

1943

*Present : Jayetileke J.*LIEVERSZ *v.* KANNANGARA.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Certiorari*
AND *Mandamus* ON THE RETURNING OFFICER OF THE
COLOMBO MUNICIPALITY—No. 527.

*Municipal Election—Candidate makes deposit with Municipal Treasurer—
Deposit irregular—Nomination bad—Colombo Municipal Council
(Constitution) Ordinance, Cap. 194, s. 30.*

Where a candidate for election to the Municipal Council deposited a sum of two hundred and fifty rupees with the Municipal Treasurer and obtained a receipt—

Held, that he had failed to comply with the provisions of section 30 of the Municipal Council (Constitution) Ordinance which require that the deposit should be made with the Returning Officer and that his nomination was bad.

THIS was an application for a writ of *certiorari* and *mandamus* on the Returning Officer, Colombo Municipality.

Barr Kumarakulasingam (with him *Vernon Wijetunge* and *G. Samarawickreme*), for petitioner.

J. E. M. Obeyesekere (with him *R. A. Kannangara*), for respondent.

N. K. Choksy, for intervenient.

Cur. adv. vult.

December 13, 1943. JAYETILEKE J.—

The petitioner was a candidate for the Wellawatta South Ward at the general election of elected members of the Colombo Municipal Council.

The first respondent is the Secretary of the Council, and was duly appointed the Returning Officer of that ward. The second respondent was a candidate for that ward.

On November 9, 1943, the petitioner deposited with the Municipal Treasurer Rs. 250, and obtained a receipt P 1. On the day of nomination, namely, November 11, 1943, he heard that an objection was likely to be

taken to his nomination paper on the ground that his deposit was not made in strict compliance with the provisions of section 30 of the Municipal Council (Constitution) Ordinance. He, therefore, went up to the first respondent and inquired whether he intended to take any action in regard to the supposed irregularity. The latter replied that he would not take any objection himself but, if any objection was taken by a voter, he would uphold it. He did not make any suggestion to help the petitioner out of the difficulty, though on the previous day he had, very properly, helped Sir Ratnajothe Saravanamuttu by exchanging his own receipt for that of the Treasurer.

I find myself unable to comprehend why this discrimination was made by the first respondent.

The petitioner, thereupon, went in search of the Treasurer whom he eventually found in the Commissioner's room. He explained to the Treasurer his difficulty, and asked him to take back his receipt and give him the money he had deposited.

At this stage the petitioner says that the Commissioner shouted "Why are you people worrying us without taking the trouble to read the Ordinance". This would have been an appropriate remark to be addressed to both the first respondent and the Treasurer, for, the former did not seem to know that he had no power to entertain objections after 1.30 P.M., and the latter that he was not entitled to accept deposits from the candidates.

When the petitioner asked the Treasurer for a refund of his deposit, he was told that he could be given a cheque but not cash. The Treasurer says that it would have been difficult to get Rs. 250 in cash from the shroff, as the previous day's collections had been sent to the bank the previous evening. He admitted that on November 10, he learnt that the deposits made with him by some of the candidates were not in order, yet, he failed to provide himself with sufficient money to return the deposits to those candidates on the day of nomination. However that may be, no effort seems to have been made by him to help the petitioner out of his difficulty.

It is not competent to me to investigate what reasons prompted the Treasurer to take up this unhelpful attitude but, it seems to me, that his indifference on this occasion is not what a member of the public was entitled to expect from a person in a responsible position.

The petitioner was not willing to accept a cheque either because he was told by the Treasurer, or he thought, that a cheque would not be accepted by the respondent, and he took the chance of an objection not being taken. Unfortunately for him, two objections were lodged against his nomination paper on the ground that he had failed to make his deposit with the Returning Officer. The objectors were the second respondent and Mr. M. O. Fernando, a voter. The first respondent says that Mr. M. O. Fernando lodged his objection at 1.20 P.M. and the second respondent at 1.25 P.M.

The petitioner led some evidence to prove that the second respondent's objection was lodged at 1.34 P.M., but failed to lead any evidence to prove that Mr. M. O. Fernando's objection was not lodged before 1.30 P.M. Both objections were upheld by the first respondent.

It is unnecessary for me to decide whether the second respondent's objection was not lodged in time, because, it seems to me, that Mr. M. O. Fernando's objection was lodged well within time.

I, therefore, proceed to consider whether the petitioner complied with the provisions of section 30 of the Ordinance. It provides that a candidate shall deposit with the Returning Officer Rs. 250 before 1 P.M. on the day of nomination, but that the Returning Officer shall forthwith credit the said sum to the Municipal Fund. If a candidate fails to observe the provisions of this section, provision is made in section 32 for an objection to be taken to his nomination paper on that ground.

The petitioner paid his deposit to the Assistant Shroff of the Council, who received the money on behalf of the Treasurer, and issued the receipt P 1. The question arises whether this payment can be said to be a deposit with the first respondent within the meaning of section 30.

In clear and unambiguous language section 30 provides that the Returning Officer shall forthwith credit the money received by him to the Municipal Fund. In order to comply with this requirement of the law the Returning Officer must either have the money in his hands or have control over the money.

The words "deposit with the Returning Officer", therefore, imply that the candidate must either pay the money to the Returning Officer or deposit it in such a way that the Returning Officer will have dominium or control over the money. P 1 shows that the petitioner did not deposit the money to the credit of the first respondent. The money has been credited to "the deposit account of the M. C. elections".

On the materials before me I am unable to say that the first respondent had dominium or control over that money.

I am, therefore, of opinion that the deposit in question was not a deposit with the Returning Officer within the meaning of section 30 of the Ordinance.

It was urged by Counsel for the petitioner that I should not insist on a meticulous compliance with the provisions of section 30 as the intention of the Legislature was that the money should eventually be credited to the Municipal Fund and the money has, in fact, been credited to the Fund.

That section says in unambiguous language that *the candidate shall deposit Rs. 250 with the Returning Officer and the latter shall forthwith credit the said sum to the Municipal Fund.* When the words used in a statute are clear it is not permissible for me to depart from the ordinary and plain meaning of those words on the mere supposition that the intention of the Legislature was different from that indicated by the plain meaning of the words.

The general rule is laid down by Lord Wensleydale in *Becke v. Smith*¹:—

"To adhere to the ordinary meaning of the words used, and to grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further."

¹ 2 M. and W. 195.

Though the ultimate destination of the money is indicated in the section the Legislature must have had good reasons for providing that the money should be deposited with the Returning Officer. To uphold Counsel's contention I shall have to disregard as inoperative what appears in the section and to read into the section words which are not expressed therein. My function is to give words which appear in a statute their natural meaning. I cannot disregard as inoperative what appears in the section or read into the section words which are not expressed therein. I am bound by fixed rules of law and am not at liberty to legislate for myself.

The law says that the money shall be deposited with the Returning Officer. That has not been done, and the objection that has been taken under section 32 is, in my opinion, well founded.

With much regret I would discharge the rule but in view of the unhelpful attitude of the first respondent I would make no order as to his costs. I would award to the second respondent half costs of this application.

Rule discharged.

