

In the affidavit filed by the respondent the question of undue delay has specifically been raised. No counter affidavit has been filed excusing the delay. The election took place on 8th June, 1949. The application was filed in the Registry on 14th November, 1949, i.e., more than five months after the election. In the absence of any excuse I think there has been undue delay on the part of the petitioner.

In the case of *Jayasooria v. de Silva*, referred to above, Soertz J. thought five months' delay too long. Counsel for the petitioner says that in that case the challenged election was that of the Vice-Chairman of an Urban Council whose tenure of office was only one year and in the circumstances five months' delay was undue delay; in this case the members hold office for three years and therefore five months' delay would not be unreasonable.

The question of undue delay surely cannot depend on the length of an elected member's tenure of office. The criterion would be the period of time that has elapsed between the date of the election and the filing of the application. A successful candidate has a right to expect that the issue of the validity of his election should be disposed of as quickly as possible. And how can that be done if the challenger waits for five long months before making his challenge?

Where a defeated candidate makes his application for a writ of *quo warranto* in the hope and with the object of unseating his successful rival I would, in the absence of a lawful excuse, unhesitatingly say that there has been unreasonable delay in making the application when a period of five months has elapsed from the date of the election.

The rule is discharged with costs.

*Rule discharged.*

1949

*Present: Gratiaen J.*

PUNCHISINGHO, Petitioner, and B. H. PERERA, Respondent

*S. C. 478—Application for a Writ of Quo Warranto*

*Writ of quo warranto—Village Committee Election—Disqualification for membership—Application of Local Authorities Elections Ordinance, No. 53 of 1946—Sections 2 (1) and 10 (1).*

An applicant, who seeks to set aside the election of a village committee member on the ground that he is the holder of a public office under the Crown and is, therefore, disqualified by section 10 (1) of the Local Authorities Elections Ordinance, must furnish material showing that the village committee in question is governed by the Ordinance.

**T**HIS was an application for a writ of *quo warranto* seeking to set aside the election of a member of Adikari Pattu Village Committee, Bamunumulla.

*A. B. Perera*, for petitioner.

*H. W. Jayewardene*, for respondent.

December 13, 1949. GRATIAEN J.—

The petitioner seeks to set aside the election of the respondent as member of Ward No. 7 of Adikari Pattu Village Committee, Bamunumulla, on the ground that the respondent is the holder of a public office under the Crown within the meaning of section 10 (1) of Ordinance No. 53 of 1946. I find however that this Ordinance has no application to any particular Village Committee unless an order is published in the *Government Gazette* to that effect as required by section 2 (2). Learned Counsel for the petitioner concedes that he has no material to place before me to show that the Village Committee in question is governed by the Ordinance. In those circumstances the present application is rejected with costs. The petitioner asks for leave to file fresh papers should he be so advised. I allow the application, but only on condition that the petitioner hypothecates a sum of Rs. 315 with the Registrar of this Court as security of the respondent's costs of any future application. Should such fresh papers be filed the respondent will, of course, be entitled to take any further objections to the granting of that application.

*Application rejected.*