

SUPREME COURT**A.G. Ariyadasa and others****V.****A.L.B.K. Perera and others***S.C. No. 15/81 - C.A. Application No. 2057/77 C.A. (L.A.) 99/80 S.C.**Employees Council Act - Finality of determination of electoral list - Inability to postpone election a day after acceptance of nomination and fixing election day.*

The Appellants were employees eligible to vote and hold office under the Employees' Council Act No. 32 of 1979.

All preliminary steps had been taken by the 1st Respondent to hold elections and all preparations had been made including compiling electoral lists. As required by the Act the Commissioner of Labour the 1st Respondent appointed an electoral Board of which the third Respondent was the Chairman. The 3rd Respondent fixed 8th November 1979 as nomination day and 23rd November as election day. On 8.11.79 the 3rd Respondent accepted the nomination papers of all three Petitioners but informed them that they had been transferred to other depots.

In the meantime the 1st Respondent issued a circular amending the electoral list thus necessitating the postponement of elections. Elections were held on the altered basis. The Petitioners prayed for a Writ of Mandamus directing the Respondents to hold fresh elections.

- Held*
1. That once the Commissioner of Labour prepared and certified the electoral list that list was final and could not be amended.
 2. That the Respondent had contravened the provisions of the Act by transferring the Petitioners with effect from nomination day.
 3. That once the 3rd Respondent accepted nominations and fixed election day he had no right to reject nominations and postpone election day.

APPEAL from judgment of Court of Appeal.

Before: Wanasundera, J., Ratwatte J, and Soza J.

Counsel: Nimal Senanayaka, Senior Attorney-at-Law with Miss S.M. Senaratne, T. Balasuriya and Mrs. A.B. Dissanayake for Appellants.

Ameen Ismail, Senior State Counsel with S.K. Hettige, State Counsel for 1st Respondent.

D. Q. Palliyaguru for 2nd and 3rd Respondents.

Argued on: 12.02.82, and 25.02.82

Cur. adv. vult.

Decided on: 8.4.1982

SOZA J.

The three appellants in this case challenge the propriety of the alteration of the electoral list and the postponement of the election of the Employees' Council fixed for 23rd November 1979, of the unit of undertaking called the Maharagama Depot of the Colombo South Region Transport Board. These elections were to be held under the Employees' Councils Act, No. 32 of 1979 (hereafter referred to as the Act) and the Employees' Councils Rules, 1979 (hereafter referred to as the Rules) made under section 12 of the Act.

At the times material to the questions we are being called upon to consider, the three appellants were eligible employees within the meaning assigned to this expression in the Act and therefore entitled to be elected to and to vote at the elections for membership of the Employees' Council of the Maharagama Depot (section 9 of the Act).

We are here concerned with the first election held under the Act. The first step to be taken was the appointment of an Electoral Board of five members (two of whom had to be eligible employees of the particular unit of undertaking) by the Commissioner of Labour (hereafter referred to as the Commissioner) who is the first respondent before us. One of the five members had to be appointed Chairman of the Board by the Commissioner. The Board and its Chairman had to be appointed within six weeks of the coming into operation of the Act (sections 7 and 8 of the Act). It was the duty of the Electoral Board to hold the election within six months of the coming into operation of the Act. If the Board neglected any of its duties the Commissioner could act instead (sections 6 and 13 of the Act).

On 24.9.1979 the Commissioner appointed an Electoral Board for the Maharagama Depot with the 3rd respondent as Chairman. The 3rd respondent was the Depot Superintendent of the Maharagama Depot of the Colombo South Region Transport Board which has been made the 2nd respondent to these proceedings.

The Commissioner determined that there should be three categories of eligible employees for the Maharagama Depot and he also fixed the number of members to be elected to represent each category in the Council which had to have a complement of eighteen members under section 10 (f) of the Act. These categories were:

- (1) Clerks and similar grades3,
- (2) Skilled and semi-skilled 13, and
- (3) Unskilled and others 2.

The Commissioner directed the 3rd respondent to notify the categorisation. The 3rd respondent complied. He compiled a list of names of eligible employees in alphabetical order separately for the three categories and published a notice that the list was prepared and was open for inspection. Any eligible employee was entitled within seven days of the publication of the notice to claim that his name be included in the list if his name had been omitted or to object to the inclusion of any particular name. Such claims and objections had to be submitted in writing to the Electoral Board which had to place the matter before the Commissioner for his ruling. The Commissioner's ruling was final and after amendment according to such ruling the list would be certified as the one upon which the

election would be held. Within seven days of certifying the lists the electoral Board had to publish a notice specifying the name of each constituency, the number of members to be elected for each constituency and the names of those eligible to vote in each constituency. The Electoral Board next had to appoint an Elections Officer and notify his name by posting it up in the notice board and other conspicuous places of the unit of undertaking (Rules 2(1) to (9) and 3).

For the purpose of electing members to the Employees Council the eligible members could organize themselves into groups of a number not less than the number of members to be elected to the Council. Each group had to have a leader and had to be recognised by the Electoral Board. No eligible member could stand for election unless he was a member of a recognised group (Rules 4(1) to (4) and 5(1) to (4)). In practice the grouping followed a political pattern.

In the case before us the 3rd respondent who was also the Elections Officer complied with all the rules as set out above. He called for nomination papers for each of the categories as determined by the Commissioner to be submitted before 4.00 p.m. of 8th November 1979 (Rules 6(1) to (8)). He also fixed the election itself for 23rd November 1979. On 8th November 1979 the 3rd respondent duly accepted nomination papers from the members of the various groups. The petitioners submitted nomination papers for the category of skilled and semi-skilled workers and these were accepted (Rules 7(1) to (2) and 8).

If the election was held as arranged there could have been no cause for complaint. On the 7th November 1979 however the Commissioner threw a spanner in the works. He sent a circular IR1 dated 7.11.1979 to all units of undertaking of the Ceylon Transport Board advising that a broad meaning should be given to the term "supervisory capacity" so that employees in Grade 6 and below could be regarded as eligible employees and accordingly directing that appropriate alterations in the lists of eligible employees "hitherto prepared or under preparation" be made.

No doubt the Commissioner has wide powers under the Act. It is open to him to interpret the provisions of the Act. But wide as his powers are he is nowhere given the power to rescind his own decisions. On the contrary his determinations and decisions are in

many instances described by the rules as final. Were it otherwise where do we draw the line? How many times can the Commissioner review his own decisions and determinations? An interpretation such as would stultify the working of the Act should not be given. Once an electoral list is prepared and certified that list is the only valid one for the election for which it was prepared.

It was the Commissioner who decided on the categorisation of eligible employees. His decision on that was final - see rule 2(1) (a), (b) and (c) and rule 2(2). If the list prepared in compliance with this categorisation is found to have omissions or names of persons not entitled to vote, it is for the Commissioner to rule upon it. The Commissioner's decision here too is final - see Rule 2(4) and (5).

The electoral list in the case before us had passed all these stages. The respondents say that the Commissioner issued IR1 to ensure a better representation. But even if the object was laudable the action was illegal. The circular IR1 so far as it related to electoral lists already prepared was illegal. Electoral lists yet to be perfected could of course be governed by it.

Before I leave this point I would like to make another comment. The Commissioner should have been aware that the elections had to be conducted within a time-frame. This is what the Legislature had willed. If owing to some special circumstances it becomes impossible to adhere to the time-frame then the default could be excused. If the prescribed time limits are not adhered to and there are no exonerating circumstances then it will amount to a breach of the law. That the Commissioner acted bona fide I have no reason to doubt. But owing to what the Commissioner did the time-schedules had to be broken with the consequence that the legality of the election itself was affected.

What the Commissioner did tainted the first election with illegality. Yet it had at least the redeeming feature that it was done in the interests of ensuring as democratic an election as possible. But what the 3rd respondent did was to ignore the entire election law and set at naught the highly democratic objectives of the Act.

Let me examine the 3rd respondent's role in regard to the election. The 1st and 2nd petitioners were members of the group of the

Communist Party Trade Union Federation in the Maharagama Depot and the 1st petitioner was the group leader. The 3rd petitioner was a member of the group of the Sri Lanka Freedom Party Trade Union Federation in the same Depot. All three petitioners were eligible employees in recognised groups and therefore qualified to stand for election to the Employees' Council of the Maharagama Depot.

The 1st and 3rd petitioners had worked at the Maharagama Depot on 7.11.1979 till evening. On 8.11.1979 they handed in their nominations to the 3rd respondent who accepted them but did not allow them to sign the attendance register. The 3rd respondent informed them that letters of transfer had been posted to them on 7.11.1979 and refused to give them work at the Maharagama Depot. On 10.11.79 the 1st and 3rd petitioner received letters of transfer dated 7.11.1979 transferring them with effect from 8.11.1979 - the 1st petitioner to the Kesbewa Depot and the 3rd petitioner to the Ratmalana Depot. The 2nd petitioner handed in his nomination paper on 8.11.1979 which the 3rd respondent accepted. The 2nd petitioner was allowed to work on this day at the Maharagama Depot. On 9.11.1979 the 2nd petitioner was handed a letter of that date transferring him with immediate effect to the Avissawella Depot. He was an Engineering Inspector and he was transferred from the Maharagama Depot which was understaffed in that Grade to Avissawella which was overstaffed with Engineering Inspectors. Although the Chairman of the 2nd respondent Board and the Minister himself directed the cancellation of these transfers the 3rd respondent found excuses for not complying.

The 3rd respondent in his affidavit denies the transfers of the 1st and 3rd petitioners were effected after the nomination papers were handed in. He maintains that the transfers were effected on the 7th November. The 1st and 3rd petitioners have not placed proof available to them to prove that the letters were not despatched on the 7th November. The 1st and 3rd petitioners could have produced the envelopes in which the letters of transfer were posted to them. The date-stamp on them would have thrown some light on the date of posting. Hence the Court will have to act on the basis that the transfers of the 1st and 3rd petitioners were effected on the 7th November. So far as the 2nd petitioner is concerned his letter of transfer P4 was dated 9th November and the transfer was to be effective on the same day. The letter P4 is conclusive that this transfer was effected on 9th November.

On 8th November the 3rd respondent accepted the nomination papers of all three petitioners and of others. This was apparently because the Commissioner's circular IR1 had not yet reached him. Therefore so far as the 3rd respondent was concerned 8th November stood as nomination day. The inference then is that the 3rd respondent had effected transfers of three eligible employees and not even the fact that on 8th November he knew they were also candidates served to persuade him to stay the transfers. The suddenness of the transfers puts the bona fides of the whole action under a cloud. Nomination day should have been the last day to be chosen by the 3rd respondent to effect transfers of eligible employees. The circular IR1 had no recognisable connection with these transfers. So far as the circular IR1 went, one would have expected the 3rd respondent to bring to the notice of the Commissioner that nomination papers had already been accepted and election day fixed and asked for instructions.

No doubt the petitioners were liable to transfer in accordance with the terms of their appointment. But this right should not have been exercised so as to stymie the provisions of the Act. The 3rd respondent should remember that a person who attempts to influence the election by imposing any disadvantage or disability on an eligible employee, let alone a candidate, is guilty of an election offence punishable under the Act (sections 16 and 49). The 3rd respondent on his own showing is guilty of contravening the provisions of the Act by serving sudden transfer orders to be effective on nomination day on the 1st and 3rd petitioners and on the day after on the 2nd petitioner. Further once he accepted nominations and had election day also fixed he had no right to reject the nomination papers and postpone the elections. Even the circular IR1 cannot redeem his transgressing the law.

What relief however can this Court give? The elections that were eventually held on 10th January 1980 on nominations accepted on 30th December 1979 were no doubt bad. However the Employees' Council elected in contravention of the law having completed its two year term is now no longer in office. A writ of mandamus at this stage would be futile. A fresh election cannot be held on the electoral list of 1979 because of inevitable changes in personnel at the Maharagama Depot. In the circumstances I do not interfere with the order of the Court of Appeal.

In regard to costs however I see no ground to justify an order for costs in favour of the 1st respondent and therefore set it aside. The petitioners came to Court as early as 6.12.1979 but have been unable to obtain relief because time has run out for them. This situation has arisen because of inevitable delays in the disposal of this case. The dispute in this case has been mainly brought about by the irresponsible manner in which the 3rd respondent has acted. Therefore I order the 3rd respondent to pay the petitioners the taxed costs of the proceedings in this Court and in the Court of Appeal. Subject to this the appeal is dismissed.

Wanasundera J. - I agree.

Ratwatte J. - I agree.

Appeal dismissed