

1966 Present : Abeyesundere, J., and Siva Supramaniam, J.

K. P. PERERA, Petitioner, and H. WICKRAMATUNGA,  
Respondent

*S. C. 39/66—Application for a Writ of Quo Warranto*

Quo warranto—Election of Municipal Council member—Grounds of avoidance—Restriction to the grounds specified under statute law—Local Authorities Elections Ordinance, ss. 9, 10 (1)—Municipal Councils Ordinance, ss. 10, 13—Civil Law Ordinance, s. 3—Courts Ordinance, s. 42—Ceylon (Parliamentary Elections) Order in Council, 1946, s. 77.

A writ of *quo warranto* does not lie to invalidate the election of a person as a member of the Colombo Municipal Council on the ground of general intimidation of voters or of general undue influence. Such corrupt or illegal practices are not grounds of disqualification on which a Municipal election can be declared invalid under the statute law in Ceylon.

*Piyadasa v. Goonesinghe* (42 N. L. R. 339) not followed.

**A**PPPLICATION for a writ of *quo warranto*.

*E. R. S. R. Coomaraswamy*, with *Rajah Bandaranayake*, *S. S. Sahabandu* and *C. Chakradaran*, for the Petitioner.

*H. W. Jayewardene*, *Q.C.*, with *R. R. Nalliah* and *N. Kasirajah*, for the Respondent.

October 10, 1966. ABEYESUNDERE, J.—

The petitioner has applied for a Writ of Quo Warranto in order that this Court may determine the question whether the respondent, who was elected as a member of the Colombo Municipal Council on 18th December, 1965, has the right to hold the office of Municipal Councillor. It is alleged by the petitioner that there was no free and fair election as there was general intimidation of the voters at the instance of the respondent, some voters were by undue influence induced to refrain from voting and the opposing candidate was by the use of force and intimidation prevented from holding meetings for the promotion of his candidature and canvassing support for his election.

The Local Authorities Elections Ordinance (hereinafter sometimes referred to as "the Ordinance") is, as its long title indicates, an Ordinance to amend and consolidate the law relating to the election of members of Local Authorities. A Municipal Council is one of the Local Authorities to which the Ordinance applies. Section 9 of the Ordinance specifies the disqualifications to be elected, or to sit or vote, as a member of any Local Authority. Section 10 (1) provides that where any member of a Local Authority is, by reason of the operation of any of the provisions

of Section 9, disqualified from sitting or voting as a member of such authority, his seat or office shall *ipso facto* become vacant. Section 11 of the Ordinance makes it an offence for a person knowingly to act in the office of member of any Local Authority after his seat or office becomes vacant under Section 10 (1).

None of the grounds averred by the petitioner would under Section 9 of the Ordinance have disqualified the respondent to be elected as a member of the Colombo Municipal Council or would under that Section disqualify him to sit and vote as a member of such Council.

Section 10 of the Municipal Councils Ordinance specifies the term of office of a Municipal Councillor elected at a general election. Section 13 of that Ordinance provides for the vacation of the office of Municipal Councillor by the relinquishment or resignation of office or by the failure to attend 3 consecutive general meetings of the Council without leave of the Council first obtained. The petitioner does not aver that the respondent's right to hold office as a member of the Colombo Municipal Council is affected by Section 10 or Section 13 of the Municipal Councils Ordinance.

From the aforesaid provisions of statutory law in force in Ceylon it is reasonable to infer that if a person, who is not disqualified to be elected under Section 9 of the Local Authorities Elections Ordinance, is elected as a member of a Municipal Council, he has the right to hold the office of such member until that office is vacated by relinquishment or resignation of office or otherwise becomes vacant in accordance with the aforesaid statutory provisions.

Mr. E. R. S. R. Coomaraswamy, who appeared for the petitioner, argued that the case of the petitioner was that the respondent was not duly elected. When Section 10 of the Municipal Councils Ordinance specifies the term of office of a Councillor "elected at a general election", it does so in respect of a Councillor elected in accordance with the provisions of the Local Authorities Elections Ordinance. The essential provisions relating to election contained in the latter Ordinance are those relating to nomination of candidates, the holding of a poll where there is a contest, voting at the poll, and the determination of the result of the poll by counting the votes cast at the poll. In the case before us, the facts averred by the petitioner indicate that there was a nomination of candidates, that voters had gone to the poll and voted, that 3886 voters had voted at the poll, that the votes were duly counted, and that the result of the poll was determined by reference to the majority ascertained at the counting. It must, therefore, be presumed that the election of the respondent was in accordance with the provisions of the Local Authorities Elections Ordinance.

Mr. Coomaraswamy conceded that under the statute law of Ceylon the averments of the petitioner afford no ground for declaring that the respondent has no right to hold office as a member of the Colombo Municipal Council, but he argued that the question whether the respondent has a right to hold office as a member of the Colombo Municipal

Council must be determined by applying the English Law. He relied on the judgment of Mr. Justice Soertsz in the case of *Piyadasa v. Goonesinghe*<sup>1</sup> in which it was held that a Writ of Quo Warranto lies to question the election of a person to a Municipal Council on the ground of general undue influence and general bribery. In holding as aforesaid Mr. Justice Soertsz relied on the English Common Law as general undue influence and general bribery were not grounds on which according to the law in Ceylon the election of a member to a Municipal Council could be invalidated. In 1872 a statute (Victoria, Cap. 60) was passed by the Parliament of England for "the better prevention of corrupt practices at Municipal Elections". That statute displaced the Common Law of England which permitted a Writ of Quo Warranto on the ground of corrupt practice at a Municipal election. Therefore, after the aforesaid statute was enacted, according to English Law no Writ of Quo Warranto lies to question the election of a member to a Municipal Council on the ground of general undue influence or general bribery. Consequently, with due deference to the learned Judge aforesaid, we are of the view that the issue of a Writ of Quo Warranto in the aforesaid case of *Piyadasa v. Goonesinghe* could not have been according to English Law. Mr. Coomaraswamy cited certain other cases in which the aforesaid judgment of Mr. Justice Soertsz was adopted with approval. The judgment in each of the aforesaid cases was that of a single Judge. We are therefore not bound by those judgments even under the convention of *stare decisis*. Mr. Coomaraswamy pleaded that the precedents created by this Court by the judgments in the aforesaid cases should not be departed from. I need only quote Justinian's dictum: "Non exemplis sed legibus iudicandum est". The decisions of a Court must be based on law and not on precedents.

Section 3 of the Civil Law Ordinance provides that in all cases which have to be decided in Ceylon with respect to the law of corporations, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question had arisen or had to be decided in England, unless there is other provision in any enactment in force in Ceylon. A Municipal Council is a statutory corporation. The right of a person to hold office as a member of such a Council must therefore be determined by reference to the statute law applicable to such a Council. Mr. Coomaraswamy submitted that Section 3 of the Civil Law Ordinance applied to a Municipal Council. Assuming that the said Section 3 applies to a Municipal Council, it is clear from the terms of that Section that, if there is statutory provision applicable to any matter relating to a Municipal Council, the English law will not apply to that matter. As indicated above there is statutory provision in Ceylon in regard to the disqualifications to be elected and to sit and vote as a member of a Municipal Council, the term of office of such a member, and the vacation of such office by relinquishment or resignation thereof or otherwise in accordance with these statutory provisions. The intention of the legislature, as evident from those

<sup>1</sup> (1941) 42 N. L. R. 339.

statutory provisions, appears to be that a person not disqualified to be elected shall be entitled after election to hold the office of Municipal Councillor until his term of office expires or his office becomes vacant under those statutory provisions. We cannot agree with Mr. Coomaraswamy when he seeks to introduce from the law of England further circumstances in which an elected member of a Municipal Council may be held to cease to hold office as such member.

The question we have to determine is whether a Writ of Quo Warranto lies on the averments made by the petitioner. As stated above, even according to the law of England a Writ of Quo Warranto does not lie on such averments. We have also indicated that the petitioner's averments do not disclose a ground on which, under the statute law in Ceylon, the respondent ceases to hold office as a member of the Colombo Municipal Council.

For the aforesaid reasons, we hold that the averments of the petitioner do not afford a legal ground for declaring on a Writ of Quo Warranto that the respondent has no right to hold the office of member of the Colombo Municipal Council to which he was elected at a general election. The Rule Nisi issued on the respondent is therefore dissolved.

The respondent is entitled to his taxed costs of the proceedings in this Court.

SIVA SUPRAMANIAM, J.—

I agree. It was only in 1920 when Section 42 of the Courts Ordinance No. 1 of 1899 was amended by Ordinance No. 4 of 1920 that this Court was authorised to grant and issue, according to law, a mandate in the nature of a Writ of Quo Warranto. At that date, relief by way of a Writ of Quo Warranto had ceased to be available under the English Common Law to invalidate a Municipal election on the ground that a corrupt or illegal practice such as general bribery or general undue influence or general intimidation had been committed in connection with the election. It will not be appropriate, therefore, to have recourse to the principles of English Common Law to determine the grounds on which this Court should issue that writ in connection with the invalidation of a Municipal election.

Soertsz J. at the conclusion of his Judgment in *Piyadasa's case* drew attention to the desirability of adopting *mutatis mutandis* the State Council Order in Council in regard to elections to the State Council to govern Municipal elections. That was in 1941. Nevertheless, when the Legislature enacted Ordinance No. 53 of 1946 (Cap. 262) to amend and consolidate the law relating to the election of members to Local Bodies it did not include therein provisions to invalidate an election on grounds of general corrupt or illegal practice. The omission is significant when one considers the provisions of Section 77 of the Ceylon

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(Parliamentary Elections) Order-in-Council of 1946 in connection with the election of members to Parliament. In these circumstances, this Court will be encroaching on the powers of the Legislature if it adds to the grounds on which elections to Municipal Bodies can be invalidated.

*Application dismissed.*

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