

1971 *Present* : H. N. G. Fernando, C.J., and Samerawickrame, J.

C. P. PERERA, Petitioner, *and* D. W. DE ALWIS (Government Agent, Colombo), Respondent

*S. C. 93/71—Application for a Writ of Mandamus*

*Excise—Local option poll—Required notices—Delayed publication of them in some places—Resulting invalidity of the poll—Mandamus.*

Where a local option poll was held after publication in due time at some only of the different places at which publication was required by Rule 6 of the relevant local option Rules of 1928, but the publication was late at the other places—

*Held*, that the poll was not valid.

**A**PPPLICATION for a writ of *mandamus*.

*Vernon Wijetunge, Q.C.*, with *D. R. P. Goonetilleke* and *Gamini Dissanayake*, for the petitioner.

*N. Sinnetamby*, Crown Counsel, with *P. Tennekoon*, Crown Counsel, for the respondent.

*E. R. S. R. Coomaraswamy*, with *Glanville Perera*, for the Member of the Kotahena West Ward of the Colombo Municipal Council.

August 11, 1971. H. N. G. FERNANDO, C.J.—

This is an application relating to a local option poll held on 25th January, 1971, for the abolition of two toddy tavern licences. Rule 6 of the relevant local option Rules, 1928, provides that :

“ At least 20 days' notice of the poll shall be given by publication in one or more local newspapers by fixing copies of the notice at the Kachcheri, the local Magistrate's Court, and the Village Tribunal, if any, within the jurisdiction of which the area is situated, and at prominent places within the said area, and by beat of tom-tom or by such other method as the Government Agent shall direct.”

In the present case, the affidavit of the Government Agent shows that notices were published in some newspapers and in the *Government Gazette* more than 20 days before the date of the poll. But in regard to the requirement for fixing copies of the notice at the Kachcheri and the Magistrate's Court and other prominent places, and also in regard to publication by beat of tom-tom, there was no publication until about 18th January, 1971 which was only a week before the date of the poll. In the case of *Miller and Company v. Government Agent, Province of Uva*<sup>1</sup>, there was a complete failure to comply with the requirement of Rule 6 because there had been delay in the publication of all the required notices. We are unable, however, to distinguish the present case merely because some of the notices were published in due time. There is nothing in Rule 6 to create any distinction between the different places at which publication is necessary. We must accordingly agree that the poll was not validly held.

In regard to the relief sought from this Court, learned Crown Counsel has argued that, because there is no duty imposed by law on a Government Agent to issue licences under the Excise Ordinance, we should not in the present case make an order declaring this poll to have been invalid. We do not feel disposed, however, to depart from the precedent in the case already cited, where a declaration was granted in almost the very terms which have been set out in the present prayer.

<sup>1</sup> (1928) 30 N. L. R. 6.

Order will therefore be made declaring the local option poll held on 25th January, 1971 to be null and void and that accordingly the licences for the two toddy taverns in the Kotahena West Ward of the Colombo Municipal Council have not been abolished.

The respondent will pay to the petitioner a sum of Rs. 252.50 as the costs of these proceedings.

SAMERAWICKRAME, J.—I agree.

*Application allowed.*

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