

1972

Present : Wimalaratne, J.

H. M. WILSON, Appellant, and M. SUMATHIRATNE, Respondent

S. C. 611/70—M. C. Gampola, 17947

Urban Council—Contract of tenancy between the Council and a member in respect of a house built by the Council for poorer classes—Whether it disqualifies the member from sitting and voting in the Council—Local Authorities Elections Ordinance (Cap. 262), ss. 9 (1)(f), 10, 11—Urban Councils Ordinance (Cap. 255), ss. 129 (g), 227.

The accused-appellant sat and voted as a member of an Urban Council when he was at that time the tenant of a model dwelling house which had been constructed and rented to him earlier by the same Council. The house belonged to a public utility service provided by the Council under section 129 of the Urban Councils Ordinance.

The accused was charged with having committed an offence punishable under section 11 of the Local Authorities Elections Ordinance. The Magistrate convicted him because he took the view that by reason of the contract of tenancy the accused was a person who held or enjoyed a contract or agreement with the Urban Council and was therefore disqualified under section 9 (1) (f) from sitting and voting in the Council.

Held, that no disqualification attaches under section 9 (1) (f) of the Local Authorities Elections Ordinance to a person who holds or enjoys a contract or agreement with an Urban Council for the provision of public utility services which such a Council is empowered to establish and maintain under section 129 of the Urban Councils Ordinance.

APPEAL from a judgment of the Magistrate's Court, Gampola.

E. R. S. R. Coomaraswamy, with *K. Devasagayam* and *S. C. B. Walgampaya* for the accused-appellant.

No appearance for the complainant-respondent.

Cur. adv. vult.

August 30, 1972. WIMALARATNE, J.—

The accused was the tenant of a model dwelling house constructed and rented out by the Urban Council of Gampola on a monthly rental of Rs. 12 from 1st November, 1959. He was elected a member of the same Urban Council on 1.1.68 and sat and voted at meetings of the Council held on 22.11.69, 21.1.70 and 25.1.70.

The complainant charged the accused with having committed offences punishable under Section 11 of the Local Authorities Elections Ordinance (Chap. 262). The learned Magistrate took the view that the accused was disqualified under Section 9 from sitting or voting as a member, that his seat became *ipso facto* void under Section 10, and convicted and sentenced him to a fine of Rs. 35 on each count.

The disqualifying Section reads as follows :—

“ 9 (1) No person shall, at any time, be qualified to be elected under this Ordinance, or to sit or to vote, as a member of any local authority, if such person at that time—

.....
 (f) directly or indirectly, himself or by any other person whatsoever in trust for him or for his use or benefit or on his account, holds or enjoys, in the whole or in part, any contract or agreement or commission made or entered into with or accepted from any person for or on account of such authority :

Provided that nothing herein contained shall extend to any pension or gratuity granted by such authority in respect of past service, nor to any contract, agreement or commission entered into or accepted in its corporate capacity by any incorporated trading company in which such person may be a member or a shareholder. ”

The learned Magistrate held that by reason of the tenancy agreement the accused was a person who held or enjoyed a contract or agreement with the Urban Council. He followed the reasoning in the decision in *Sirimal v. de Silva*¹—51 N.L.R. 42—that the object of Section 238 of the Urban Councils Ordinance (which is renumbered as Section 227 in Chap. 255) is obviously to prevent a conflict between interest and duty which would otherwise arise.

Section 227 of Chap. 255 reads as follows :—

“ (1) No member, officer, or servant of any Urban Council shall, whether directly or indirectly, be concerned or have any financial interest in any contract or work made with or executed for the Council.

(2) If any member, officer or servant of an Urban Council is concerned or has any financial interest in any contract or work made with or executed for the Council, he shall be guilty of an offence punishable with a fine not exceeding five hundred rupees, and shall, as the case may be, be disqualified from sitting as a member of the Council or from holding any office or employment under the Council . ”

In that case the Urban Council ordered, for the use of the Rest Houses maintained by it, four dozen packets of Lux soap from a shop owned by the Chairman of the Council. The bill was paid for on the express

¹ (1949) 51 N. L. R. 42.

authority of the Chairman. Gratiaen J. held “ but with little enthusiasm ” that the evidence disclosed the commission of an offence prohibited by Section 227.

The learned Magistrate thought that a conflict between interest and duty would arise in the instant case too, if, for example the Council decided to raise the rental or to give notice to the accused to quit the premises. It was urged before the Magistrate that some limitation must be put upon the general words of the section where the agreement relates to public utility services provided by the Urban Council to its inhabitants. In terms of Section 129 of the Urban Councils Ordinance, it is open to an Urban Council to establish and maintain for the benefit of the inhabitants the following among other public utility services :—

- (a) water supply ;
- (c) the supply of electric light or power ;
- (g) the provision of housing accommodation for the poorer classes.

If the rule in Section 9 (1) (f) of Chap. 262 or in Section 227 of Chap. 255 is strictly applied, then every member of a local authority who has an agreement with that authority for the supply of water or electricity will be disqualified. But they are not disqualified for the reason that those agreements relate to the supply of public utility services established and maintained for the benefit of the inhabitants of the area. Why, then, should a person who has entered into a tenancy agreement for the occupation of a dwelling house belonging to that authority on a rental of Rs. 12 per month be disqualified ? The Magistrate thought that there was no evidence that the accused was given the dwelling because he belonged to the poorer classes, within the meaning of Section 129 (g). The evidence of Mohamed Sadikeen, a member of the Council from 1958, was that the building of these houses was a part of the Council's Slum Clearance Scheme. The rent of Rs. 12 per month itself suggests the inference that these dwellings were meant as accommodation for the poorer classes.

I take the view that no disqualification attaches under Section 9 (1) (f) of the Local Authorities Elections Ordinance to a person who holds or enjoys a contract or agreement with an Urban Council for the provision of public utility services which such a Council is empowered to establish and maintain under Section 129 of the Urban Councils Ordinance.

The convictions and sentences are accordingly set aside and the accused is acquitted.

Appeal allowed.