

1943

Present : Hearne J.

RANESINGHE *v.* GOVERNMENT AGENT, SABARAGAMUWA.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus*
ON THE GOVERNMENT AGENT, SABARAGAMUWA.

*Writ of Mandamus—Village Committee election—Adjournment of meeting—
No notice in writing or by tom-tom—Village Communities Ordinance,
(Cap. 198) s. 14 as amended by Ordinance No. 60 of 1938.*

Where the adjournment of an election for a Village Committee was not given by notice in writing or by beat of tom-tom,—

Held, that the election would not be declared void unless there was proof that the result would have been different had there been such notice.

Karunaratne v. Government Agent, Western Province (32 N.L.R. 169) followed.

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

C. V. Ranawake (with him *W. Muthurajah*), for petitioner.

Walter Jayawardene, C.C., for first respondent.

N. Nadaraja, K.C. (with him *S. Fernando*), for second respondent.

Cur. adv. vult.

November 10, 1943. HEARNE J.—

The validity of the election of the second respondent to represent Ward No. 15 in the Village Committee of Palle pattu has been challenged by the petitioner on various grounds.

(1) It was argued that, in contravention of the peremptory provisions of section 14 (3) of the Village Communities Ordinance, the meeting of the voters of Ward No. 15 for the purpose of electing their representative was held outside the village area of Palle pattu. The meeting was held at “Kendangomuwa” which has been brought under the operation of the Small Towns Sanitary Ordinance, and it was claimed that this fact alone made it a legal entity distinct from Palle pattu even if, as is the case, it falls geographically within the limits of Palle pattu. This is not necessarily so but in certain circumstances, which have *not* been shown to obtain, it may be so.

(2) In his petition the petitioner alleges that the election in respect of Ward No. 14 was over at 3 p.m., that “no time of resumption” was announced, that many of the voters left for refreshment, that “work” (in connection with Ward No. 15) was resumed at 3.15 or 3.30 p.m., that “about this time” a rope was drawn across the entrance to the premises where the election was held, and finally that several voters were thereby prevented from recording their votes.

Nine voters have filed an affidavit to the effect that at 3 p.m. “they understood the election for Ward No. 14 was still going on” (according to the petitioner it was then over), that they went to the bazaar for refreshment and that on their return at 3.30 p.m. they were not allowed to enter the election premises.

The unsuccessful candidate, in his affidavit, stated that the presiding officer (he was appointed by the 1st respondent) told him that the election for Ward No. 15 would follow the election for Ward No. 14 which started at 1.45 p.m., and that "it was altogether impossible for him to have informed all his supporters of the alteration in time".

It is clear, confining myself for the moment to the nine voters referred to above, that if they had been present as they said till 3 p.m., they at least could have been informed by the candidate whom they had come to support of the change in time. The presiding officer's version is that two or three voters arrived after the polling was declared closed and were not allowed to vote. It appears from the petitioner's affidavit that many of the voters had arrived very early in the morning, had had no midday meal and had gone to their homes or the bazaar for refreshment. The presiding officer states in his affidavit that it was about 2 p.m. that by public announcement he adjourned the meeting of voters for the purpose of electing the member for Ward No. 15 from that hour to 3.30 p.m. If the nine voters were present at 2 p.m., and according to them they did not leave till 3 p.m., they should have been fixed with knowledge of the adjournment. It is difficult to form an idea of the veracity of persons whom one has not seen but the probabilities of the matter suggest that the pangs of hunger were responsible for their failure to record their votes. Out of a total strength of 510,440 voters recorded their votes. Surely they must have been apprised of the changed hour of the election? Again, how did so many of them gain access to the polling booth if "about the time" voting was resumed "a cordon of rope was put up" to prevent such access? The affidavits in support of the petitioner's case do not ring true. The presiding officer's explanation of the purpose of the rope is reasonable and in all probability in accordance with the facts.

(3) The third ground was that certain persons alleged to be minors were allowed to vote. These "minors" have filed affidavits denying that they voted, but even if they were allowed to vote, upon their right to do so being challenged, the decision of the presiding officer is final and conclusive. It appears that a record was not made of the objections raised in accordance with the provisions of section 16 (5) (d), but this is not a ground for avoiding the election.

(4) The final ground was that the adjournment of the meeting from 2 to 3.30 p.m. if announced at all to the voters present (I hold that it was not "notified thereafter by beat of tom-tom and written notices as required by section 14"). Unless it was alleged and proved that this omission would have led to a different result, the election cannot be declared illegal, *Karunaratne v. G. A., Western Province*¹

The rule is discharged with costs.

Rule discharged.

¹ 32 N. L. R. 169.