

1963

*Present : T. S. Fernando, J.*

P. RATNAYAKE, Petitioner, and H. E. HAPUARATCHI,  
Respondent

*S. C. 15 of 1963—In the matter of an Application for a Mandate  
in the nature of a Writ of Quo Warranto under section 42 of  
the Courts Ordinance*

*Quo warranto—Town Council—Election of Chairman—Allegation of disqualification  
on the ground of want of residence—Burden of proof—Local Authorities  
Elections Ordinance (Cap. 262), s. 8.*

The validity of the election of the respondent as Chairman of a Town Council was challenged on the ground that he was not a resident of the electoral area of the Town Council on the 17th May, 1962. The only evidence adduced by the petitioner consisted of two certificates issued by two persons seven months afterwards stating that, at the time when the certificates were issued, the respondent was not residing within the Town Council limits.

*Held*, that the material relied upon by the petitioner to show the disqualification of the respondent did not in fact establish any such disqualification. The onus of proof in such a case is on the petitioner.

**A**PPPLICATION for a writ of *quo warranto*.

*Prins Gunasekera*, for the petitioner.

*S. Nadesan, Q.C.*, with *M. L. de Silva*, for the respondent.

*Cur. adv. vult.*

May 17, 1963. T. S. FERNANDO, J.—

This is an application for the issue of a writ of Quo Warranto on the Chairman of the Town Council of Polonnaruwa on the ground that he was not qualified to be elected as a member for a ward of the said Town Council in that he was not, on the date of the commencement of the preparation or revision of the parliamentary register for the time being in operation for the electoral district of Polonnaruwa (which is the relevant electoral district within the meaning of section 8 of the Local Authorities Elections Ordinance (Cap. 262)) resident in any ward of the electoral area of the said Town Council.

Counsel on behalf of the respondent has contended that the material relied upon to show the disqualification of the respondent does not in fact establish any such disqualification.

It is common ground that the date of the commencement of the preparation or revision of the parliamentary register concerned is the 17th May, 1962. The petitioner's affidavit—paragraphs 9 and 10—alleges that the material in support of the disqualification consists of two certificates, "E" and "F" issued respectively by the District Revenue Officer of Tamankaduwa and the Village Headman. Certificate "E" is dated 24th December, 1962, and is in the following form:—

"The Village Headman has certified that Mr. H. E. Hapuaratchi, the Chairman of Polonnaruwa Village Committee, is not residing within the Polonnaruwa Town Council limits."

Apart from the circumstance that this certificate is based on hearsay, it purports to speak of the residence of the respondent as at 24th December, 1962, which is more than seven months removed from the relevant date. Certificate "F" signed by the Village Headman is to the effect that "the person named Hapuaratchige Emis Singho alias Emis Hapuaratchi is a permanent resident of No. 73B Kalinga Ela Thulane in Moraratenna". Assuming that the village referred to in this certificate is not part of the electoral area of the Polonnaruwa Town Council, it has to be observed that this certificate is dated 25th December 1962. There is no document, therefore, to show where the respondent was resident on 17th May 1962. The onus of establishing that the respondent was not resident in one of the wards of the electoral area of the Polonnaruwa Town Council is, in my opinion, on the petitioner and he has failed to discharge that onus.

Learned counsel for the petitioner argued that, even if the certificates "E" and "F" are of no assistance in determining the residence of the respondent on the relevant date, there remains to be considered the affidavit of the petitioner himself. If the affidavit of the petitioner had remained bare there may have been some substance in this argument, but the reasonable inference from the averment in the affidavit is that it was made relying solely on the certificates as proof thereof.

Counsel for the petitioner finally requested that an opportunity be given to him to adduce other evidence in order to substantiate the material allegation. I found myself unable to accede to that request. The respondent occupies a public office and, if his authority to function in that office was intended to be seriously challenged in this court, the petitioner should have provided himself with the necessary material. It would not, in my opinion, be a proper exercise of this court's discretion to allow adjournments of an inquiry into an application to do so to assist indifferent litigants.

The application is dismissed with costs fixed at Rs. 250.

*Application dismissed.*