

1945

Present: **Wijeyewardene J.****MENDIAS APPU v. HENDRICK SINGHO.**

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Quo Warranto* AGAINST **DIOGUNNEHENDIGE HENDRICK SINGHO.**

Writ of Quo Warranto—Election to village committee—Disqualification of member elected—No objection raised on date of nomination—Concurrence—Quo Warranto lies—Effect of petitioner's delay or malice—Village Communities Ordinance (Cap. 198), ss. 13 (e), 15 (3) and (4).

An application for a writ of *quo warranto* lies to set aside an election to a village committee on the ground that the respondent who was elected was not qualified for election as a member. The fact that the petitioner did not raise objection, under section 15 (3) of the Village Communities Ordinance, to the nomination of the respondent, would not operate as a bar.

"On the question of concurrence a distinction has to be drawn between cases where the defect arises in connection with the form of conducting the election and cases where the defect lies in the non-compliance with a positive requirement of the law regarding the qualification of the person elected."

The writ will not, however, be granted if there has been unreasonable delay on the part of the petitioner or where he is actuated by malice.

APPPLICATION for a writ of *quo warranto* to have it declared that the election of the respondent as member of a ward in a village area was void on the ground that he was not qualified for election as a member as he had been convicted of an offence under section 315 of the Penal Code in 1921 and served a sentence of six months' rigorous imprisonment.

S. C. E. Rodrigo for the petitioner.

C. S. Barr Kumarakulasingham (with him *Vernon Wijetunge*), for the respondent.

Cur. adv. vult.

March 6, 1945. **WIJEYWARDENE J.**—

This is an application for a writ of *quo warranto* declaring that the election of the respondent as member for Lucasgoda Ward in the Village Committee of Tissamaharama is null and void.

Acting under the provisions of section 14 of the Village Communities Ordinance, the Government Agent fixed May 31, 1944, as the day for the delivery of nomination papers. On that day the respondent alone was nominated for the Lucasgoda Ward, and the Government Agent declared him to be the duly elected member for that ward. The petitioner filed papers in this Court on September 22, 1944, impugning the election on the ground that the respondent was not qualified for election as a member, as he had been convicted in 1921 for an offence under section 315 of the Penal Code and served a sentence of six months' rigorous imprisonment (*vide* section 13 (e) of the Village Communities Ordinance). The respondent

does not dispute the fact that he was so disqualified at the date of the election but seeks to obtain relief on the following grounds:—

- (a) that the remedy by way of *quo warranto* does not lie in this case.
- (b) that there has been unreasonable delay on the part of the petitioner.
- (c) that the petitioner has presented this application because the respondent criticised the present Chairman of the Village Committee.

The argument in support of ground (a) was briefly as follows:—

The petitioner did not avail himself of the opportunity given by section 15 (3) to raise an objection to the nomination of the respondent on May 31, 1944, when the respondent's nomination paper was delivered to the Government Agent. In the absence of any such objection, the Government Agent declared him duly elected under section 15 (4) and in doing so the Government Agent exercised a judicial function. Section 15 (3), moreover, makes the decision of the Government Agent with regard to any objection to a nomination final and conclusive.

I am unable to uphold this contention. It is not suggested that the petitioner was present when the nomination papers were delivered. Moreover, even if he was present, the circumstances in which nominations are made should be considered before a decision is reached on the question whether he concurred in the election. The Village Communities Ordinance makes no provision for the preparation of lists for voters and eligible candidates. A voter cannot be expected reasonably to acquaint himself with the early history of all the villagers and much less to provide himself with the necessary evidence to prove what he knows against them so as to be ready to object successfully to the nomination of anyone of the villagers whose name may be put forward. I am in respectful agreement with the views expressed by Maartensz A.J. in *G. R. Karunaratne v. Government Agent, Western Province*¹.

No doubt, section 15 (3) makes the decision of the Government Agent final and conclusive. The decision therein referred to is the decision given by the Government Agent after inquiry into an objection raised at the time the nomination papers are delivered to him. But where no objection is raised, all that the Government Agent is required to do is to "scrutinise" the nomination paper which is in the Form B in the schedule to the Rules relating to the Conduct of Elections (Subsidiary Legislation 1941, Supplement Volume 3, Page 336). That Form gives the names and addresses of the proposer, the seconder and the candidate. It also contains a declaration by the proposer and the seconder that they are entitled to vote but strangely enough omits any declaration as to the eligibility of the proposed candidate. The Government Agent "scrutinising" the nomination papers is not, therefore, even acting on a declaration made by anyone that the candidate has the necessary qualification to be a member of the Village Committee.

Moreover, on the question of concurrence a distinction has to be drawn between cases where the defect arises in connection with the form of conducting the election and cases where the defect lies in the non-compliance with a positive requirement of the law regarding the

qualification of the person elected. In *Rex v. Smith*¹ an objection was taken to the election of a Mayor on the ground of his not having taken the sacrament according to the rites of the Church of England, within one year next before his election, as required by the 13 Car. 2 stat. 2 c. 1. The Court set aside the election and held that the relators were not disqualified by reason of their having concurred in the election.

The petitioner's Counsel, however, was unable to give any explanation for the delay in presenting the petition. The petitioner has not stated in the affidavit when he first became aware of the conviction of the respondent.

The respondent stated in his affidavit that the petitioner, a servant of the Chairman of the Village Committee, was "actuated by malice" as he had occasion to criticise the Chairman. This statement was not contradicted by any counter-affidavit. In fact, it appeared to be conceded in the course of the argument.

I refuse the application on the grounds (b) and (c). The respondent is entitled to costs.

Application refused.
