

1939

Present : Hearne J.

DE SILVA v. SCHOKMAN.

In re APPLICATION FOR A WRIT OF *Mandamus* ON THE MAYOR OF COLOMBO.

Municipal Council of Colombo—Consideration of special committee's report at Council's meeting—Report placed on the Order of the Day—Right of Mayor to prevent discussion—Writ of Mandamus.

Where the respondent, the Mayor of the Municipal Council of Colombo, who was presiding over a meeting of the Council, refused to allow the members of the Council to discuss the report of a special committee of the Council, appointed under section 11 of the Municipal Councils Ordinance, which was listed in the "Orders of the Day" for consideration by the Council,—

Held, that the respondent had no right to prevent discussion of a matter that was properly before the meeting.

THIS was an application for a Writ of *Mandamus* on the respondent, the Mayor of Colombo.

H. V. Perera, K.C. (with him *Colvin R. de Silva* and *S. Alles*), for the petitioner.—Under section 11 of Cap. 194, the ultimate destination of a report of a special committee is the Council. The respondent acted wrongly in rejecting the report and refusing to place it before the Council for consideration.

The main point for consideration is whether, in law, the Chairman had any discretion vested in him in preventing the report to be discussed. If he had any discretion, whether he exercised it rightly, or wrongly, the present application would fail. The position, however, is that the Chairman had no option in the matter at all. Section 11 (2) of Cap. 194 shows the purpose for which the report of the special committee is referred to the Council, namely, so that it may be finally considered by the Council. The provisions of section 11 (2) are further elaborated by by-law 31 (Chapter 2) and by-law 3 (Chapter 3). The report of the committee is to be considered by the Council and not to be judged by anybody else but the Council.

[HEARNE J.—Suppose the matter contained in the report is defamatory and irrelevant?]

The Chairman's first duty is to the Council. If there is anything defamatory, the public can be excluded under by-law 2 (Chapter 2). Further, a member would utter a defamatory statement at his own risk.

[HEARNE J.—Has the Chairman no control over the debate?]

He has, but the act in question was not one of controlling any business; it was a way of preventing business being done.

The Chairman always derives his authority from the assembly. The report has to be considered by the Council. Until the Council considers it, the special committee continues to live (section 11). So far as the report is concerned, the Chairman is only a channel of communication,

and he has to submit the report to the Council. In the course of the report from the special committee to the Council, the Chairman's function is purely of a ministerial nature—*The King v. Bishop of Sarum*.¹

N. E. Weerasooria, K.C. (with him *E. B. Wikremanayake* and *V. F. Gunaratne*), for the respondent.—The Mayor was under no legal duty to do what is asked for in the present application, namely, to direct the Chairman to place the report before the Council.

By-law 31 (Chapter 2) dealing with the conduct of business was repealed by *Gazette* No. 8,401 of October 7, 1938, and replaced by a section which deals not with special committees but with standing committees. Standing committees are referred to in section 10 of Cap. 194.

There is no specific statutory provision under which there is a duty cast on the Mayor or Chairman to place a report before the Council. Section 11 of Cap. 194 is too vague to read into it any special duty which the petitioner alleges has not been done. A statutory duty must be expressed in clear and specific terms—*Short on Mandamus*, pp. 229, 231.

One has to consider the position of the Mayor. His real designation appears in section 60 of Cap. 194. Sections 7 and 8 deal with the conduct of business at a meeting of the Council. Under the present Ordinance there is no such person as "Chairman of the Municipal Council". By section 5 (3) the office of the original Chairman is now divided between the Mayor and the Commissioner. Section 8 empowers the Mayor to preside and the subsequent sections provide as to who should preside if the Mayor is absent. Consequently, when the Council meets, one cannot say who will be the Chairman. The persons who presides has nothing to do with the submission of a report to the Council. One cannot ask for a Writ of *Mandamus* on a person who happens to sit as chairman at a meeting.

In regard to the report itself, it has gone completely outside the terms of reference and purported to condemn certain officers whose conduct was not under inquiry. As Chairman of the meeting, the respondent was entitled so to control the proceedings as to rule the report out; there is no restriction with regard to the control of the proceedings.

Assuming *mandamus* lies, the present petitioner cannot move alone for it. There is nothing to show that the majority of the Council is of the opinion that the report in question should have been considered. If the breach complained of is the breach of a duty to a body, a single member of the body cannot apply for a writ.

H. V. Perera, K.C., in reply.—The Mayor is *ex officio* Chairman of the meeting—section 8. Chairman's duties can be enforced by the remedy of *mandamus*—*Blackwell on Public and Company Meetings* (8th ed.), p. 41. As regards the duties of a Chairman at meetings, see *Taylor v. Nesfield* discussed in *Crewe on Procedure at Meetings* (15th ed.), pp. 19 et seq.

There need not be an express statutory duty. A duty may be derived from the fact that a person holds a certain office. *The Queen v. The Overseers of Christchurch, Middlesex*.²

¹ (1916) 1 K. B. 466.

²(1857) 7 El & B. 409.

Each member has the right to participate at a meeting. An individual who is a member of a group can apply for *mandamus*—*Application for a Writ of Mandamus on the Government Agent, Northern Province*¹; *The Queen v. Stewart*²; *The King v. Manchester Corporation*³.

Cur. adv. vult

December 20, 1939. HEARNE J.—

This is an application for a writ of *mandamus* on Dr. V. R. Schokman directing him to place for consideration by the Municipal Council of Colombo the report of a special committee appointed under section 11 of the Colombo Municipal Council Ordinance to inquire into “the circumstances which led to the transfer of the Municipal Workshop Foreman”. The respondent was described in the caption as the Mayor of Colombo and Chairman of the Municipal Council but it appears from an examination of the relevant Ordinance that this is a misdescription. He is the Mayor of the Municipal Council and as such is entitled, subject to the provisions of sections 60 and 61, to preside over all meetings of the Council at which he is present.

The report of the special committee was set down for consideration at a meeting of the Council on November 1, 1939, and when that item of the agenda was reached the respondent stated that he had decided to reject the report as it was not in conformity with the terms of reference. After certain members had expressed their views he made it clear that he refused to allow it to be discussed.

The signatories of the majority report purported to deal with the circumstances which preceded the transfer of the Workshop Foreman but they went much further. They dealt with the conduct of certain officers concerned in the transfer and also with their “unsuitability” for their respective posts. Further, adverse comment was made on the qualifications of another officer who does not appear to have had anything to do with the subject-matter of the inquiry (paragraph 14).

In the argument before this Court it was, no doubt correctly, assumed that the respondent did not seek to exercise powers he knew he did not possess but that, on the contrary, he thought he was entitled, by reason of the extraneous matter in the report, to forbid any discussion of it. It is clear that the legal advice he has since taken has confirmed him in this view.

In my opinion, however, he has been wrongly advised. As Chairman he undoubtedly had control over the conduct of business at the meeting and to his ruling on points of procedure members would be bound to bow. But he had no right to prevent discussion of a matter that was properly before the meeting. On the contrary it was his duty to see that due and sufficient opportunity to express their views on any such matter was given to those who wished to do so.

¹ (1927) 28 N. L. R. 323.

³ (1911) 1 K. B. 560.

² (1898) 1 Q. B. D. 552.

The report of the special committee was properly before the meeting. It had been authorized by and made to the Council, it had been listed in the "Orders of the Day" for discussion by the Council, and it was not within the authority of the respondent to deprive the Council of the right to consider it. If the report went beyond the terms of reference it would be for the Council to decide upon the steps it would be advisable to take. If in the course of a discussion on the report it was considered desirable to do so, the provisions of by-law 2 (Cap. 2) relative to the exclusion of strangers could be invoked. But all these are matters within the competence of the Council and not an individual member of it.

In his affidavit the respondent said that "in the exercise of the discretion I had as Chairman of the meeting . . . I did not permit the report to be discussed". The fact is that he had no discretion. It is not vested in him by the Colombo Municipal Council Ordinance and his Counsel could not say whence he had derived it. Apart from statute he could only have derived it from the meeting itself. "Public meetings" as Jervis C.J. said in *Taylor v. Nesfield (supra)* "must be regulated somehow; and where a number of persons assemble and put a man in the chair they devolve on him, by agreement, the conduct of that body. They attorn to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. The Chairman collects, as it were, his authority from the meeting". The meeting of the Municipal Council certainly did not vest in the Chairman the right to decide which items of the agenda should and which should not be taken up. So far from doing so, those who spoke protested against the assumption of any such right.

Counsel for the respondent argued that there was nothing to show that the action taken by the applicant meets with the approval of a majority of the Council and that, therefore, the writ must be refused. I know of no authority for this proposition.

It is suggested by the respondent that the application is not *bona fide*, that the applicant is a candidate for the office of Mayor in 1940, and that the object of the application is to throw doubt on the propriety of the respondent's conduct as Mayor. I would stress that no suggestion has been made that he acted with any improper motive. On the other hand it would, I think, be generally conceded that had the special committee not taken such a liberal view of the task entrusted to them, the respondent in the ordinary way would have submitted their report for discussion. It is not the propriety but the legality of his conduct that is at issue. The applicant in his counter affidavit states that his application was made *bona fide*. He also says that the respondent is mistaken in thinking that he is a candidate for the office of Mayor. This must be taken to be conclusive of the matter.

The rule will be made absolute with costs.

Rule made absolute.