

1943

*Present : de Kretser J.*

RANESINGHE v. MACK.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF MANDAMUS  
ON THE COMMISSIONER OF THE MUNICIPAL COUNCIL, GALLE,  
No. 439.

*Writ of mandamus—Preparation of Voters' list—Mistake of enumerator—  
Failure of applicant to claim inclusion of his name—Municipal Council  
(Constitution) Ordinance, Cap. 194, s. 23.*

Where, in the preparation of Voters' lists under the Municipal Council (Constitution) Ordinance the name of the applicant had been omitted by a mistake on the part of the enumerators and where the applicant had failed to make a claim to have his name included in the list before the list was duly certified.

*Held*, that no mandamus should issue against the Municipal Commissioner as he had not failed to perform any duty imposed on him by the Ordinance.

THIS was an application for a Writ of *Mandamus*.

J. E. M. Obeysekere (with him U. A. Jayasundere) for applicant.

E. F. N. Gratiaen for respondent.

*Cur adv. vult.*

October 19, 1943. DE KRETZER J.—

Mr. Obeysekere intimated that he would not contest the statements in the affidavit of the respondent, and when, later, he sought to reconcile that affidavit with the applicant's I told him they were irreconcilable and invited him to call evidence. He did not accept the suggestion and argued differently. The facts appearing from the two affidavits are as follows:—

Certain "enumerators" were entrusted with the task of preparing the preliminary lists. They used what the respondent calls "field books" and the applicant "rough books". The enumerator concerned put down the applicant's name in his rough list with the double qualification mark which indicated that he was entitled to be both a voter and a candidate. The applicant states that he saw to this being done. When, however, the enumerator made his fair copy and sent it in he omitted the mark from the applicant's name as well as from others, as was discovered later. The lists were then duly exhibited for inspection after due notification. The applicant failed to make a claim to have his name included in the list as qualified to be a candidate and the list was duly certified. Then on the 26th of August he saw the respondent and asked to be allowed to inspect the list as he intended being a candidate for election. The omission was then discovered and the respondent, being satisfied that the applicant was entitled to it, put down the double qualification mark against his name in his presence. Later the same day the respondent decided that he had no power to alter the list (and it is admitted he had none) and erased the mark he had inserted and the same day wrote to the applicant the letter A. The respondent's affidavit and the letter make it quite plain that the mark did not exist on the list, and the enumerator, when called upon to explain, admitted the omission. The applicant's affidavit to the effect that he did inspect the list at the proper time and that the mark then existed and that he later learned that it had been erased by some one and that when he saw the respondent the latter refused to "reinsert" the mark as he had no power to do so are quite incorrect and unworthy of one who aspires to be a Municipal Councillor. The petitioner took no steps till the 20th of September, when he signed the petition which was received in the Registry on the 28th of September, and as a result rule *Nisi* issued only on the 29th of September.

Section 26 of the Ordinance prescribes the 7th of October as the latest day on which the lists should be certified, and enacts that the list when so certified shall be "final and conclusive". At the present date therefore the lists are final and conclusive.

Mr. Obeysekere admitted that the applicant's failure to avail himself of the remedy provided by section 23 of the Ordinance was a serious objection. He pleaded that the applicant was entitled to believe that the enumerator would do his duty in a proper manner. That, however,

is no answer to his own omission to be vigilant. He had no right to assume that the enumerator may not have changed his mind for good reason or that the respondent may not have acted under the provisions of section 21 (e) before publishing the list.

Mr. Obeysekere sought to find some means of escape in the ruling made in *The King v. The Revising Barrister for the Borough of Hanley*<sup>1</sup> but the facts of that case are quite different. In that case the Revising Barrister heard certain objections and ordered that certain names should be expunged, but being unable to write owing to an injury to his hand he had employed a clerk and the latter had failed to strike out the names. As a result the Revising Barrister handed in to the Town Clerk an incorrect list, not having verified the accuracy of it as he should have done. As Channell J. said, he performed the judicial part of his work but omitted by inadvertence to perform the mechanical part. In these circumstances the Court issued a Writ of *Mandamus* as there was no other remedy provided.

In the present case a remedy was provided. Unlike the applicant in that case, the applicant in this case has neglected to do what the law allowed and expected him to do. The respondent, unlike the Revising Barrister in that case, has not omitted to perform any duty imposed on him by the Ordinance, and the facts closely resemble those in *Re The Town Clerk of Eastbourne: ex parte Keay*<sup>2</sup> where the overseers made a mistake in preparing the list and the mistake was discovered only after the list had been published after revision. It was there held that no *mandamus* should issue as the Town Clerk had done his duty. The Judges in the *Hanley* case approved of that ruling.

The applicant therefore fails, and his affidavit is not only belated but tainted with falsehood. The rule *nisi* is discharged. The applicant will pay the respondent's costs.

I note that the enumerator's explanation does not contain a word of regret. On the contrary he draws attention to section 23 and says that that section exists in order that omissions such as these may be rectified. The omissions are so many as to suggest not merely utter incompetence but corruption. Omissions like these seriously affect civic rights, and while the ultimate responsibility is on the voter that does not justify the employment of incompetent persons in preparing the lists.

*Rule nisi discharged.*

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<sup>1</sup> (1912) 3 K. B. D. 518.

<sup>2</sup> 66 *Law Times* 323.