

GAMINI ATUKORALE
v.
DAYANANDA DISSANAYAKE,
COMMISSIONER OF ELECTIONS AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, C.J.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.
S.C. APPEAL NO. 175/97
C.A. APPLICATION NO. 259/97
SEPTEMBER 17, 18, 21, 1998

Writs of Certiorari and Mandamus – Grounds for invalidating the result of election to a Municipal Council – Local Authorities Elections Ordinance – Section 69 – Failure to comply with the provisions of the Ordinance.

At the election of members to the Negombo Municipal Council held on 02.03.1997 People's Alliance obtained a majority of 534 votes over the United National Party. It was common ground that at least at 10 of the 45 polling stations, during the poll, gangs of person broke in, drove the UNP polling agents out, seized ballot paper books from the officers, perforated and marked ballot papers and inserted them into the ballot boxes. However, at the counting, the ballot papers so introduced were identified with reference to the serial numbers and excluded from the counting. The appellant sought writs of certiorari and mandamus, relying on section 69 of the Local Authorities Elections Ordinance, for invalidation of the result of the said election and for an order to hold a fresh election, on the ground that by reason of the alleged incidents the election was not conducted in accordance with the provisions of the Ordinance and with the principles laid down in such provisions and the result of the election was thereby affected.

Held:

That the acts complained of by the petitioner form no part of the conduct of the election. They were the acts of third parties who had no legitimate role to play in the conduct of the impugned election. The petitioner, therefore, cannot succeed on the ground that there had been a failure to comply with the relevant provisions of the Ordinance; and the evidence adduced was insufficient to determine that the incidents complained of did affect the result of the election.

Held further, that the declaration of the result by the Returning Officer in terms of s. 65 of the Ordinance is not a "decision" which attracts the jurisdiction exercisable by way of a writ of certiorari.

Per Wijetunga J.

"As mentioned above, provision has been made in statutes such as the Parliamentary Elections Act, No. 1 of 1981, Presidential Elections Act, No. 15 of 1981, and the Provincial Councils Elections Act, No. 2 of 1988 for an election to be challenged appropriately, but not so in the case of the Local Authorities Elections Ordinance."

". . . If that be the case, the time is ripe for this court to draw the attention of the legislature to the crying need for appropriate provisions to be made for the invalidation of impugned elections under this Ordinance on grounds similar to those contained in the other statutes aforementioned. Otherwise, the concept of a free and fair election and the citizen's right to elect representatives of his choice to the local authority of his area would not merely be a myth but a farce."

Cases referred to:

1. *Martin Perera v. Madadombe* 73 NLR 25.
2. *Perera v. Wickramatunga* 69 NLR 176.
3. *Piyadasa v. Gunasingha* 42 NLR 339.
4. *Silva and Others v. Sadique and Others* (1978.79.80) 1 Sri LR 166.
5. *Morgan v. Simpson* (1974) 3 All ER 722.

APPEAL from the judgment of the Court of Appeal.

K. N. Choksy, P.C with *Ronald Perera* and *Ms. K. Wijetunga* for appellant.

K. C. Kamalabeyson, P.C A.S.G, with *A. Gnanadasan SSC* and *N. Pulle*, SC for 1st, 2nd and 28th respondents.

R. K. W. Goonesekera with *Asoka Gunasekera*, and *Gaston Jayakody* for 6th respondent.

Cur. adv. vult.

October 28, 1998.

WIJETUNGA, J.

The petitioner, as General Secretary of the United National Party (UNP), filed an application in the Court of Appeal seeking a mandate in the nature of a Writ of Certiorari quashing the declaration of the final result of the election held on 21.3.97 for the purpose of electing members to the Negombo Municipal Council and for a Writ of Mandamus directing the 1st and 2nd respondents to hold an election to the said

Municipal Council in due compliance with the provisions of the Local Authorities Elections Ordinance, as amended.

Candidates from the United National Party (UNP), the People's Alliance (PA), the Nava Sama Samaja Party (NSSP) and the Janatha Vimukthi Peramuna (JVP) contested the said election. The particulars regarding the poll and the votes received by the four political parties aforesaid are as follows:

People's Alliance	23,456
United National Party	22,922
Nava Sama Samaja Party	1,201
Janatha Vimukthi Peramuna	638
Total polled	51,230
Total valid votes	48,217
Rejected votes	3,013
Registered number of electors	67,622

The PA thus obtained a majority of 534 votes over the UNP.

Accordingly, the PA was declared entitled to 12 seats (including 2 additional 'bonus' seats) and the UNP to 10 seats. The NSSP and the JVP were not entitled to any seats. The Negombo Municipal Council has a total of 22 members.

It was alleged that, out of the 45 polling stations, there were incidents of intimidation, thuggery and violence in 13 polling stations. The 1st respondent, the Commissioner of Elections has conceded that his officers have reported such incidents in 10 polling stations.

The appellant alleges that by reason of the incidents referred to in paragraph 17 of the petition filed in the Court of Appeal, the election was not conducted in accordance with the provisions of the Local Authorities Elections Ordinance and the principles laid down in such provisions and the result of the said election was thereby affected. He further pleaded that accordingly "the conduct of the said election by the 1st and 2nd respondents is illegal and a nullity and of no legal effect, and the purported result thereof liable to be quashed in pursuance of the provisions of section 69 of the Local Authorities Elections Ordinance". It is on this basis that the appellant sought mandates in the nature of Writs of Certiorari and Mandamus from the Court of Appeal.

The Court of Appeal, in a well considered judgment, held *inter alia* that the court was "constrained to hold that the petitioner has failed to establish that the 1st respondent or his officers failed to comply with the provisions of the Ordinance. It follows therefrom that there was no breach of the principles underlying those provisions" and referring to the submission of counsel that "the incidents referred to may have prevented the supporters of the UNP from casting their votes" observed that "apart from the speculative nature of the submission, there is absolutely no evidence to establish that the majority of 534 votes in favour of the PA over the UNP would have been the other way round, even if the elections officers were able to prevent the incidents that took place at the polling stations". The application was accordingly dismissed without costs. It is from this order that the petitioner has appealed to this court.

As correctly submitted by learned President's Counsel for the petitioner at the hearing before us, the focal point of the case is section 69 of the Local Authorities Elections Ordinance, as amended, which states that:

"No election shall be invalid by reason of any failure to comply with the provisions of this Ordinance relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election".

There is no provision in the Ordinance for the invalidation of an election on grounds such as general intimidation, undue influence, and bribery. However, they are made punishable offences under section 79 and 81.

Learned counsel for the appellant stated that what was sought from the Court of Appeal was an order in the nature of a Writ of Certiorari to quash the declaration made by the Returning Officer in terms of section 65 of the Ordinance. He submitted that Certiorari would lie to quash a decision or declaration made under a statute if the statutory process or procedure by which the decision or declaration is made is not in compliance with the prescribed procedure; and that the declaration made under section 65 is the culmination of such a statutory process. Such a determination cannot stand if there has been non-compliance.

The procedure relating to such elections is contained in Part IV of the Ordinance. Counsel submitted that the provisions relevant to the grounds of complaint are contained in sections 24, 27, 37 (3) (a) and 44 (e) of the Ordinance. Sections 49 (1) and (4) (polling agents), 50 (3) (maintenance of law and order), and 59 (1) (procedure on closure of poll), it was further submitted, should also be effectually complied with.

Learned President's Counsel for the appellant stated that although the petition contained allegations in respect of incidents at 13 polling stations, he was content to accept the version of the 1st respondent that such incidents had been reported only in respect of 10 polling stations. The allegations were to the effect that gangs of persons broke into these polling stations, drove the UNP polling agents out, forcibly took ballot paper books from the hands of the officers, marked such ballot papers, perforated them and inserted them into the ballot boxes. It was also alleged that the 6th respondent, who is the present Mayor of the Negombo Municipal Council, led the gangs and his presence was specifically mentioned by at least one Presiding Officer, viz that of Polling Station No. 42, where a UNP candidate was able to pick up one such ballot paper marked for the PA, with the preferences marked for the 6th respondent. These incidents are alleged to have taken place between 1 p.m. and 4 p.m. resulting in the polling stations being abandoned and the voters having dispersed. The Presiding Officers' reports confirmed the alleged incidents but the persons responsible for such incidents were not identified by the officers concerned.

It is the position of the 1st respondent that where it was reported that gangs of persons had forcibly entered the polling stations and had forcibly taken ballot papers from the officers, had marked and perforated them and had 'stuffed' them into the ballot boxes, he gave specific instructions to the Counting Centre and removed such ballot papers by identifying ballot papers which had not been cast by the registered electors, with reference to the serial numbers given by the Senior Presiding Officers and thus invalidated and excluded those ballot papers from the count, thereby ensuring that only those ballot papers which were validly issued by the elections officers to the registered electors were taken into account at the stage of the count. These averments are supported by the affidavits of the Counting Officers who state that having correctly identified such ballot papers

with reference to the serial numbers, they were invalidated and excluded from the count, in the presence of the Counting Agents who were at the counting centres.

While the court unreservedly condemns the actions of those who attempted to disrupt the poll, thus interfering with the voter's right to a free and fair election, their identity has unfortunately not been sufficiently established in these proceedings. It must, however, be emphasized that the officers on duty at these polling stations were not to blame for such incidents.

Learned counsel for the appellant pointed out that the Court of Appeal had taken the view that the transgressions of or non-compliance with the provisions of the law should be brought home to the culpability of the officers conducting the election and that the result cannot be vitiated by reason of wrongful acts done by outsiders. Further, it had been held that the onus was on the petitioner to prove that the result was in fact affected, which the Court of Appeal itself recognizes is well nigh impossible. It was his submission that the affectation of the poll cannot be established with mathematical precision. But, there was a serious doubt as to whether the result would have been the same if there were no such incidents. He pointed out that about 1/4th of the polling stations had been invaded by these gangs. It was also relevant that the majority obtained by the PA was only about 1% of the valid votes cast and the voters who had by then not cast their votes had been unable to do so, due to the acts complained of. He, therefore, submitted that the election had not been conducted in accordance with the principles laid down in the provisions of the Ordinance and that such failure did affect the result of the election. He further submitted that in the absence of specific provisions in the Ordinance to invalidate such an election, a Writ of Certiorari was the appropriate remedy to have the result of such an election quashed.

Learned counsel for the 6th respondent, on the other hand, submitted that in other enactments dealing with elections such as the Parliamentary Elections Act and the Presidential Elections Act, specific provision has been made in regard to the procedure to be adopted for the invalidation of such elections. But, in regard to Local Authorities, the Legislature has refrained from making similar provisions, though this Ordinance has been amended as recently as in 1990. Although the petitioner sought to base his case on non-compliance with the

provisions of the statute, he was in fact relying on acts of general intimidation, which though punishable insofar as the perpetrators of such acts were concerned, was not a ground on which such an election could be avoided under the Ordinance.

Out of 45 polling stations, alleged non-compliance was only in respect of 10. Even in regard to those 10 polling stations, the complaints come under the rubric of general intimidation. There had thus been compliance with the law in regard to the other 35 polling stations. There is no provision other than section 69 of the Ordinance to challenge an election in respect of a local authority and that section deals with non-compliance with the provisions of the Ordinance, in consequence of which the result must be affected. He pointed out that under section 83 of the Ordinance, any person convicted of an offence under sections 77 to 82 shall, in addition to any other penalty to which he may be liable for such offence, be disqualified for a period of five years reckoned from the date of such conviction from being elected or from sitting or voting as a member of any local authority. It is significant, he said, that section 79 deals with acts of bribery, and section 81 with intimidation and related acts. Transgressions of those sections may result in penal sanctions insofar as the persons culpable are concerned; but their individual or collective actions have not been made the basis for the avoidance of such elections. Thus, section 69 is the only section available to the petitioner. What the law contemplates is that the election be conducted in accordance with the principles laid down in the several provisions of the Ordinance, so as not to affect its result. It was counsel's submission that the election had indeed been *conducted* in accordance with those provisions and section 69 therefore has no application to the facts and circumstances of this case.

He further submitted that these proceedings could not have been properly brought by way of an application for a Writ. Having regard to the grounds alleged to quash the result, he submitted that a Writ of Certiorari is wholly inappropriate and the petitioner cannot convert what he referred to as a 'Writ Court' into an 'Election Court'. Is it conceivable, he asked, that these allegations can be substantiated merely by affidavit and not by oral evidence? Complaints of this nature are triable before a properly constituted 'Election Court' where oral evidence could be led and the witnesses subjected to cross-examination. The elaborate procedure laid down for challenging a

Parliamentary election, etc., is a clear indication that once an election is held, it is not easily set aside.

Counsel further submitted that what the petitioner sought to quash was the final result of the said election which was merely a declaration of the result of such election by the Returning Officer, in terms of section 65 of the Ordinance. He had no discretion in regard to the declaration of the result, in that he had merely to add up and determine the number of votes cast for each recognized political party or independent group, from the statements of votes cast at each polling station. That is not a 'decision' but merely the proclamation of the result and as such it cannot be the subject of an application for a Writ of Certiorari.

The learned Additional Solicitor-General for the 1st and 2nd respondents submitted that he defends the declaration made under the relevant section of the Ordinance. He pointed out that while certain sections of the Ordinance relate to purely ministerial acts, others involve a discretion and a decision, such as in section 31. Under section 65 (1) (a), he submitted, that upon the receipt of the necessary documents, the Returning Officer has no choice but to declare the result. As non-compliance naturally implies a duty to perform a statutory function, it is necessary to ascertain whether the 1st and 2nd respondents have not complied with the provisions contemplated by section 69. Clearly the answer is 'none'.

An election contemplated by section 69 can be conducted only by the 1st respondent and his officers, and non-compliance with the provisions of the Ordinance referred to therein necessarily envisages the acts of the officers concerned with the conduct of such election. Adverting to the incidents alleged by the petitioner, he stated that the 1st respondent has admitted all the incidents except three; but, significantly he has made reference to 'persons unknown', since the identity of the persons responsible for such incidents was not within the knowledge of the 1st respondent or his officers.

He submitted that the issue before the court being a contested one, it could not have been adequately dealt with in proceedings by way of Writ. He referred to the several provisions in the Presidential Elections Act, the Parliamentary Elections Act, and the Provincial Councils Elections Act, which provide for an election to be annulled

according to the procedure laid down in those enactments. Such provisions are not available under the Local Authorities Elections Ordinance.

Learned President's Counsel for the petitioner submitted in reply that the decision in *Martin Perera v. Madadombe*⁽¹⁾ has no application to the facts and circumstances of this case and the *ratio decidendi* of that case therefore does not apply. (Fernando, CJ. had referred there to the decision in *Perera v. Wickramatunga*⁽²⁾, with acceptance, while *Piyadasa v. Gunasinha*⁽³⁾ had been overruled.) He laid emphasis on the fact that the acts complained of in Martin Perera's case were committed during the whole campaign, (not on polling day), before the commencement of the poll and outside the precincts of the polling station. There was no complaint of general intimidation on polling day.

In *Perera v. Wickramatunge* (*Supra*) also, the general intimidation complained of was during the polls campaign.

As regards *Piyadasa v. Gunasinghe* (*Supra*) he pointed out that the present section 69 of the Ordinance was then not in existence.

He observed that in the instant case, the court is dealing with acts of intimidation on polling day, at the polling stations, when sections 24 to 68 were in operation. The control of the election at that time was in the hands of the Officers of the Commissioner of Elections. He submitted that the fact that there was general intimidation on polling day makes a fundamental difference in regard to the operation of section 69.

As the will of the majority must prevail at the close of the poll and by the declaration of the results the Returning Officer decides who has been elected, such acts of general intimidation affect the rights of the subject. The declaration by the Returning Officer must evidence the will of the majority, as expressed through the procedure laid down in sections 54 to 68, which is within the field of public law. The Commissioner and the Returning Officers are statutory functionaries and if the final determination is flawed by a failure to observe any relevant step in the procedure, then the declaration of the result too is flawed and cannot stand in law. The purpose is to enable the voter to exercise his right effectively and without hindrance. It was his submission that this election was not conducted in accordance

with the principles laid down in the relevant provisions of the Ordinance and section 69 mandates that such an election shall be invalid.

As regards the submission of the respondents that Certiorari is in any event not the appropriate remedy, it was his contention that these being statutory provisions and the officers being statutory functionaries, the public law element necessary for the issuance of such a Writ is satisfied. In the past, when the courts had recourse to the Writ of *Quo Warranto*, the system of election to local authorities was entirely different. The election of a member at that time was to a particular ward of a local authority and such an election could appropriately be challenged through a Writ of *Quo Warranto*, but under the Proportional Representation system, the entire local authority area is taken together and only one declaration is made by the Returning Officer in respect of such local authority. Certiorari, he submitted, is therefore the appropriate remedy, as one has to attack the final declaration made in respect of the entire Municipal Council.

Section 69, he said, admittedly does not provide a remedy. He therefore contended that the petitioner must necessarily have recourse to the Writ of Certiorari, that being the only available remedy in the circumstances. He referred us to *Silva & Others v. Sadique & Others*⁽⁴⁾ in that connection.

Learned counsel for the 6th respondent, on the other hand, submitted that what is sought is the cancellation of the entire election which affects the rights of persons against whom there are no allegations whatsoever. He pointed out that as *Ma:ñ Perera's* case does not refer to the facts but discusses only the law relating to the subject, there is no material to indicate whether the general intimidation complained of in that case was on polling day or otherwise. The broad issue there, he said, was whether *Quo Warranto* could be used in those circumstances, which under the Proportional Representation system has no relevance.

In any event, it was for the petitioner to establish that the failure, if any, to comply with the provisions of the Ordinance did affect the result of the election and in the instant case he submitted that the petitioner has failed to do so.

The learned Additional Solicitor-General drew our attention to the legislative pattern between non-compliance and general intimidation, etc. He referred us to the provisions of the Ordinance which deal with offences relating to elections (section 77 et seq.) and the penal consequences resulting from the contravention of such provisions. He submitted that the attempt on the part of the petitioner to introduce general intimidation as an ingredient of non-compliance under section 69 is not permissible. The fact that it is alleged that there was general intimidation within the polling station, he said, would not convert such an act to non-compliance within the meaning of section 69. The alleged acts are those of third parties who had no hand in the, conduct of the election, which was essentially within the province of the officers concerned. As section 69 speaks of the election being conducted in accordance with the principles laid down in the relevant provisions, it necessarily refers to the role of the officers who conduct such election and not to that of third parties. The Legislature, he submitted, does not contemplate the setting aside of an election to a local authority on the grounds urged by the petitioner, as is evidenced by the fact that no provision has been made therefor in the Local Authorities Elections Ordinance unlike in other statutes such as the Presidential Elections Act, the Parliamentary Elections Act and the Provincial Councils Elections Act where specific provision has been made and the necessary legislative machinery installed for the annulment of such elections, where appropriate.

The main question with which the court is concerned in these proceedings is whether a Writ of Certiorari is available in these circumstances or is the appropriate remedy to invalidate such an election, where admittedly there is no specific legal provision therefor. But, before one gets to that question, it is necessary in the instant case to consider whether there has been non-compliance with the provisions of the Ordinance relating to Local Authorities Elections.

Lord Denning, MR in *Morgan v. Simpson*⁵⁾, dealing with the question of the validity of a local government election which was challenged on the ground that it had not been conducted 'substantially in accordance with the law as to elections' and alternatively that the omissions of the polling clerks had affected the result, declared the election invalid on the alternative ground aforementioned. In that

connection, he considered a number of decisions of the English courts relevant thereto. But those cases too dealt with non-compliance with the law by elections officers and not with matters concerning third parties whose acts may affect the ultimate result of the election. Thus, those decisions would not be of assistance in regard to the matter before us.

Fernando, CJ., in Martin Perera's case (*supra*) has subjected section 69 to very careful scrutiny. He states (at page 29) that: "having regard to the sense in which the expression 'failure to comply' has been used by the Legislature of this country for a hundred years, I greatly doubt whether in s. 69 of Cap. 262 that expression was used to connote anything other than breaches of statutory duties".

He goes on to state (at page 30) that: "it is perfectly clear that sections 24 to 68 of Cap. 262 deal with the *conduct* of an election, and entrust various officers at different stages with the duty of *conducting* elections. If therefore any such officer does not comply with some provisions of those sections, it may properly be said that the election was not conducted in accordance with the principles which underlie those provisions. It is thus manifest that s. 69 was intended to apply in such a case. But can it properly be said that the giving and taking of bribes to and by voters forms part of the *conduct* of an election?"

Again (at page 31) His Lordship observes that: "the language of the section leads clearly to the inference that the contemplated reason for invalidity is that the election was not conducted by the proper officials in accordance with the principles of ss. 24 to 67. Once that inference is reached, a court must hesitate to institute a search for some further hidden intention".

Applying these dicta, with which I am in respectful agreement, to the facts of this case, it is crystal clear that the acts complained of by the petitioner form no part of the conduct of the election, however reprehensible they may be. They were undoubtedly the acts of third parties who had no legitimate role to play in the *conduct* of the impugned election. Though they may have committed penal offences, they surely could not have been in *breach of statutory duties*, as they had none to perform.

To my mind, the fact that the alleged acts were committed on election day or at the polling booths makes no difference in law as far as the applicability of section 69 is concerned. The election process proper commences at least from the stage when steps are taken by elections officers under part IV of the Ordinance (section 26 et seq.). From then onwards, the officers of the Commissioner of Elections are in sole charge of the conduct of the election. Specific provision has been made in the Ordinance prohibiting certain acts not only on the date of the poll, but during the period commencing on the first day of the nomination period and ending on the day following the day on which the poll is taken (sections 81A, 81B, etc.). But the acts so specified do not even include incidents of the nature referred to in paragraph 17 of the petition. The distinction sought to be drawn by learned counsel for the petitioner in that regard is thus not tenable.

The petitioner, therefore, cannot succeed on the ground that there had been a *failure to comply* with the relevant provisions of the Ordinance.

In the instant case, even though the PA gained control of the Council by a slim majority over the UNP, the evidence adduced is insufficient to determine that the incidents complained of did affect the result of the election, in the sense that had it not been for those incidents, the decision would have been in favour of the UNP. The Court of Appeal, in my view, rightly observed that the petitioner "will be faced with the well nigh impossible task of proving beyond reasonable doubt . . . or at a high degree of probability . . . the allegations in the petition, solely on supporting affidavits and documents".

Unlike the proceedings in an election petition case where oral evidence is led and the witnesses are subjected to cross-examination, thereby providing an opportunity to the parties as well as the court to come to grips with the true nature of the acts complained of and the consequences thereof, the procedure in an application for a Writ of Certiorari where the matters are decided on affidavits and documents, to say the least, is a very poor substitute for the procedure followed at the hearing of an election petition. Evidence tendered through affidavits, etc., cannot, in these proceedings, be adequate,

even if tested by cross-examination of the deponents of such affidavits. Nor is such a court equipped to effectively deal with the validity of an impugned election through the usual procedure applicable to the grant of a Writ of Certiorari. Such a Writ is therefore not merely not the ideal remedy, but, in my view, is quite an inappropriate remedy.

As regards the question whether in any event a Writ of Certiorari would lie to quash the declaration of the result of an election by the Returning Officer in terms of section 65 of the Ordinance, one must necessarily examine the nature of the Returning Officer's functions in respect thereof. The Returning Officer does not have to exercise a discretion or make a 'decision' at that stage, in that he has merely to declare the result on the basis of the total number of valid votes cast for each political party or independent group, as reflected in the returns sent by the relevant officers of each polling station. This is no more than a ministerial act and by its very nature does not attract the jurisdiction exercisable by way of a Writ of Certiorari.

Jain & Jain, *Principles of Administrative Law*, 4th Ed., states at page 325 that: "functions dischargeable by the administration may either be *ministerial* or *discretionary*. A ministerial function is one where the relevant law prescribes the duty to be performed by the concerned authority in certain and specific terms leaving nothing to the discretion or judgment of the authority. It does not involve investigation into disputed facts or making of choices. The authority concerned acts in strict obedience to the law which imposes on it a simple and definite duty in respect of which it has no choice".

The case of *Silva & Others (supra)* cited by learned counsel for the appellant has no application to the facts and circumstances of this case, as the court was there considering an objection *in limine* on the ground, *inter alia*, that Certiorari did not lie to quash Reports made to the President of the Republic pursuant on inquiries held upon Warrants issued under the Commissions of Inquiry Act and the binding effect of such orders or decisions.

Undoubtedly there is a serious lacuna in the law as regards impugned elections under the Local Authorities Elections Ordinance, as amended. If the legislative intent is to be gathered by reference

to the several amendments to that Ordinance, which has been in existence since 1946, and the last such amendment being as recently as in 1990, it does not appear that the failure to provide the necessary machinery to annul such an election was a mere omission or oversight on the part of the Legislature. As mentioned above, provision has been made in statutes such as the Parliamentary Elections Act, No. 1 of 1981, Presidential Elections Act, No. 15 of 1981, and the Provincial Councils Elections Act, No. 2 of 1988 for an election to be challenged appropriately, but not so in the case of the Local Authorities Elections Ordinance.

Therefore, one cannot but conclude that the failure to make such provision in respect of elections to local authorities was deliberate on the part of the Legislature. If that be the case, the time is ripe for this court to draw the attention of the Legislature to the crying need for appropriate provisions to be made for the invalidation of impugned elections under this Ordinance on grounds similar to those contained in the other statutes aforementioned. Otherwise, the concept of a free and fair election and the citizen's right to elect representatives of his choice to the local authority of his area would not merely be a myth, but a farce.

The acts of general intimidation complained of in these proceedings should be an eye-opener to those vested with the responsibility of good governance to take appropriate steps to prevent such occurrences in the future, lest it be thought that even after fifty years of Independence, the oft lamented but hitherto uneradicated scourge of election violence has become part of our 'election culture'.

For the reasons aforesaid, the court, though reluctantly, is obligated to hold that the appellant cannot succeed in this appeal.

The appeal is accordingly dismissed, but without costs.

G. P. S. DE SILVA, CJ. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal dismissed.