1951 *Present :* **Nagalingam S.P.J.**

H. F. C. FONSEKA, Petitioner, *and* S. SELLATHURAI, Respondent

S. C. 111—Application for a Writ of Quo Warranto on the Member for Ward No. 7, Hatton-Dickoya Urban Council

Quo warranto—Public office—Appointment thereto—Should appointee communicate his acceptance ?—" Hold office "—Rent Restriction Act, No. 29 of 1948, s. 19 (6)—Local Authorities Elections Ordinance, No. 53 of 1946, s. 10 (1) (d).

Where the right of a member of an urban council to sit and vote at meetings of the council was challenged on the ground that at the date of his election he was a member of a Rent Control Board and, therefore, being a holder of a public office under the Crown within the meaning of section 10 (1) (*d*) of the Local Authorities Elections Ordinance, was disqualified from being elected—

Held, (i) that where a person receives an appointment to an office which he is willing to accept, it is not essential to the validity of it that the appointee should communicate his acceptance to the appointing authority. If his assent can be implied or inferred from attendant circumstances and particularly from his conduct, the appointment then becomes effective.

(ii) that once the respondent was appointed to, and was willing to accept, the office of Member of the Rent Control Board he automatically became the holder of the office, subject to the contingencies set out in section 19 (6) of the Rent Restriction Act ; the circumstance that he neither actually functioned as such member nor received remuneration was immaterial.

APPLICATION for a writ of *quo warranto* on the member for ward No. 7, Hatton-Dickoya Urban Council.

N. E. Weerasooria, K.C., with *W. D. Gunasekera*, for the petitioner.

H. V. Perera, K.C., with *H. W. Tambiah, M. M. Kumarakulasingham* and *G. C. Niles*, for the respondent.

Cur. adv. vult.

November 9, 1951. NAGALINGAM S.P.J.—

A Writ of Quo Warranto was directed to the respondent calling upon him to shew by what authority he sits and votes at meetings of the Hatton-Dickoya Urban Council. The information to Court was presented by the petitioner on the footing that the election of the respondent was void for the reason that the respondent was personally disqualified from being elected as he was the "holder of a public office under the Crown" in Ceylon within the meaning of that phrase in section 10 (1) (*d*) of the Local Authorities Elections Ordinance 53 of 1946.

The facts are not in dispute. By letter P1 of 31st March, 1950, the Permanent Secretary to the Minister of Health and Local Government informed the respondent that the Minister

> "has in terms of section 19 (2) of the Rent Restriction Act No. 29 of 1948 appointed you to fill an existing vacancy in the panel of 5 persons serving on the Rent Control Board for the area comprised within the administrative limits of the Hatton-Dickoya Urban Council."

The respondent has affirmed, and his statement has not been challenged, that he was at no time prior to letter P1 being sent to him consulted regarding his willingness to serve on the Rent Control Board, and he further affirms that at no time did he apply to anyone for the office nor intimate to anyone that he would be willing to accept such an office. On the other hand the fact remains that on or after the receipt of the letter P1 the respondent did not notify the Permanent Secretary or any other person in authority that he was unwilling to accept office.

It is in evidence that the full complement of members constituting the Rent Control Board for the Hatton-Dickoya Urban Council area had been appointed prior to 23rd March, 1950 (*Vide* P2) but that two of the members, namely, Samaraweera and Banks, had tendered their resignations, and to fill the resulting vacancies the respondent and one Mr. Wijeratne were appointed on 31st March, 1950. Although the Board had been constituted and been in existence for some time, the Board does not appear to have functioned till, if at all, after the appointment of a Secretary to the Board on 23rd July, 1951. (*Vide* R1). The first intimation to the public in terms of regulation 3 of the Regulations

framed under the Rent Restriction Act of the address to which applications should be sent and of the place where the sittings of the Board would be held was given by publication in the *Government Gazette* on 24th August, 1951. (*Vide* R2). That the respondent did not at any time function as a member of the Board and that he did not at any time receive any remuneration is not questioned by the petitioner.

On 25th November, 1950, as a result of a poll taken, the respondent was declared elected as member for Ward No. 7 of the Council. Four days later, namely, on 29th November, 1950, by letter P3, the respondent wrote to the Commissioner of Local Government as follows :—

" *Rent Restriction Board, Hatton.*

Dear Sir,

This is to inform you that I tender my resignation of the member of the above Board.

Yours faithfully,

Sgd. ..... "

On these facts the petitioner contends that at the date of election the respondent was in fact the holder of a public office under the Crown and was therefore disqualified from being elected, while the respondent asserts the contrary.

The first point that arises for consideration is whether the intimation P1 by the Permanent Secretary to the respondent that he had been appointed a member of the Rent Control Board, without the consent of the respondent having been obtained prior thereto and without at least a signification by the respondent subsequent thereto that he was willing to accept office, does in fact amount to his being duly appointed to office, so as to make him the holder thereof.

I do not think that where a person receives an appointment which he is willing to accept it is essential to the validity of it that the recipient should communicate his acceptance. Mr. Perera, however, argued that although no communication may be necessary, nevertheless, there should be what he called an overt assent as opposed to a secret mental resolution to accept the office. Now, an overt assent can mean nothing less than a manifestation of the assent which would necessarily then become overt. But the question is : To whom should the fact of assent be manifested ? If the manifestation is to have any value at all, it must be to the appointing authority or to some person who would legally be entitled to take notice of such assent. If so, it would then be equivalent to a communication of acceptance. The mere manifestation of acceptance to one's friends or relations cannot be deemed to be a manifestation from which any legal consequence could flow, because such a manifestation is analagous to a *nudum pactum*, so that it seems to me that when Mr. Perera used the term " overt assent " he was really putting forward the contention he had given up by conceding that no communication of assent was necessary.

Mr. Perera reinforced his argument by calling to his aid by way of illustration the case of a Minister who, to get rid of his political opponent, say from membership of Parliament, appoints him a member of the Rent Control Board without obtaining his assent. In such a case in view of the facts which are assumed, there cannot be the slightest doubt as to how a Court of Law would determine the issue. But those are not the facts in this case. I see no difficulty in holding that neither a communication of assent nor an overt assent or manifestation of assent is at all necessary for an appointment to be effective. But there can be no doubt that there should be assent on the part of the appointee. The assent need not necessarily be signified, as I have already indicated. by express intimation or manifestation. If assent could be implied, or inferred from attendant circumstances and particularly from the conduct of the appointee, the appointment then becomes effective.

Silence in certain circumstances may lead to the undoubted inference that the appointee had accepted the appointment, especially where the silence continues over a considerable period of time. Affirmative conduct, too, such as the entering upon and exercising the functions of office without intimation of assent would, again, lead to the same inference. So that, for a proper appraisement of the question involved, investigation should be made along lines which would either countenance or negative the view that there was implied assent by the respondent to his appointment.

Mr. Weerasooriya urged that a person in the position of the respondent, who is a Proctor and who would ordinarily be expected to know the resulting implications of his own conduct, would have been the first person, if he was not willing to accept appointment, to have written in and informed either the Permanent Secretary or the Commissioner of Local Government that he did not wish to take office, and in the absence of any such action on his part the fair and proper inference to be drawn is that he was willing to assume the office and exercise the functions pertaining to it if and when called upon ; for not till an application was received for adjudication by the Board would the Board itself be called upon to function, and till such event took place a member himself could not exercise the functions of his office. It is a slight circumstance, but one which cannot entirely be ignored, that if the position of the respondent was that he was not willing to take appointment, then there would have been a vacancy on the Board which the Minister would have filled in accordance with the provisions of the law. But by the respondent not conveying to the proper authority that he was declining the appointment, he certainly lulled the Minister into the belief that there was no vacancy on the Board, for otherwise such a vacancy would not have been allowed to remain unfilled. I am not prepared to say that this contention does not carry conviction, but it is unnecessary for me to express any final opinion in regard to it in this case, for there are other factors which are more conclusive.

Mr. Weerasooriya next contended that there was an act of an affirmative character on the part of the respondent which showed unmistakably and clearly that he had assented to the appointment

and had considered himself the holder of the office. He depends upon the letter of resignation, P3, written by the respondent to the Commissioner of Local Government. The terms of the letter are quite unambiguous and, construed normally, does and can only mean that the respondent, who had been and was up to the date of the letter a member of the Board, was resigning his membership of the Board from that date.

To escape from this dilemma Mr. Perera presented an argument based on the variation in the description of the Board by the appellant and by the appointing authority. It is true that when the respondent refers to his resignation from the Board he uses the phrase " above Board " meaning " Rent Restriction Board, Hatton " which is the heading in his letter ; but as the resignation relates to the appointment made by letter P1 by which the respondent was appointed to serve on the Rent Control Board, it must be held that the term " Rent Restriction Board " has been used by the appellant as a synonym for the term " Rent Control Board " used in the letter of appointment and in the Statute. I cannot accept the contention that the respondent intended by using the term " Rent Restriction Board " to convey the idea that he had in his mind some other Board than the Rent Control Board referred to in the letter P1, for there is no evidence that the respondent at that date he wrote the letter was holding any other appointment which could properly be designated as one on a Rent Restriction Board. If this is the meaning to be attached to his letter P3, I do not think it can be gainsaid that there is a clear implication that the respondent had regarded himself as having assented to his appointment as a member of the Rent Restriction Board on receipt by him of the letter of appointment P1, so that there is sufficient material upon which one can arrive at the view that the respondent had accepted appointment.

Mr. Perera, however, put forward a second argument that the letter P3 must be regarded as having been written by the respondent *ex abundanti cautela* in order to apprise the Commissioner of Local Government that he never accepted office, but if this were his intention, he certainly could have used adequate language to convey his meaning, but the language used by him in the letter P3 is far removed from any such meaning and leads to a contrary inference. I am satisfied that the respondent assented to the appointment on receipt of letter P1, and his subsequent silence then becomes easily explicable on this basis.

It was next argued on behalf of the respondent that, assuming that there was an effective appointment, till the appointment of a Secretary was made and the notification of the place where the Board would hold its sittings and of an address to which applications could be sent was made, as required by Regulation 3 of the Regulations already referred to, it could not be said that there was a Board in existence or, at any rate, a Board that could function. The appointment of a Secretary and the notification to the public were made, as set out earlier, subsequent to the date when the respondent wrote in his letter P3 resigning his office.

That the appointment of a Secretary is not a *sine qua non* for the functioning of a Board would seem to follow from the language used in section 20 (7) of the Rent Restriction Act which says that all documents, notices and summonses issued under the hand of the Chairman of the Board or *the Secretary thereto if appointed in accordance with the Regulations made in that behalf* shall be deemed to be issued by the Board. There is no provision in the Regulations which necessitates the appointment of a Secretary, and the words " if appointed " clearly indicate that there may be cases where no appointment may be made. That this is so is made clearer by the provisions to be found in the Regulations themselves. For instance, Regulation 6 prescribes that the Chairman or the Secretary shall acknowledge receipt of the applications received by the Board. A similar collocation of words is used in Regulation 7. There does not appear to be any provision which requires a particular act to be done by a Secretary to the exclusion of the Chairman, so that so long as a Chairman has been appointed to the Board, the Board can effectively function although there may be no Secretary.

The argument based on notification being necessary in regard to the address to which applications could be sent and the place where the meetings of the Board would be held is equally unsustainable ; there is nothing either in the Ordinance or the Regulations which indicates that the Board cannot function till such notification is given or that members of the public cannot address applications to the Chairman of the Board till such notification appears. The notification contemplated is to give publicity to the location of the office of the Board and of the address to which applications may be sent with a view to assist the members of the public by dissemination of the necessary information. But to say that till the notification is made the Board cannot function is a *non sequitur*.

I do not therefore think that the contention based on the absence of an appointment of a Secretary or the notification of an address or the venue of meetings is entitled to prevail.

Yet another argument was made use of by reference to the word " panel " that was used in the letter of appointment P1. It was said that the term " panel " had reference to the provisions of section 11 of the Rent Restriction Ordinance No. 60 of 1942 under which there was provision for the establishment of a Rent Assessment Board, the constitution of which provided *inter alia* for the selection of three persons from a panel of seven persons appointed by the Minister, and that the appointment P1 had rightly or wrongly been made under that Ordinance. There is, however, in the letter of appointment P1 express reference to section 19 (2) of the Rent Restriction Act No. 29 of 1948 and, unless the term " panel ", which is not used in the Act, has some connotation which conflicts with the other terms of the letter P1, there is no compelling reason to hold that the appointment was made under Ordinance No. 60 of 1942 and not under Act No. 29 of 1948.

The term " panel " originally meant a piece of cloth or pad put under the saddle of a horse, and latterly, in law, it came to mean the strip of parchment on which the Sheriff inserted the names of the jurors and

which he annexed to the writ. The meaning that gained currency thereafter was that the term merely meant a list of persons ; sometimes the list may be of a large number of persons from which for a particular purpose a smaller group may be elected ; in other cases the entire body on the list may be included in the term. A " panel of jurors " means not only the list of persons who have been summoned to serve on the jury but the jury selected to try any particular case itself. In recent years the term " panel doctor " has come into existence, which means nothing more than a doctor whose name is placed on a list of doctors who are willing to attend on patients in accordance with the National Health Insurance Acts. Correspondingly, there are " panel patients " who are merely patients on the list of a doctor at whose hands they are entitled to receive treatment.

The argument therefore that there was something inappropriate in the use of the word " panel " in P1 leading to a necessary inference that the appointment was not intended to be made under the Act of 1948 but under the Ordinance of 1942 cannot be sustained. I am of opinion that there is nothing in the terms of the letter P1 from which it could be said that the appointment of the respondent was not made under the Act of 1948, as it purports to be. This argument too fails.

Another point urged was that even though the appointment made may be considered to be effective from the date it was made, nevertheless it could not be said that the respondent was the holder of the office as there was a distinction to be drawn between an appointment to and the holding of an office. This argument was deduced from an analogy founded upon the case of *King v. Beer* [1] where under the provisions of section 32 of the English Bankruptcy Act of 1883 one disqualification of a person adjuged to be bankrupt is stated to consist in " being elected to, or holding, or exercising, the office of Mayor, alderman, or councillors ". It is easy to see that a man may be elected a Mayor but not hold office if, for instance, he does not take the oaths of allegiance if it be necessary to do so or attend meetings of the Council. But different considerations would apply where nothing need be done after election. In such a case can it be said that the person elected a Mayor, alderman or councillor is not holding the office ? I do not think so. In fact in the very case cited Lord Alverstone C.J. expresses the opinion that the word " holding " is equivalent to the word " being ", and in this sense I do not think it could be said that once the respondent was appointed and he was willing to accept the appointment he was thereafter not holding or filling the office of Member of the Rent Control Board. If he was not holding or filling the office, a vacancy would have resulted ; and it must not be lost sight of that under section 19 (6) of the Rent Restriction Act there is express provision that every person appointed to be a member of the Board shall unless *he earlier vacates the office by resignation or by revocation of the appointment hold office* for a period of three years commencing on the date of his appointment. The words to be specially emphasised are " hold office ", so that on appointment of the respondent to the office which he was willing to accept, he became the holder of

[1] *(1903) 2 K. B. 693.*

the office for a period of three years, subject to the contingencies set out in section 19 (6). There is nothing in the enactment which would warrant the contention that in order to hold office one should function as such. In fact one can visualise a case where, if no disputes under the Act were submitted to the Board, it would never be called upon to exercise its functions, but there can be little doubt that even in such a case each of the members would continue to hold and fill the office to which he was appointed. I do not therefore think that the circumstances relied upon by the respondent that he neither acted as a member nor received remuneration is of any avail to him.

In the result I find that the respondent was the holder of a public office under the Crown of Ceylon at the date he was declared elected a member. The election is therefore null and void, and the respondent was and is disqualified from sitting as a member or taking part in the deliberations of the Council.

The petitioner will be entitled to the costs of these proceedings.

Application allowed.