1967 *Present :* **T. S. Fernando, A.C.J., and Siva Supramaniam, J.**

S. DON SIRISENA, Applicant, *and* L. G. SIRIWARDENA and another, Respondents

S. C. 428/66—Application for Mandates in the nature of Writs of Quo Warranto and Mandamus under section 42 of the Courts Ordinance

Urban Council—First meeting—Election of Chairman—Right of a member to propose his own name—Urban Councils Ordinance (Cap. 255), ss. 17, 18 (1)—Local Authorities (Election of Officials) Act No. 39 of 1951—Municipal Councils Ordinance No. 29 of 1947, s. 14 (4)—Village Communities Ordinance (Cap. 257), s. 19—Quo warranto.

When the members of an Urban Council meet for the first time for the purpose of electing a Chairman in accordance with the provisions of sections 17 and 18 of the Urban Councils Ordinance, it is competent to a member to propose his own name for election as Chairman.

APPLICATION for writs of *quo warranto* and *mandamus*.

Nimal Senanayake, with *Bala Nadarajah*, *Adela P. Abeyratne* and *D. Senanayake*, for the applicant.

Mervyn Fernando, Crown Counsel, for the 1st respondent.

N. R. M. Daluwatte, for the 2nd respondent.

Cur. adv. vult.

December 10, 1967. T. S. FERNANDO, A.C.J.—

This application raises an interesting point relating to the election of a Chairman of an Urban Council.

The applicant and the 2nd respondent are members of the Urban Council of Balangoda. The 1st respondent is the Assistant Commissioner of Local Government who is required by sub-sections (3) and (5) of section 17 of the Urban Councils Ordinance (Cap. 255) to preside at a meeting of the Council convened by him for the purpose of electing a Chairman. It is common ground that such a meeting was convened for the 3rd October 1966, and that the 1st respondent did preside thereat.

So much of the proceedings at this meeting of the 3rd October 1966 as is relevant for the purpose of deciding the present application may now be noted. The name of the 2nd respondent for election as Chairman was proposed and seconded respectively by two other members of the Council. The applicant then proposed his own name for election to the same office whereupon the 1st respondent indicated to him that there may be no one to second the proposal. Why the 1st respondent should have made a remark to that effect is not apparent, and the remark itself, I am free to observe, was an imprudent one. However that may be, another member of the Council did second the applicant's name that had been proposed by the latter himself. The 1st respondent then ruled that it was not competent to the applicant to have proposed his own name for election as Chairman and held that the proposal was bad in law. The applicant's candidature for office was therefore rejected. In the result the 2nd respondent was declared elected without any contest on the basis that there was only one candidate proposed and seconded for election—vide section 18 (2) (*a*).

The question for determination by us upon the present proceeding is whether the ruling referred to above made by the 1st respondent is correct in law. Section 18 of the Urban Councils Ordinance in its present form was the result of an amendment of the relevant law introduced by the Local Authorities (Election of Officials) Act, No. 39 of 1951. It was an Act passed for the purpose, *inter alia*, of amending the law relating to Local Authorities in order to make new provisions regarding the mode of election of the Mayors or Chairmen and the Deputy Mayors or Vice-Chairmen of such Authorities. Even before amendments were effected by Act No. 39 of 1951, the relevant law so far as it affected the election of a Mayor or a Deputy Mayor of a Municipal Council—(Vide section 14 (4) of the Municipal Councils Ordinance, No. 29 of 1947)—required the proposing and seconding of names of candidates for these two offices to be done " by any other Councillor ". The 1951 Act did not seek to change that part of the law. Indeed in the case of an election of a Chairman for a Village Committee, the law is analogous to that governing the election of a Mayor of a Municipal Council. Section 19 of the Village Communities Ordinance, No. 9 of 1924, as amended by Act No. 39 of 1951 (Cap. 257), requires the proposing and seconding of a name of a member for election

as Chairman to be done " by any other member ". The Legislature, however, at the same time, although it had in contemplation before it the corresponding provisions obtaining in the cases of a Municipal Council and a Village Committee, appears to have departed from those provisions when it legislated for the cases of Chairmen and Vice-Chairmen of Urban Councils and Town Councils which are the other local authorities established by law in this Country. In the case of these two local authorities, the provision relating to the proposing and seconding being done " by any other Councillor " or " by another member " was not included. We cannot think that the distinction which the amending Act No. 39 of 1951 introduced was anything but studied or deliberate, coming as it did at a time when the Legislature was making new provisions regarding the mode of election of officials of all the local authorities of this Country. We have therefore to give effect to the apparently deliberate intention of the legislature. In that situation we need not attempt to ascertain any reason for the distinction ; but we would like to observe that one reason may well be that the membership of an Urban Council or a Town Council can often be very small. Whereas the minimum number of councillors for the composition of an Urban Council and a Town Council is four and three respectively, a Municipal Council or a Village Committee is composed of a larger number of members. Learned Crown Counsel, who had made some investigation in the relevant archives, did in fact bring to our notice that this was the very reason that the draftsman of the legislation had in mind, but, of course, we cannot make use of that knowledge in reaching our own interpretation of the written law.

Crown Counsel, appearing for the 1st respondent, was frank enough to state that he could not support the ruling of the respondent at the meeting in question. Counsel for the applicant invited our attention to a passage in Crew's standard work on the conduct of *Public Company and Local Government Meetings* (1956, 19th ed.) at p. 28 which I would like to quote below :—

> " There is usually nothing to prevent a person proposing or seconding himself as Chairman, though this course is undesirable ; in any event, he is entitled to vote for himself. "

Any argument which could have been advanced on behalf of the 2nd respondent based on the use by the legislature of the passive voice in the language employed in section 18 (1)—" any member may with his consent be proposed "—is defeated by the action of that very legislature in observing a distinction between the cases of a Municipal Council and a Village Committee on the one hand and an Urban Council and a Town Council on the other. For the reason I have thus indicated, we did at the conclusion of the argument make *absolute* the order *nisi* which had already issued from this Court so far as the application related to a mandate in the nature of a writ of *quo warranto*, and we quashed the election of the 2nd respondent on 3rd October 1966 as Chairman of the Urban Council of Balangoda.

Mandamus has also been sought on this *application*, but we do not think it necessary for us to issue any mandate of that nature at this stage. Now that the election of the 2nd respondent has been quashed, we do not doubt that the 1st respondent or, if that be the case, his successor in office, will proceed without delay to convene the necessary meeting and proceed to election of a Chairman. Learned Crown Counsel indicated to us that that would indeed be the advice that will be tendered to the Assistant Commissioner of Local Government.

The applicant is entitled to the costs of this application to be paid in equal shares by the 1st and 2nd respondents.

SIVA SUPRAMANIAM, J.—I agree.

Order nisi *made absolute.*