passed in accordance with the Village Communities Ordinance.

It was pointed out that Tellippalai East ward included among its inhabitants peoples of several castes, and that by the method of the election adopted a number of these castes were debarred an opportunity of naming a candidate from among their own members.

In regard to the chairman it was pointed out *inter alia* that the committee having been improperly appointed and the chairman elected by only thirteen members of the committee, his election cannot be said to be regular, as he may have been elected by persons who had no right to vote. The petitioner also prays that this Court should exercise its powers for issuing a writ of *quo warranto* on the village committee, that their election be declared null and void, and that they may be ordered to vacate their respective offices. Thirdly, that a fresh election of 9 members for the electoral area of the Tellippalai East ward be ordered to be held in conformity to the provisions of the Village Communities Ordinance, No. 9 of 1929, and in terms of the preliminary resolution passed at the meeting of the inhabitants of the Tellippalai subdivision, throwing open all the nine seats to all qualified residents of the electoral area, irrespective of caste or creed, and on a competitive

basis and a fresh election of the chairman be ordered, and the Government Agent be ordered to preside at the meeting of such election.

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In order that the position may be understood it is necessary to state in some detail the proceedings which took place in connection with the election of the village committee. The proceedings commenced by a notice dated March 19, 1929, signed by the Government Agent, of a meeting of the male inhabitants of the subdivision of Tellippalai to be held at the American Mission compound at Tellippalai on April 30, 1929, and the male inhabitants were invited to appear in person. The objects of the meeting were stated to be—

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- (a) To elect a village committee, to consist of not less than six persons, for such subdivision to hold office for three years from July 1, 1929;
- (b) To decide whether the power of making rules should be delegated to such committees; and
- (c) To decide whether the chairman of such committee should be elected by the committee or whether the chief headman of the division should be *ex officio* chairman.

The meeting was held and the minutes were copied and signed by the Government Agent. Affidavits of what happened at the meeting have been submitted to this Court by the Government Agent. After the objects of the meeting had been explained and the qualifications of voters and members had been read out, the following resolutions were unanimously carried:—

- “(a) That twenty-four members be elected.
- “(b) That the Chairman shall be elected by the members from among their own number.
- “(c) That each police vidane’s division votes separately for its allotted number, but that for this purpose Keerimalai votes with Tellippalai South-west.
- “N.B.—It was explained that the candidates must come from the police vidane’s division concerned. This formed part of the resolution.
- “(d) That the number 24 be allotted as follows:—

Tellippalai North-west	...	...	3
Tellippalai South-west with Keerimalai	...	...	6
Tellippalai East	...	...	9
Maviddapuram	...	...	6
- “(e) That the inhabitants delegate the power to make rules to the committee.”

The voting then proceeded on the lines agreed upon and it appears that while the election for Tellippalai South-west was in progress, a heavy downpour of rain occurred and the voters dispersed

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to various places for shelter. The Government Agent found that the voters of Tellippalai East had taken refuge in a certain house and proceeded to take their poll. The minutes show that he addressed the voters on the question of caste representation, and it was proposed and seconded that 9 members should be elected as follows :—

Vellalas	...	...	...	6
Kovias	...	...	...	1
Karaiyars	...	...	...	1
Goldsmiths	...	...	...	1

The minutes show that the resolution was carried by a large majority, but not unanimously. After this the Kovia, Karaiyar, and Goldsmith members were proposed and seconded and elected only one name being put forward in each case. Sixteen persons were proposed from among the Vellallas, and six of these were declared to be elected. It was pointed out that although there were according to the minutes only 500 voters present that the votes cast actually amounted to some 4,100, which would mean that each voter on the average voted for about eight persons, and it is suggested that this in itself is sufficient to invalidate the election.

A preliminary objection was taken that the relator could not join with his objections to the election of the committee men, independent, and unrelated objections to the subsequent election of the chairman.

The applicant, though admitting that he was not entitled to bring forward these objections, agreed to limit himself to those objections which were consequential to the irregularity alleged against the election of the committee.

The respondent's Counsel agreed that he was entitled to bring such objections to the notice of the Court. Various other objections were taken to the application. It was argued that, as the Ordinance makes no provisions for bye-elections, he cannot ask that part of the election be reheld, and that, if it is decided that any of the persons are improperly elected, the whole election, not only for Tellippalai East, but for the whole of Tellippalai, is invalid. It was further pointed out that one of the prayers of the petition was for a *mandamus* on the Government Agent to hold a new election and that the Government Agent has not been made a party to the application and that in his absence such an order cannot be made. I understand it to be conceded that this is the case and Counsel for the applicant to intimate that he will be content if a *quo warranto* order be issued unaccompanied by a *mandamus* on the Government Agent.

For the respondent it was argued that the application was not a *bona fide* one, that no complaint was made until nearly two months after the election of the committee, that no injury has been caused

to the rights of the relator, who is himself a member of the Vellala caste, and that no persons of the lower castes have raised any objections to the proceedings. It was stated for the respondent that although the relator professes to act in the interests of the lower castes, in effect the special arrangements made for the election were instituted in order that the lower castes might have some representation.

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The total number of Vellalas in the ward exceeded the number of the other castes, and but for the special provisions made the lower castes would have had no representation at all.

In the case of *Perera v. Rajapakse*¹ it was pointed out by Mr. Justice de Sampayo that "the jurisdiction of this Court in respect of applications for *mandamus* in the nature of *quo warranto* is discretionary, and any circumstance of undue delay must be taken into consideration."

The delay in making the complaint however does not seem to be a serious delay. A printed petition of great length was compiled for the purpose of an application to this Court within two months of the election itself.

No doubt the relator was present at the proceedings and he does not seem to have made any active protest. On the other hand there is nothing to show that he approved of the measures taken. Although it is suggested that he is not acting *bona fide*, I do not think that this suggestion has been established beyond reasonable doubt.

The procedure adopted by the Government Agent at this election is taken under the provisions of Ordinance No. 9 of 1924. Section 14 provides that it shall be lawful for the inhabitants of any subdivision to elect a committee of not less than six.

The subdivision referred to is the subdivision proclaimed by His Excellency the Governor in Executive Council under Part II. of the Ordinance, sections 4 to 6. I cannot find that any power is given to the Government Agent or to the inhabitants of a subdivision to divide themselves into wards or into castes; for the purposes of electing this committee. It was however contended by Counsel for the respondent that the Ordinance does not in any way define the manner in which a committee is to be elected, and Counsel for the applicant did not press this point so far as it affects the division into wards, for the reason that there had been unanimous consent by the persons present at the meeting to the separation of the subdivision into wards and for the voting in respect of each ward separately by the inhabitants of that ward alone. He did however press the point in so far as it related to the selection of candidates according to caste.

¹ 26 N. L. R. 422.

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I shall therefore confine my attention to that part of the election to which objection is taken, *i.e.*, to the election of the second to the tenth respondents.

Section 18 deals with the qualifications of committee men and provides that a person shall be disqualified to be elected as a member of the committee for various reasons.

One of the reasons for disqualification is if he should not have been resident in the subdivision for a period of one year immediately prior to the date of his election, thus confining candidates to residents not otherwise disqualified.

Reading the section as a whole it seems clear that any person, who complies with all the conditions mentioned in that section and also the condition of being resident in the subdivision, is entitled to be elected a member of the committee. If this is so, the exclusion of a member of any caste from the possibility of election appears to me to be contrary to the provisions of the Ordinance.

While, therefore, I am doubtful whether it is permissible for the subdivision to be divided into wards for the purpose of election, it is sufficient for the purposes of this appeal to hold that the selection of certain castes to which candidates are to be confined is contrary to the provisions of section 18.

I would, therefore, declare that the second to the tenth respondents are not properly elected, and have no authority to act as members of the village committee, and a writ of *quo warranto* will issue against them.

I do not think I can order a fresh election as this would entail an order of *mandamus* on the Government Agent, who is not a party to these proceedings.

In regard to the application against the first respondent that he should vacate the post as chairman, it was pointed out that he is not one of the members for Tellippalai East and that his election is a separate matter effected on a subsequent date and should be the subject of separate proceedings.

The relator, however, objects to the election as chairman on the ground *inter alia* that the meeting at which he was elected was convened by the second respondent whose election is null and void. He also alleges that there were other irregularities, such as short notice, non-issue of notices to certain members, &c.

I have not, however, discovered that any irregularity which may have taken place in the election of a chairman has caused serious inconvenience to anyone, and in regard to this, which is really a separate "cause of action," I am of opinion that it is improperly joined with the petition against the election of the members of the committee for Tellippalai East.

Accordingly, I refuse this part of the petition.

Rule made absolute.