

1943

*Present: Soertsz J.*WIJEYRATNE, Appellant, and SILVA *et al*, Respondents.

758—M. M. C. Colombo.

Colombo Municipal Council (Constitution) Ordinance (Cap. 194)—Preparation of Voters' Lists—Residence in ward at date of preparation and revision—Crucial date—s. 14 (2) and (6).

Where, in the course of preparation and revision of voters' lists under the Municipal Council (Constitution) Ordinance a resident's name comes up to be entered on a separate list for a ward the date of entry shall be the date of preparation or revision of the list *vis-à-vis* that resident, within the meaning of sub-section (6) of section 14 of the Ordinance.

A PPEAL from an order of the Municipal Magistrate of Colombo.

N. Nadarajah, K.C. (with him *E. B. Wikremanayake* and *J. L. M. Fernando*), for appellant.

H. V. Perera, K.C. (with him *U. A. Jayasundere* and *P. Malalgoda*), for objector, respondents.

October 6, 1943. SOERTSZ J.—

This is an appeal preferred under section 24 of the Colombo Municipal Council (Constitution) Ordinance (Cap. 194) against an order made by the

Municipal Magistrate under section 23 (6) on objection taken by the respondent under section 23 (2) expunging the name of the appellant from the separate list which the Commissioner acting in compliance with section 21 (d) had caused to be made for the Ward of Modera.

The respondent's objection to the appearance of the appellant's name on that list was advanced *inter alia* on the ground that, in order to enable a voter to have his name entered on the list for any ward, the law requires that he should be resident in that Ward on May 1 of the relevant year and the respondent alleged that in fact the appellant was not so resident although he claimed to have been. On appeal the appellant's submission was that his residence within the Ward from June 5 as found by the Magistrate was sufficient to justify the appearance of his name on the list for the Ward.

On the evidence adduced by the parties the Magistrate found that the appellant was not resident in the Modera Ward on May 1 this year and adopting part of the interpretation which the respondent contended for, he made the order in question now.

For the purpose of examining the cases put forward by the appellant and by the respondent, section 14 and particularly sub-section 14 (2) and 14 (6) must be interpreted by reading them with section 21.

Section 14 deals with the qualifications and disqualifications of voters. It provides by sub-section (1) that—

“ no person shall be qualified to vote unless the name of such person appears in the new or revised list of persons duly qualified to vote, certified as hereinafter provided and in force for the time being ”.

Sub-section (2) goes on to say—

“ No person shall be entitled to have his name placed on such list in any year as a person duly qualified to vote unless such person *on the date of the commencement of the preparation or revision* as the case may be of such list for that year ”, has the qualifications and is free from the disqualification enumerated in the subsequent part of that sub-section.

Sub-section (2) paragraph (f) says that—

“ except in the case provided for in paragraph (g) (iv) of this sub-section, is resident within the limits of any ward of the Municipality and has for a continuous period of at least six months in the period of eighteen months immediately prior to the said date resided within the limits of any ward of the Municipality.”

It will be observed that in regard to all these qualifications and disqualifications their existence or non-existence is determined with reference to a definite date, namely, the May 1 of the relevant year. That is the date fixed by section 21, sub-section (1), paragraph (a) and (b) which enact that—

(a) “ On the 1st day of May in the year in which a general election is required . . . , the Commissioner shall commence the preparation of the new lists ”.

(b) On the first day of May in every year other than a year in which a general election is to be held, the Commissioner shall *commence the revision of the lists*. Those provisions are followed by paragraph (c) which says—

“ the said first day of May shall in each case be deemed to be the date of commencement of the preparation or revision of the list ”.

The purpose of this paragraph appears to be to obviate any case in which by oversight, inadvertence or neglect the Commissioner does not comply with the requirement of paragraphs (a) and (b) and does not commence the preparation of the lists on the date appointed in those clauses. The object of the Legislature appears clearly to be to secure that there shall be one date with reference to which the question of the qualification or disqualification of a citizen to be a voter shall be determined.

Once the matter of the right to be a voter has been so determined the Legislature goes on to enact that these eligible voters shall be allocated to the different Wards into which the Municipality has been divided and by sub-section 14 (6) it provides that:

“ the name of any person who in any year is qualified to vote under the provisions of this Ordinance shall be entered in the new or revised list of persons qualified to vote prepared for the Ward in which that person is resident on the date of the preparation or revision as the case may be of such list for that year ”.

As the words stand they make it quite clear that the Legislature is here adopting not a fixed artificial date as it does in sub-section 14 (2) for the purpose of determining qualification or disqualification, but an actual date which may vary as between Ward and Ward and may even vary within the same Ward in relation to the residents of that Ward the actual date being “ the date of the preparation or revision as the case may be of such list for that year ”. This difference between sub-section 14 (2) and sub-section 14 (6) in the selection of a crucial date is quite understandable if the different purposes of the two sub-sections are borne in mind.

But it is contended that the words “ on the date of the preparation or revision ” contemplates a single date and that it is not possible to assign such a date to a process whether of preparation or revision which *ex necessitate rei* must extend over a period and upon that contention it is argued that for those words there should be substituted the words “ on the date of the commencement of the preparation or revision ”. But, if we did that, we should be legislating and not interpreting. Nor do I encounter any temptation urgent enough to lure me into such a course for the supposed difficulty of assigning a single date to a process such as this can be surmounted in virtue of the Interpretation Ordinance by reading “ dates of the preparation or revision ” for “ date of preparation or revision ”.

In that way we find that this sub-section provides that in the course of the preparation and revision of lists the date on which a resident's name comes up to be entered on the separate list for a ward shall be the date of preparation or revision *vis-a-vis* that resident.

For these reasons, I am of the opinion that no case was made out for depriving the appellant of his right to be a voter in the Modera Ward and I accordingly set aside the order of the Magistrate and direct that the appellant's name do remain on the list.

In regard to costs, section 25 provides for an order as to the payment of the costs of the inquiry. There is no provision in regard to the costs of appeal. I, therefore, direct that the respondent do pay to the appellant Rs. 52.50 as costs of the inquiry. I limit the costs in this way for the reason that the appellant protracted the inquiry unduly by endeavouring to show what was not true in fact—that he was in premises 205, Modera street, on the 1st of May.

Set aside.

