

1944

Present: **Hearne J.**DE COSTA *v.* ASSISTANT GOVERNMENT AGENT, COLOMBO

IN THE MATTER OF AN APPLICATION FOR A WRIT OF  
*Mandamus* or *Certiorari* No. 306.

*Urban Council—Candidate for election—Qualifications of candidate—Absence of name from list of candidates—Urban Councils Ordinance, No. 61 of 1938, ss. 8, 9, 11 (1).*

No objection can be taken to the nomination of a candidate for election to an Urban Council on the ground that his name does not appear on the list, which is prepared under section 9, of persons who are qualified to be candidates.

Section 11 (1) merely enacts that he must have the qualifications mentioned in section 8.

Where objection is taken to a candidate whose name does not appear on the list, it is for the Returning Officer to decide whether he has the qualifications.

**T**HIS was an application for a writ of *mandamus* or in the alternative for a writ of *certiorari*.

*H. W. Jayawardene*, in support.

*T. S. Fernando, C.C.*, for respondent.

*Cur. adv. vult.*

July 17, 1944. HEARNE J.—

Objection was taken to the nomination of the petitioner, a candidate for election for the Dehiwala-Mt. Lavinia U. C., on the ground that his name did not appear in the list, prepared under section 9 of the relevant Ordinance, of persons who possessed the qualifications referred to in section 8. The Returning Officer, the respondent to this petition, upheld the objection and rejected the petitioner's nomination paper.

It is clear from the provisions of section 11 (3) of the Ordinance that objection may be taken to the nomination of a candidate on certain specified grounds and that the absence of a candidate's name from the list of persons who have the qualifications referred to in section 8, is not one of those grounds. If a candidate who has those qualifications has duly delivered a nomination paper that is in order and has made the deposit he is required to make in the manner and within the time prescribed, the Returning Officer would have no power to reject his nomination paper. No person is qualified to vote unless his name appears in the list prepared of persons possessing the qualifications referred to in section 7. (The petitioner's name appears in that list.) But the Ordinance does not lay down that no person may be a candidate unless his name appears in the list prepared under section 9 of those who have the qualifications referred to in section 8. On the contrary section 11 (1) merely enacts that he must have these qualifications.

Section 9 (7) requires to be considered. It is as follows:—"The lists certified under sub-section (6) shall be final and conclusive and be the sole evidence of the due qualification of each of the persons *whose names are included therein* to vote or to be a candidate for election at the general election referred to in sub-section (1) or at any bye-election that may be necessary for the purpose of filling any casual vacancy in the Council at any time before the preparation and certification of new lists for the purposes of the next succeeding general election".

With reference to the list prepared of persons who possess the qualifications referred to in section 8 it means, in my opinion, no more than this. If the name of a person appears in that list it is final and conclusive of the fact that he has the qualifications referred to in section 8. It is the sole evidence of the due qualification of a person whose name appears in that list. But the section does not mean that a person whose name is *not* in the list has not, or is deemed not to have, the qualifications that are referred to in section 8. That is a question the Returning Officer must decide, on an objection being taken, in the case of candidates whose names do not appear in the list.

It is admitted that objection could not have been taken on any other ground. This is another way of saying that the petitioner was in every way legally qualified to be a candidate. The respondent will, therefore, be ordered and required to accept the petitioner's nomination paper and declare him to be a candidate for election.

*Rule made absolute.*

