

1968 *Present* : H. N. G. Fernando, C.J., and Sirimane, J.

S. MURUGESU, Petitioner, and V. ANANDASANGARY
(Chairman, Town Council, Killinochchi) and two others,
Respondents

S. C. 106-108 of 1968—*Applications for Mandates in the nature of
Writs of Quo Warranto*

*Town Council—First general election of members—Disqualification of
a member of any other local authority for membership—Member
of a Village Council—Resignation of office by him after nomination
day—Ineffectiveness—Town Councils Ordinance (Cap. 256),
ss. 2, 3, 7—Local Authorities Elections Ordinance (Cap. 262), as
amended by Act No. 9 of 1963, ss. 9, 28—Village Councils
Ordinance (Cap. 257), ss. 5, 8, 8A, 14—Quo warranto.*

A candidate at a general election which is held in terms of section 7 of the Town Councils Ordinance, when a part of a Ward of a Village area becomes a Ward, or part of a Ward, of a new Town Council, is disqualified by section 9, read with section 28, of the Local Authorities Elections Ordinance to be elected if, on the date of his nomination, he is a member of any other local authority. If the local authority happens to be a Village Council, resignation by the candidate of his office in terms of section 14 of the Village Councils Ordinance would not avail him if the resignation is tendered after the Nomination day and just before the polling day.

APPPLICATIONS for writs of *Quo Warranto*.

S. *Sharvananda*, for the petitioner in all three applications.

G. G. *Ponnambalam*, Q.C., with E. R. S. R. *Coomaraswamy*,
M. *Shanmuganathan*, M. *Sivanandan*, Motilal *Nehru* and
C. *Chakradaran*, for the respondents.

Cur. adv. vult.

June 25, 1968. H. N. G. FERNANDO, C.J.—

By Order under Section 2 of the Town Councils Ordinance (Cap. 256) the Minister declared a certain area to be a Town for the purpose of that Ordinance, and in consequence, s. 3 required a Town Council (hereinafter referred to as the Killinochchi Town Council) to be constituted for the new town. Thereafter, in terms of s. 7, a General Election was held for the purpose of electing the first members of the Killinochchi Town Council.

The holding of such an election is regulated by the Local Authorities Elections Ordinance (Cap. 262) and requisite notices were published for the nomination of candidates for the first General Election, and for the holding of the poll for the Wards of the Council on 13th January 1968. The three persons who are named as the respondents respectively to each of the three present petitions were each nominated for election for one of the Wards of the Killinochchi Town Council; and each of them, having secured a majority of the votes at the poll, was declared elected for the Ward which he contested. In each of the present petitions application is made for a writ of Quo Warranto declaring that the respondent in each instance was not duly elected on the ground that he was at the time of the election disqualified for such election.

Section 9 of the Local Authorities Elections Ordinance prescribes the disqualifications for membership of a Town Council. By reason of an amendment effected by Act No. 9 of 1963, a person is disqualified to be elected at any time as a member of any Local Authority "if at that time he is a member of any other Local Authority". In the case of the respondent to each of these applications, the ground of the application is that, at the time of his election as a member of the Killinochchi Town Council, he was a member of another Local Authority, namely, the Karachchi Village Council.

It is not disputed that the three persons who are respectively the 2nd respondents in each case *were* members of the Karachchi Village Council. Section 14 of the Village Councils Ordinance (Cap. 257) provides that a member of the Village Council may relinquish his office by a written communication of his resignation to the appropriate Elections Officer, either directly or through the Chairman of the Council. The respondent in one of these applications had been in fact the Chairman of the

Karachchi Village Council. It would appear that he wrote a letter of resignation dated as of 12th January, 1968, the day immediately preceding the polling day for the Killinochchi Town Council Election, resigning his office as a member of the Karachchi Village Council and addressed to the Elections Officer of the area. In the other two cases, it would appear that similar letters of resignation dated as of 12th January 1968 were delivered to the Chairman himself for transmission to the Elections Officer. None of these three letters of resignation however was received by the Elections Officer before the polling day, and they were in fact handed to him only three days later.

Counsel for the respondents did not seriously argue that the letters of resignation which were in the hands of the Chairman on the day before the Killinochchi Election were in law effective resignations ; but even if they were so effective, the three persons concerned were nevertheless members of the Karachchi Village Council on the Nomination Day, and if they were disqualified on that account, resignations tendered just before the polling day would not avail them.

Section 28 of the Local Authorities Elections Ordinance provides that "any person who is qualified, under this Ordinance, for election as a member of a local authority may be nominated as a candidate for election for any ward of the electoral area of such authority". I hold that s. 28 disqualifies a person from being duly nominated on Nomination day if he is at that time not qualified for election.

In the case of each of the three respondents whose elections are challenged in these applications, each of them had not on the Nomination day resigned his office as a member of the Karachchi Village Council ; and since he was on that day yet a member of that Village Council, s. 9 of the Local Authorities Elections Ordinance (as amended in 1963) declared him to be disqualified for election as a member of any other local authority. That being so, each of these three persons could not be duly nominated on the Nomination day. There are decisions concerning Parliamentary Elections holding that the time of an election is the period between Nomination day and polling day.

Counsel for the respondents submitted a rather involved argument in support of a contention that these three persons had in law vacated office as members of the Village Council prior to their being nominated for election to the Town Council. This argument invoked certain provisions of the Village Councils Ordinance (Cap. 257) to which I must now refer.

Section 5 of Chapter 257 provides that the Minister may by order alter and redefine the limits of any village area; and section 8 provides *inter alia*, that the Minister may by notification subdivide an existing Ward of a Village Council into two or more Wards, and may amalgamate two or more existing Wards into a new Ward. Section 8A then provides that where the limits of a Ward are altered in consequence of an order under section 5 or a notification under section 8, the member elected for that Ward shall, upon the coming into force of the order or notification, vacate his office, and that a bye-election should then be held for that Ward.

Counsel's argument is based on the fact that the area of the new Killinochchi Town Council comprises several areas which formerly formed parts of some of the Wards of the Karachchi Village Council. The contention is that when the Minister constituted the new town Killinochchi by including in it parts of the former Village Council area,

EITHER—

(a) he was bound contemporaneously to make orders or notifications under section 5 or section 8 of Chapter 257 to re-define the limits of the Karachchi Village area or of the Wards thereof;

OR

(b) by operation of law, the area of the Village Council was automatically re-defined, and the limits of its Wards automatically altered.

In either event, it was argued, there was by operation of law a situation in which s. 8A took effect and the three respondents therefore vacated office at the time when Killinochchi became a Town.

One answer to Counsel's contention is that ss. 5 and 8 only empower the Minister to make orders or notifications and do not impose on him a duty to do so in any specified circumstances.

The contention that s. 8A automatically operated to create vacancies in the offices (of membership of the Karachchi Town Council) calls for a consideration of the purpose served by s. 8A in relation to ordinary cases where that Section applies. If for instance, the limits of a Village area are altered under s. 5 of Chapter 257 by the addition to it of some new area, the resulting

position would be that there will then be resident in the village area persons who are not represented in the Village Council by a member of their choice. That being so, s. 8A necessarily provides for fresh elections in order that such persons may participate in electing a representative in the Council. So also, if under s. 8 of Cap. 257, an existing Ward is divided into two new wards, then new elections are necessary in order to secure that each of the two new Wards will be represented on the Council by its own member.

But such situations as those I have just envisaged will not arise when a part of a Ward of a Village area becomes a Ward or part of a Ward of a new Town Council. In such an event, an Election will be held (as was done in this case) for the new Town Council with the result that the residents who ceased to be represented in the Village Council will have their representative in the new Town Council. I think therefore that there are no urgent practical considerations which require that any vacation of office or fresh elections of members of a Village Council must follow as a necessary consequence whenever the limits of a Village area are narrowed down by the absorption of any part of the area into a new Town.

True it is that some of the Wards of the Karachchi Village Council have become smaller in consequence of the constitution of the new town of Killinochchi, and that alterations of the Wards of the Village area may be expedient in consequence of the change. Counsel informed us some such alterations were in fact made recently and that these alterations will become effective when a General Election is held next year for the Karachchi Village Council. But in the absence of any express provision compelling the Minister to act under s. 5 or s. 8 of Chapter 257 in the circumstances of the present case, I am quite unable to agree that the Minister was bound so to act contemporaneously with his order constituting the new town of Killinochchi.

For these reasons I hold that in each of these three applications the respondent to each such application was not duly elected a member of the Killinochchi Town Council and does not hold office as such. The respondent in each of the applications will pay to the petitioner Rs. 105 as the costs of the application.

SIRIMANE, J.—I agree.

Applications allowed.