1945 *Present:* **Soertsz A.C.J.**

DE ZOYSA *v.* DYSON *et al.*

APPLICATION FOR A WRIT OF CERTIORARI ON GOVERNMENT AGENT, KANDY.

Writ of certiorari—*Writ of* mandamus—*Election for ward in Urban Council—Nomination paper of candidate rejected on ground of disqualification—Erroneous decision of Government Agent—Urban Council Ordinance, 61 of 1939, s. 11 (3).*

Where a Government Agent, after hearing a voter's objection under section 11 (3) of the Urban Councils Ordinance, erroneously decided that the petitioner was disqualified from submitting his nomination paper in respect of a ward in an Urban Council area when, in fact, he was fully qualified.

Held, that the petitioner, although he laboured under a substantial grievance, was not entitled to relief by writ of *certiorari* or writ of *mandamus*.

The writ of *certiorari* never runs to give relief from wrong decisions. It is confined to decisions given or things done judicially or quasi-judicially and in excess of jurisdiction.

Mandamus is not issued on the ground that a duty has been done erroneously; it is issued to compel the performance of a neglected or disregarded public duty imposed by law.

THIS was an application for a writ of *certiorari* or a writ of *mandamus* against the Government Agent of the Central Province. The 1st respondent who is the Government Agent of the Central Province gave notice, by due publication in the *Gazette*, that he would accept nomination papers for the Hatton-Dickoya Urban Council on November 8, 1944. On the day fixed, on objection raised by the 2nd respondent, a duly qualified voter, the nomination paper of the petitioner, who is a Registrar of Marriages, was rejected by the Government Agent on the ground that he held a public office under the Crown. Parties were unaware of the fact that only holders of public *pensionable* offices under the Crown were disqualified

N. E. Weerasooria, K.C. (with him *C. E. S. Perera* and *S. P. C. Fernando*) for the petitioner.—The question that arises here is whether a writ of *certiorari* lies where the proper authority under the Urban Councils

Ordinance, namely, the first respondent, acted contrary to statute. Under section 8 (*d*) of the Urban Councils Ordinance, 61 of 1939, a person shall not be qualified to be a candidate for election if he holds " any public office " under the Crown. By Ordinance 14 of 1940 section 8 of Ordinance 61 of 1939 was amended so that only a holder of a public " pensionable office " was disqualified. The proper authority acted in ignorance of the existence of this amendment when he disqualified the petitioner who, as Registrar of Marriages, did not hold a " pensionable office " under the Crown. A writ of *certiorari* lies to quash an error of this nature—*De Costa v. A. G. A., Colombo* [1]*; Perera v. Kannangara* [2]*; Joseph v. Kannangara et al.*[3]

T. S. Fernando, C.C. (with him *J. G. T. Weeraratne, C.C.*), for the first respondent.—The proper authority admits he erred in law but he had jurisdiction under section 11 (3). According to that section the decision of the Government Agent, the first respondent, " shall be final ". The decision cannot, therefore, be questioned—*Nixon v. Attorney-General* [4]. Where the proceedings are regular on their face and the competent authority had jurisdiction a writ of *certiorari* will not be granted on the ground that the authority has misconceived a point of law. Where he had jurisdiction to decide a matter he cannot be deemed to exceed or abuse his jurisdiction merely becaus he incidentally misconstrues a statute—9 *Halsbury* (*Hailsham ed.*) 88; *Rex v. Christian* [5] *Perera v. Kannangara* (*supra*) can be distinguished. There the returning officer accepted a nomination paper after the appropriate time. He was thus exceeding his jurisdiction.

H. V. Perera, K.C. (with him *S. P. Wijewickrema*), for the second respondent.—A distinction is drawn between existence of jurisdiction and exercise of jurisdiction. *Certiorari* lies only where there is a mistake as to the existence of jurisdiction. Once there was a valid tender of a nomination paper the proper authority obtained the necessary jurisdiction to exercise his quasi-judicial powers under section 11 (3). The mistake was committed in the exercise of this jurisdiction and no *certiorari* lies—*The Queen v. St. Olave's District Board* [6]*; H. Nath Roy v. R. C. Barua Sarma* [7].

N. E. Weerasooria, K.C., in reply.—*Certiorari* will lie where the determination of a tribunal is wrong in law—9 *Halsbury* (*Hailsham ed.*) 887.

Cur. adv. vult.

July 24, 1945. SOERTSZ A.C.J.—

This application although it is described as one for the writs of *certiorari* and *mandamus*, must, I think, be supposed to be an application for the writ of *certiorari* or *mandamus* whichever, if either of them, is found to be appropriate to the facts relied upon. Those facts are few and are not in dispute. The first respondent who is the Government Agent of the Central

[1] *(1944) 45 N. L. R. 476.*
[2] *(1943) 45 N. L. R. 29.*
[3] *(1943) 45 N. L. R. 63.*
[4] *(1931) A. C. 184 at p. 192.*
[5] *(1842) 12 L. J. (M. C.) 26.*
[6] *(1857) 8 E. & B. 529.*
[7] *A. I. R. (1921) Calcutta 34.*

Province, and, as such, the proper authority under the Urban Councils Ordinance gave notice, by due publication in the *Government Gazette*, that he would accept nomination papers for the Hatton-Dickoya Urban Council area on November 8, 1944, between 10.30 and 11.30 A.M. Section 8 of that Ordinance provides for a duly qualified voter objecting to any nomination paper on any of the specified grounds, and empowers the Governmeont Agent to consider and decide upon any such objection.

On the day fixed, the petitioner tendered his nomination paper in respect of Ward No. 2 and the second respondent, a duly qualified voter, himself seeking to be returned for that ward, objected to the petitioner's nomination on the ground that the petitioner held a public office under the Crown in that he was a Registrar of Marriages. There was a time when the holding of *any* public office under the Crown was a disqualification. The petitioner, however, appears to have relied on an amendment of the Ordinance to the effect that only holders of public *pensionable* offices under the Crown were disqualified. But when attention was invited to this amendment the second respondent pointed out that that particular amendment was not in force, but due to come into force from January 1, 1945. Thereupon the first respondent made order saying that he was obliged to uphold the objection and to reject the petitioner's nomination paper. The result was that, there being only the second respondent's nomination paper left, he was returned member for Ward No. 2. All the paties concerned appear to have been unaware of the fact that, at the time this objection was taken, there was in force an intermediate amendment which was to the same effect as the proposed amendment and disqualified only holders of *pensionable* public offices, and so it came to pass that the petitioner was held disqualified when, in fact, he was fully qualified—a most unfortunate and deplorable event indeed.

But the question is whether the petitioner, although he labours under a substantial grievance, is entitled to relief under the one or the other of the two writs he has invoked.

Section 11 (3) of the Urban Councils Ordinance enacts (*a*) that the Government Agent " shall have the power to decide " any objection taken under section 8, and (*b*) " his decision shall be final ". Now, as observed by Mookerjee A.C.J. in the case of *H. Nath Roy v. R. C. Barna Sarma* [1] " the power to decide necessarily carries with it the power to decide wrongly as well as rightly ", and if the Legislature is content to make the decision final, the only question is whether the decision has been given within or in excess of the authority conferred on the person, body, or tribunal (see *Rex v. London County Council* [2]). The rightness or the wrongness of the decision, so to speak, does not arise. A remark made in the course of the argument in the old case of *The Queen v. St. Olave's District Board* [3] is to the point and if I may say so states the law correctly—the test is whether there was jurisdiction, not whether the decision is right or wrong. It is well established that the writ of *certiorari* never runs to give relief from wrong decisions. It is confined to decisions given or things done judicially or quasi-judicially and in excess of jurisdiction.

[1] *A. I. R. (1921) Cal. p. 34.* [2] *(1931) 2 K. B. p. 215.*
[3] *8 Ellis & Blackburn at p. 531.*

In regard to the alternative remedy sought by way of *mandamus*, the petitioner is in no better case for *mandamus* is not issued on the ground that a duty has been done erroneously; it is issued to compel the performance of a neglected or disregarded public duty imposed by law. The application must be refused with costs.

Application refused.