

1952

Present: Canekeratne J.

DE SILVA v. MANINGAMUWA.

Application for a writ of *Quo Warranto* on L. Maningamuwa.

Writ of Quo Warranto—Procedure for election of Chairman of Village Committee—Meaning of election by ballot—Undue influence—Village Communities Ordinance (Cap. 198), s. 27, and rules made under s. 59.

Application was made for a writ of *Quo Warranto* to set aside the election of the Chairman of a Village Committee on the ground that the election was void because it had not been held by secret ballot and as undue influence had been exercised.

On the evidence it was established that the Ratemahatmaya of the district was seen in the proximity of the room where the ballot papers were filled up by the voters. There was, however, no evidence to show that he knew how the electors voted—

Held, that there was no contravention of the statutory rules regarding the election of a Chairman.

Held, further, that there was no proof that undue influence was exercised by the Ratemahatmaya.

¹ (1881) 5 S. C. C. 8.² (1918) 20 N. L. R. 355.³ (1879) 2 S. C. C. 26.

THIS was an application for a writ of *Quo Warranto* to set aside the election of the Chairman of a Village Committee.

C. S. Barr Kumarakulasinghe (with him *T. D. L. Aponso* and *Vernon Wijetunge*); for the petitioner.

G. E. Chitty (with him *S. R. Wijayatilake*), for the respondent.

T. S. Fernando, C.C., as *Amicus Curiae*.

Cur. adv. vult.

November 29, 1945. CANEKERATNE J.—

In this case a petition has been presented to obtain a mandate in the nature of a writ of *Quo Warranto* to oust the respondent who is the *de facto* Chairman of the Village Committee of Udasiya pattuwa from that office on the ground that the freedom of election has been flagrantly violated.

The meeting for the election of the Chairman was held on July 27, 1940, at about 2 p.m. The voting took place at the Village Tribunal building at Paldeniya; it consists of a hall with an open verandah in front and on the two sides, a dwarf wall separates the verandah from the hall; in the front wall there is a gate and at the back of the hall is a wall probably reaching the roof; near this wall is the platform of the President of the Village Tribunal and in front of this platform the Presiding Officer sat during the election meeting; in front of him was the ballot box. There are two rooms behind the hall, entrance to one, *i.e.*, the room on the right, as one enters the hall, is gained through a door in the wall: there is a window on a side and another door at the back; from the back door one would step on to an open verandah which leads to a block consisting of a small verandah, a store-room and a kitchen: the store-room being nearer the hall than the kitchen.

At the election the petitioner, H. W. S. de Silva, and the respondent, L. Maningomuwa, were the candidates. The evidence of the headmen called by the respondent shows that the Assistant Government Agent had fixed a meeting of the headmen of his division for the purpose of considering matters relating to the cultivation of fields, the internal purchase of paddy and certain other things for 3 p.m. Their presence in the hall at the time of the election meeting was not necessary; however, led by curiosity or at the request of some person they took their seats in the hall. On an objection taken by the petitioner to the presence of the headmen and the Ratemahatmaya of the district, Kapuwatte, in the hall, the Presiding Officer requested them to leave the building. Most of them left by the front entrance; the Ratemahatmaya who was seated near the Presiding Officer got up from his seat and departed from the back entrance; he apparently opened the door leading to the back verandah which would have been closed at the beginning of the election meeting and went out; this door was thus left unbolted.

On a member applying for a ballot paper the Presiding Officer handed him a blank piece of paper and requested him to go to the room on the right where a table had been placed, write the name of the candidate of

his choice, fold the paper, return to the hall and put it in the ballot box. The number of ballot papers given out by him was 22; 14 votes were cast in favour of the respondent and 8 in favour of the petitioner.

It was argued on behalf of the petitioner that the election was void because it had not been conducted in accordance with the provisions of the Law inasmuch as it was not by secret ballot and as undue influence had been exercised. On behalf of the respondent it was urged that there was no mistake as regards the voting, that the Law only required that the voting should be by ballot, that there was no contravention of the Law and that the mistake, if any, had not affected the result of the election and there was an unreasonable delay in making this application by the petitioner.

R. A. Peter Perera was the first person to receive a ballot paper. He testified that when he went inside the room to write the name of the candidate whom he preferred he saw the back door open and the Ratamahatmaya standing near the open door.

The presence of the Ratamahatmaya at the entrance was spoken to by Mudiyanse who voted next. The petitioner was the 14th person to go to the room; he saw the Ratamahatmaya at the open door and immediately came and made a complaint to the Presiding Officer; it was, as he testified, to the effect that the door was open and that the Ratamahatmaya was standing just by the door and trying to see what was being done by the voters; that the Presiding Officer went to the place and closed the door with a bang. It was not disputed that the complaint was made about the door being open, that the Presiding Officer went to ascertain this, found the door open and closed it.

The Police Officer, Sergeant Fernando (now Sub-Inspector Fernando), corroborated the petitioner's statement that he complained that the Ratamahatmaya was by the door. It is probable that the petitioner saw Mr. Kapuwatte standing at this place and mentioned this fact to the Presiding Officer; the fact that the petitioner was in a state of excitement when making the complaint seems to be a circumstance, although slight, in favour of this view.

Two of the headmen who were called by the respondent stated that they were with the Ratamahatmaya near the kitchen while voters were recording their votes: according to them the Ratamahatmaya did not leave that place till the election was over. One would not be impressed with the story they related in the witness-box and I have no doubt that their evidence is not true. The other witness was the Vel Vidane, the 12th person to record his vote; he did not remember whether the door was open at all but he said there was plenty of light in that room. The respondent is the brother-in-law of the Korala; he said he does not associate with the Ratamahatmaya, he does not know that he is a man of influence; he started by saying he addressed the Ratamahatmaya as "R. M." Later it transpired that he was the clerk to the gentleman who was the immediate predecessor of Mr. Kapuwatte and that he continued to be the clerk to Mr. Kapuwatte for one month and left his services thereafter. He gave different reasons for doing so: because his education was not sufficient, then the salary was not sufficient; later he stated he wanted to look after the cultivation of his property. He

was not a candid witness and his answers were lamentably lacking in frankness. It was not safe to accept his evidence on any material point unless it is corroborated by the evidence of others.

It has long been held in England before the Acts relating to elections were passed, that by the common Law of the land, *i.e.*, Law not created by Enactments and Acts of Parliament, an election is void (1) if it is not a real election, as where there is bribery, undue influence and undue pressure; (2) if the election were not conducted in accordance with the principles of the subsisting election laws. An election would be declared void if the Tribunal which is asked to avoid it is satisfied as a matter of fact that there was no real electing by the constituency at all, if it were proved to its satisfaction that the body of electors had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if the majority were proved to have been prevented from recording their votes effectively according to their own preference by general undue corruption or general intimidation. The same result should follow if by reason of any such or similar mishap, the Tribunal, without being able to say that a majority had been prevented should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred¹. An election may also be avoided whenever intimidation by the improper exercise of spiritual influence has so extensively prevailed upon as to prevent the election being a free election: undue influence may be lay or ecclesiastical (*Calway, 2 O' M & H 56.*)

For the purpose of this case it is necessary to consider and determine the construction of the provisions of the Ordinance (Ch. 198 of Legislative Enactments). Section 27 (1) of the Ordinance enacts: "Election of the Chairman of a Village Committee should be by ballot Then follows sub-section 2 which enacts: "The election of a Chairman and the ballot. . . . subject to the provisions of sub-section 1 be conducted in accordance with such procedure as may be prescribed by rules under section 59." The rules made under section 59 of the Ordinance are published in the 1941 Supplement of Subsidiary Legislation, Volume 3 (320); Part III. contains the rules relating to the election of a Chairman. Rule 2 (A) states: "If there are two candidates. . . . the Presiding Officer shall proceed to the election of one of the candidates by ballot." Rule 5 states: "For the purpose of a ballot under Part III the Presiding Officer shall give to each member present a ballot paper on which the member may write the name of the candidate for whom he wishes to vote. Ballot papers shall be folded so that the name written thereon shall not be seen. The Presiding Officer shall collect and count them in the presence of the members of the Committee present at the meeting." The Rule generally points out the mode or manner of doing what the section enacts shall be done. Words should be taken in their ordinary sense and it is therefore permissible to refer to a dictionary to ascertain the meaning of a word: the dictionary meaning of the word ballot is as follows: a small ball used for secret voting hence, a ticket, &c., so used; the method of secret voting.

¹ *Woodward v. Sarsons (1875) L. R. 10 C. P. 733.*

The provisions relating to the election of members are to be found in section 16; section 16 (2) enacts: "Every poll at a meeting of voters shall be held by secret ballot." The procedure is to be found in the rules made under the Ordinance (Part II of the Rules, page 321 of Volume 3 *supra*). These contain elaborate provisions for choosing a member. The intention of the legislature gathered from the words used appears to be to ensure absolute secrecy in voting when it comes to the election of a member. The election in one case is by ballot, in the other by "secret ballot". The suggestion of a change of language as importing a change of substance, though material, may easily be exaggerated. The election of the first Chairman has to be held under the presidency of an official: the particular provision he has to observe is stated in the statute law—every person who is a member must be supplied with a ballot paper by him, the member has to write the name of a candidate, fold it in such a manner that what is written there cannot be seen by another and return it in the manner directed by the Presiding Officer. It is a kind of secret voting inasmuch as no one but the member who hands the paper would, as a general rule, know for whom he has given his vote till perhaps the election is over.

The evidence does not warrant a finding that the door leading to the back verandah was half open. It was, however, open to some extent during the time that 13 of the electors were at the table: on the evidence the door was a quarter open, or just a little more.

The Ratemahatmaya could not actually see what was written on a ballot paper unless he stepped inside the room or the elector went up to the door. If the Ratemahatmaya looked through the open door he would see an elector at the table, he would notice how long the man took to complete his task and he might make a shrewd guess as to what was inscribed on the paper but that would be far short of the evidence which ought to satisfy the Tribunal that the Ratemahatmaya had knowledge of how the 13 electors or some of them voted.

The evidence in this case does not show that there was any contravention of the statutory rules regulating the election of a Chairman.

Was the election not a real election? By means of the civil authority with which a Ratemahatmaya is invested he is in a position to acquire an influence over the subordinate headmen and over the villagers living in his district. But that alone is not sufficient, there must be an abuse of the influence. In the cases referred to, some specific act was alleged to have been done by a priest or priests; no definite act is alleged in this case.

It may be urged that the Ratemahatmaya was at the place for the purpose of letting voters see that he was keeping an eye upon them and in the hope that by so doing he might induce some of them who would not otherwise do so, to vote for the respondent or at least not to vote for the petitioner. As the voter did not pass the chief headman on his way to the room, is one justified in coming to the conclusion, without any direct evidence, that one or more voters observed him at the place and were intimidated by his presence to do what he or they would not otherwise have done?

The respondent has been chosen by the majority of the persons having the right to elect; he is the better man according to their standards; a committee gets the chairman it deserves. A Tribunal that has to consider the validity of an election impugned by the extraordinary writ of *Quo Warranto* ought to act with great caution in upsetting the considered view of the electors. It ought at least to have reasonable grounds for believing that one or more electors were prevented from electing the candidate they preferred. The presence of the Ratamahatmaya at the place was unfortunate but I do not think that there are reasonable grounds for coming to a conclusion that an elector or electors were intimidated.

I disallow the respondent the costs of the inquiry up to October 15; he is entitled to the costs thereafter.

Application refused.
