

Present: Schneider J.

In re the Application of SATHAKU for a Writ of *Mandamus*
on the Chairman, Local Board, Puttalam.

Local Boards Ordinance, No. 27 of 1916—Notice of Government Agent fixing time for delivering nomination papers for election of members—Nomination papers delivered some time after appointed hour—Papers delivered before ten days of day appointed for election—S. 10—Nomination papers rejected—Application for mandamus.

The Government Agent gave notice in the *Gazette* that a meeting would be held at 11 A.M. on December 20 to elect three unofficial members. The notice also stated that the nomination papers must be delivered "on or before 11 A.M. on December 7." On that day only one nomination paper was delivered before the hour fixed. Three others were delivered quarter of an hour later. The presiding officer rejected these, and declared only one candidate duly elected. An elector applied for a writ of *mandamus* on the Government Agent, and it was contended on his behalf that the nomination papers were in time, as they might be delivered at any time not less than ten days before the meeting (December 20) under section 10 (2) of the Local Boards Ordinance.

Held, that the Government Agent did not act *ultra vires* in fixing the date and hour for the tendering of the nomination papers.

THE facts appear from the judgment.

Driberg, K.C. (with him *Canekeratne*), for the petitioner, applicant.

Muttunayagam, C.C., for the first and second respondents.

H. J. C. Pereira, K.C. (with him *Fonseka*), for the third respondent.

January 29, 1923. SCHNEIDER J.—

There being vacancies for three members on the Local Board of Health and Improvement of Puttalam, the Government Agent of the North-Western Province, in pursuance of the provisions of section 9 of "The Local Boards (Amendment) Ordinance, No. 27 of 1916," gave public notice by publication in the *Gazette* of November 17, 1922, that "a meeting would be held at 11 A.M. on December 20, 1922, at the office of the Local Board of Puttalam to elect three unofficial members." The notice also stated that the nomination papers "must be delivered at the said office of the Local Board of

1922.
 SCHNEIDER
 J.

*In re the
 Application
 of Sathaku*

Puttalam on or before 11 A.M. on December 7, 1922, which day has been fixed for that purpose. If more than three candidates are nominated, a poll would take place at the time and place above referred to."

The words "on or before 11 A.M." were obviously intended for "before or at 11 A.M.," and were so understood by all the parties concerned.

On December 7 only one nomination paper—that in favour of the third respondent—was delivered before the hour fixed. Three others nominating three other candidates were delivered at 11.15 A.M., or about a quarter of an hour after the hour fixed.

At the election meeting the presiding officer rejected the nomination papers in favour of the three candidates which were not delivered by the hour fixed, and declared the third respondent elected as being the only candidate properly nominated. In consequence, no poll was held. The petitioner—one Sathaku—describing himself as a duly qualified elector, prays that the election of the third respondent be declared void, and that the first and second respondents "be ordered by *mandamus* to proceed with the election of the unofficial members of the Local Board, and to receive the votes of the voters in favour of the candidates duly nominated."

The one and only reason given for this application is that the Government Agent acted *ultra vires* in fixing 11 A.M. or earlier of December 7, 1922, for delivering the nomination papers, because the voters were entitled to deliver the nomination papers at any time which was "not less than ten days before the meeting," that is, December 20. In other words, that the three nomination papers which were rejected were, in fact, delivered within the time prescribed by the Ordinance.

The argument, on behalf of the applicant, was that the direction in section 9 that the Government Agent shall state the "time within which the nomination of candidates must be made" must be regarded as controlled by the provision in section 10 (2), which must be construed as giving voters time to deliver their nomination papers at any time, provided it is not less than ten days before the meeting.

The material portions of sections 9 and 10 are the following:

"Section 9.—The Government Agent shall give public notice of his intention to hold an election of unofficial members of the Board of Health and Improvement for such town. Such notice shall be published in the English, Sinhalese, and Tamil languages not less than one calendar month before the day for holding the election. Such notice shall state the time and place at which a meeting will be held for the purpose of the election, and the time within which the nomination of candidates must be made."

1923.

SCHNEIDER
J.*In re the
Application
of Sathabu*

“ *Section 10 (2).*—No person shall be entitled to be a candidate for election at the said meeting, unless he shall have been nominated in writing, and unless his nomination shall have been subscribed by at least two persons whose names shall appear in the list of persons entitled to vote, and shall have been delivered at the office of the Local Board not less than ten days before the meeting.”

In my opinion, the contention on behalf of the applicant is not sound. Section 9 clearly imposes upon the Government Agent the duty of fixing and notifying the electoral meeting, and directs that in his notice he shall state the “time and place” at which the meeting shall be held, and the “time within which the nomination of candidates must be made.” It directs that the period of time between the publication of the notice and the date of the meeting shall not be less than a calendar month. It does not mention any limit as regards the time for the delivery of the nomination papers. The word “time” in the last sentence of section 9 must be read as having the same meaning throughout that sentence. It means the day and hour. Section 9 must, therefore, be construed as empowering the Government Agent to fix the day and hours within which the nomination papers must be handed in, and also the day and hour at which the meeting will be held.

Section 10 must be read with section 9. The effect of section 10 would appear to be to indicate that the last point of time fixed for delivery of the nomination papers shall not be less than ten days before the meeting. In this case the notice was duly published, and the day and hour fixed for the delivery of the nomination papers was “not less than ten days before the meeting.” The notice, therefore, complies literally with the provisions of both sections.

The contention that the provisions in section 10 as regards the time within which the nomination papers must be handed in is for the benefit of the voters connected with the nomination paper is not altogether sound. It should be regarded, as Mr. Pereira argued, as intended for the benefit of all parties. The Government Agent, the Local Board officers, the voters who subscribe the nomination papers, and all other persons entitled to vote. The sections in question must be given a practical interpretation. The Government Agent is authorized to fix a day and hours within which the nomination papers must be handed in, so that the officers of the Local Board and persons tendering nominations papers may know within what limits of time the act of delivering the nomination papers must be done. Usually, a Local Board Office is open at 10 A.M. Between then or earlier and 11 A.M. affords ample time within which to hand in nomination papers on a fixed day.

It was argued that it would be curtailing the privilege afforded by the law to persons tendering nomination papers unless section

1922.

SCHNEIDER

J.

*In re the
Application
of Sathaku*

10 were construed to mean as giving such persons time up to the last moment which is outside the ten days' limit mentioned in section 10. To give that construction to those words would result in denying any meaning or purpose to the words in section 9 directing the Government Agent to state the time within which the nomination papers should be delivered, because if the meaning contended for were placed on section 9, the limit of time within which nomination papers must be delivered is automatically fixed by the fixing of the date of the electoral meeting. It is hardly a sound argument to say that what is intended by the words in question in section 9 is to authorize the Government Agent to fix some point of time before which nomination papers will not be accepted, provided such point of time is outside the limit indicated in section 10. If the Government Agent may not fix one line of limitation, he may not fix another if the argument is to prevail, because the fixing of any limit within the calendar month which intervenes between the publication of the notice and the election is a detraction from the right of the voters tendering nomination papers.

What appears to have been intended was to allow parties interested an interval of about 20 (30—10) days between the publication of the notice and the last moment for delivery of the nomination papers to do what they desired to do in regard to the nomination of candidates.

I am unable to uphold the contention that the Government Agent acted *ultra vires* in fixing the date and hours he stated in his notice, and would, therefore, dismiss this application, with costs, payable by the appellant to the respondents.

Application refused.
