1941 *Present:* **Wijeyewardene J.**

# DE SILVA *v.* DE SILVA.

*In re* APPLICATION FOR A WRIT OF QUO WARRANTO.

*Urban Council—Resignation of Chairman—Letter withdrawing resignation—Election of new Chairman—Proper quorum—Urban Councils Ordinance, No. 61 of 1939, ss. 255 (1) (d) and 248—Courts Ordinance, s. 42.*

**Where the Chairman of an Urban Council wrote to the Secretary stating: "I have the honour to inform you that I shall resign from the office of the Chairman, Urban Council, as from February 1, 1941, and to request you to take the necessary steps for the election of a successor as early as possible",—**

***Held*, that the communication announced the resignation of the Chairman as from February 1, 1941, and that the office of Chairman became vacant on that day.**

**It was not open to the Chairman to withdraw the resignation even with the consent of the Council.**

***Held, further*, that by the joint operation of sections 255 (1) (*d*) and 248 of Ordinance No. 61 of 1939 a by-law made under Ordinance No. 11 of 1920 fixing the quorum of an Urban District Council applies to an Urban Council constituted under Ordinance No. 61 of 1939.**

THIS was an application for a writ of quo warranto to question the election of the respondent as Chairman of the Urban Council, Ambalangoda.

*E. B. Wikremanayake* (*N. E. Weerasooria, K.C.*, with him and *Barr Kumarakulasingham*), for respondent, raised the preliminary objection that the writ of quo warranto did not lie.—Jurisdiction on the Supreme Court to issue mandates is conferred by section 42 of the Courts Ordinance. The Supreme Court can only exercise its jurisdiction within the limits prescribed by that statute—*In the matter of the Election of a Member for the Local Board of Jaffna* [1]. A writ of *quo warranto* can only be issued to persons enumerated in section 42. The words "other person" must be read *eiusdem generis*, and mean a person under a duty to act judicially —*Application for a writ of Prohibition to the Members of a Field General Court Martial* [2]; *Dankotuwa Estates Co., Ltd. v. The Tea Controller* [3]. The Chairman of an Urban Council is not a judicial officer.

*H. V. Perera, K.C.* (with him *M. C. Abeyewardene* and *D. W. Fernando*), for applicant.—*Quo warranto* lies in respect of an office of a public character even where no judicial functions are exercised. The writ lies on an usurpation of an office made by the Crown by charter or by statute. The word "person" must be interpreted with reference to the writ asked for. The only *genus* is that of persons exercising "public functions".

*H. H. Basnayake, C.C.*, for *A.-G.* (on notice).—If the intention of the Legislature was not to narrow down the scope of these writs the *eiusdem generis* rule need not be applied (*Clapham v. Oliver* [4]).

[1] *(1907) 1 A. C. R. 128.*
[2] *(1915) 18 N. L. R. 334.*
[3] *(1941) 42 N. L. R. 197 at p. 207.*
[4] *(1874) 30 L. T. R. 365.*

*E. B. Wikremanayake*, in reply.—The Supreme Court has no inherent powers. The *eiusdem generis* rule must be applied to both the words "tribunal" and "person" or to neither.

The Court next heard Counsel on the merits of the application.

*H. V. Perera, K.C.*—There must be such a resignation as renders the office vacant.

[WIJEYEWARDENE J.—To whom must resignation be given ?]

To the members. It is a bilateral act. A communication to the body is necessary or to the person authorised to act for the body, namely, the Vice-Chairman or Secretary. The only consequences contemplated by the Ordinance is the falling vacant of the seat. "I shall resign on a certain day" is not an immediate resignation. Till legal consequences come into operation the act of resignation is not effective. The only resignation contemplated by the Ordinance is an immediate resignation. Where a person declares an intention to resign on a certain day and does not revoke it there is an immediate resignation. An effective resignation must give rise to legal consequences. Till then it is not a legal act. The declaration is of no legal effect till the day and could be withdrawn before that day. *The Queen v. The Mayor and Town Council of Wigan* [1]. Where no legal consequences follow resignation may be withdrawn. *In re Application for a writ of Quo Warranto* [2]. Acceptance is necessary unless the statute dispenses with it. On the question of quorum, section 39 of the Ordinance states that in the absence of any by-law made under the Ordinance the quorum shall be not less than two-thirds of the members. The Council consists of twelve members, so that the quorum would be eight. At the election of the respondent only six members were present.

*N. E. Weerasooria, K.C.*, for respondent.—Assuming the Chairman has a right to resign, then, if he does resign, section 33 (5) comes into operation. A Chairman is a person who holds office as a result of an election. There is no contractual relation. With regard to resignation there is no provision except the act of resigning. There is no provision even for a writing. The letter is not an intimation to resign. It was a definite resignation, nothing more was necessary. *Reichel v. Bishop of Oxford* [3]; *Cooper v. Wilson* [4]. The mere fact that a date is given is not a condition. Resignation is complete at the moment it is sent and takes effect on the date mentioned. The letter was treated by all parties as a "resignation" and not an intimation to resign. A formal declaration is sufficient. That was done. He cannot then revoke it. The legal consequence is that the office is automatically vacant, that is, from February 1. The resignation was absolute as a resignation—see Lord Lindley's judgment in the *Bishop of Oxford's case* (*supra*). As regards quorum, section 248 makes by-laws in force at passing of the Ordinance equivalent to by-laws passed under the Ordinance. These by-laws govern all meetings. The by-laws made under sections 164 and 168 (1) of the Local Government Ordinance, No. 11 of 1920, fixed the quorum at five. Six members were present at the election. The election is therefore valid.

*H. H. Basnayake, C.C.*—Resignation operates on communication. Here the letter of resignation was communicated to the Secretary and

[1] *(1885) 14 Q. B. D. 908.*
[2] *(1933) 12 C. L. Rec. 208.*
[3] *(1887) 56 L. T. R. 539 at p. 550.*
[4] *(1937) 2 All. E. R. 726.*

later to the Council. The resignation was absolute though the vacancy was from February 1. The resignation was a proper resignation and the applicant was not entitled in law to withdraw—*Glossop v. Glossop* [1]; *Finch v. Oake* [2]; *Pease v. Lowden* [3]. On the question of quorum, the by-laws made under the Local Government Ordinance of 1920 are deemed to be made under the Ordinance of 1939—section 248 of Ordinance No. 61 of 1939. If these by-laws are applicable the quorum is five.

*H. V. Perera, K.C.*, in reply.—The Ordinance contemplates not a notice of resignation but a resignation. The form may be anything appropriate. Where acceptance is not provided for, one who says he will resign at a future day is not bound to do so. This is not a conditional resignation.

August 5, 1941. WIJEYEWARDENE J.—

This is an application for a mandate in the nature of a writ of *quo warranto* with a view to vacate the election of the respondent, Mr. Newton H. de Silva, as Chairman of the Urban Council of Ambalangoda. The respondent was elected Chairman of the Urban Council at a meeting convened by the Government Agent, Southern Province, and held on May 17, 1941. It is sought to have his election declared void on the following grounds :—

(1) That the office of Chairman had not fallen vacant at the time of the election.

(2) That the members present at the meeting on May 17, 1941, were less than the quorum prescribed by the Urban Councils Ordinance, No. 61 of 1939.

It is admitted that the Urban Council as constituted under the Ordinance elected on January 6, 1941, Mr. T. P. C. Fernando as Chairman at a meeting duly convened under section 33. On January 22, 1941, Mr. Fernando addressed the following letter to the Secretary of the Council :—

> "I have the honour to inform you that I shall resign from the office of the Chairman, Urban Council, as from February 1, 1941, and to request you to take the necessary steps for the election of a successor as early as possible."

The Vice-Chairman made an endorsement on that letter that he would try to persuade the Chairman to withdraw the resignation and directed the Secretary to call a meeting to consider the letter. A special meeting of the Council was held accordingly on January 30, 1941. All the members except Mr. Fernando were present. This meeting considered a resolution by the Vice-Chairman that Mr. Fernando "be requested to re-consider and withdraw his resignation". That resolution was carried by the casting vote of the Vice-Chairman who presided at the meeting in the absence of Mr. Fernando. In pursuance of that resolution a letter was sent by the Vice-Chairman on January 30 asking Mr. Fernando "to be good enough to consider and withdraw the resignation." The following day, Mr. Fernando wrote to the Vice-Chairman in reply, "I am willing to accede to the request of the Council and withdraw my resignation".

[1] *(1907) 2 Ch. 370.* [2] *(1896) 1 Ch. 409.* [3] *(1899) 1 Q. B. 386.*

Acting on a letter written to him by the Commissioner of Local Government on May, 3, 1941, the Secretary of the Urban Council informed the Government Agent of the Province on May 6, that the office of Chairman "should be regarded as now vacant" and requested him to take action under section 33 (5) of the Ordinance to fill the vacancy. It was, as a result of this letter, that the Government Agent convened the meeting of May 17, at which the respondent was elected Chairman. The material before me does not throw any light on the circumstances which led ultimately to the Commissioner of Local Government ordering the Secretary to take action, but it is not necessary for me to consider that matter for the purpose of dealing with this application.

On these facts, it is contended by the Counsel for the petitioner that Mr. Fernando did not at any time resign from the office of Chairman and that Mr. Fernando's letter of January 22 should not be regarded as anything more than a notice communicating his intention to resign at the end of that month. It was argued that there was no completed and effective resignation by Mr. Fernando and that it was open to him to withdraw the so-called letter of resignation at any time before January 31.

It is clear that under the Ordinance it is not necessary for a resignation to be accepted by the Council, in order to make it effective. If Mr. Fernando resigned in fact on January 22, 1941, and communicated that fact to the Secretary, it was not open to him to withdraw that "resignation" even with the consent of the Council. The question that has to be decided is whether the letter of January 22, 1941, could be regarded as referring to such a resignation. The question is not free from difficulty in view of the fact that the provisions of the Ordinance dealing with the resignation of a Chairman are somewhat scanty and vague. Section 34 lays down that the Chairman "shall, unless he earlier resigns or . . . ., hold office until the date on which his term of office as a member of the Council is due to expire" . . . . and section 33 (5) enacts that "whenever the office of Chairman of an Urban Council falls vacant" the Secretary shall inform the Government Agent in writing.

Now Mr. Fernando's letter states clearly what he meant. He considered that the office of Chairman would fall vacant on February 1, 1941, and he asked the Secretary to take necessary action to have the vacancy filled with as little delay as possible. There was no mistake or inadvertence so far as he was concerned with regard to the letter. There was no doubt in his mind that there would be a vacancy on February 1. He withdrew the letter 9 days after sending it and that too at the urgent request of the Urban Council to reconsider the matter and "withdrew his resignation". Could it be said that because he stated in his letter that he would resign as from February 1, there was in fact no resignation as contemplated by the Ordinance? Reading the letter as a whole I have come to the conclusion that Mr. Fernando mentioned February 1 merely to indicate the date when the office would fall vacant. The fixing of a term at which an act such as a resignation is to take effect does not make it any the less absolute though it defers the operation of the act. I hold therefore that Mr. Fernando's withdrawal was ineffective and that the office of Chairman was vacant on May 17, 1941, when the meeting for the election of the respondent was held.

The second point is based on the provisions of section 39 of the Ordinance which states that in the absence of any by-law made under the Ordinance the quorum for any meeting "shall be not less than two-thirds of the members of the Council in office on the day of such meeting". It is admitted that no by-law has been made under the Ordinance prescribing the necessary quorum. There were only six members present at the meeting of May 17, and this would be less than the two-thirds required by the section.

There was however a by-law made under sections 164 and 168 (1) of the Local Government Ordinance, No. 11 of 1920, which fixed the quorum at five. That by-law was in force at the time that the powers and duties of the dissolved Urban District Council, Ambalangoda, were transferred to the Urban Council, Ambalangoda, under Ordinance No. 16 of 1939. Now the joint effect of sections 255 (1) (*d*) and 248 is to make the by-law in question "continue in force as if it had been made with relation to or in the exercise of the powers of the Urban Council under the Ordinance".

I hold therefore that the necessary quorum for the meeting convened on May 17 was five and that as there were six members present at the meeting the second point raised by the appellant must fail.

It was argued on behalf of the respondent that in any event the Court has no power to issue a mandate in the nature of a *quo warranto* against the respondent as he was not one of the persons mentioned in section 42 of the Courts Ordinance. This argument was based on certain dicta in some judgments of this Court "that the other person or tribunal mentioned in the section referred to are intended to mean person or tribunal under a duty to act judicially". I am not prepared to assent to such an interpretation of section 42 of the Courts Ordinance without further consideration and if it became necessary for the purpose of this application to consider the argument of the respondent's Counsel I would have referred the point for the decision of a bench of three Judges.

I disallow the application with costs.

*Application disallowed.*