

Court in a judgment dated 3rd February 1949: And humbly praying Your Majesty in Council to grant the petitioner special leave to appeal from the judgment of the Supreme Court dated 13th October 1948 and for such further and other relief as to Your Majesty in Council may seem just:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble petition into consideration and having heard Counsel in support thereof (no one appearing in opposition thereto) Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the petitioner to enter and prosecute his appeal against the judgment of the Supreme Court of Ceylon dated the 13th day of October 1948 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

“AND Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the record proper to be laid before Your Majesty on the hearing of the appeal upon payment by the petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed, obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

*Application allowed.*

1949

*Present: Basnayake J.*

SAMARAKOON, Petitioner and TIKIRI BANDA, Respondent

*S. C. 421—In the Matter of an Application for a Writ of Quo Warranto against H. M. Tikiri Banda*

Quo warranto—Election of Village Committee Chairman—Bribery and treating—Remedy provided by law—Act of electing Chairman—Official act—Public Bodies (Prevention of Corruption) Ordinance—No. 49 of 1943—Section 6—Local Authorities Elections Ordinance, No. 53 of 1946—Section 10.

The act of electing a Chairman of a Village Committee is an official act within the meaning of section 6 of Ordinance No. 49 of 1943. Where, therefore, there are allegations of treating and bribery the proper remedy is under that section and a conviction will disqualify the person charged by virtue of section 10 of Ordinance No. 53 of 1946. A writ of quo warranto will not lie in such a case.

**A**PPPLICATION for a writ of *quo warranto* to have the respondent's election as Chairman of the Village Committee of Udagampaha declared void.

*C. S. Barr Kumarakulasinghe*, with *A. I. Rajasingham* and *T. W. Rajaratnam*, for the petitioner.

*G. E. Chitty*, with *N. Nadarasa*, for the respondent.

June 7, 1949. BASNAYAKE J.—

The petitioner and the respondent are members of the Village Committee of Udagampaha. The respondent successfully contested the petitioner for the office of Chairman. The petitioner seeks to have the respondent's election as Chairman declared void. The grounds on which he relies are thus stated in his petition :

"4. Before and after the said Village Committee Elections the Respondent and his agents committed various acts amounting to general bribery, general treating and general undue influence, more fully described in the affidavits annexed A to J to this petition and filed herewith.

5. The said acts were designed to prevent the free and fair exercise of the vote at the election of the Chairman held on the 27th of July, 1948, and the said acts had the effect so designed.

6. For some time before the Election of the Chairman, the Respondent together with a number of his supporters treated the said members of the Village Committee and detained them in his house and later at other places in order to prevent their independently exercising their judgment in the matter of the choice of a Chairman.

7. On various occasions before the election of the Chairman, the Respondent bribed and attempted to bribe various members of the said Village Committee."

I am unable to see how "general bribery, general treating and general undue influence" before and after the Village Committee election can affect the respondent's election as Chairman of the Village Committee by his fellow members.

In regard to the allegations of treating and bribery by the respondent, I have not been referred to any case in which the election of a member to the office of Chairman of a local body or Mayor of a council has been successfully questioned by way of *quo warranto* on the grounds alleged by the petitioner. Before I can allow an application in support of which no precedent is cited, I must be satisfied upon the affidavits that the allegations of the petitioner are true. In the instant case the respondent

denies that he either treated or bribed the members of the Committee and six out of the twelve members constituting the Committee deny that they were treated or bribed or that any other form of undue influence was exercised in respect of them. A mandate in the nature of a writ of *quo warranto* is not issued as a matter of course. It is a writ in the discretion of this Court and the onus is on the petitioner to satisfy the Court that the matter is one that calls for the remedy he asks.

Learned counsel for the respondent submitted that the petitioner should first pursue the remedy provided by the Public Bodies (Prevention of Corruption) Ordinance, No. 49 of 1943, or Chapter IX A of the Penal Code. A conviction under either of those enactments operates by virtue of section 10, sub-section (1) (k) and sub-section (2) (c) of the Local Authorities Elections Ordinance, No. 53 of 1946, as a disqualification of the person convicted from sitting or voting as a member of a local authority (which expression is defined to include a Village Committee—section 88) for a period of five years. Learned counsel for the petitioner contended that neither the Public Bodies (Prevention of Corruption) Ordinance, No. 49 of 1943, nor Chapter IX A of the Penal Code, applies to the instant case. He submitted that the expression “official act” as defined in section 6 of the former enactment does not include the act of electing a Chairman.

I find myself unable to agree with the submission of learned counsel for the petitioner. In my opinion the act of electing the Chairman of a Village Committee falls within the definition of the expression “official act”. The words “any matter or transaction whatsoever” in that definition are wide and sweeping and embrace all acts which a member of a Village Committee is called upon to perform *qua* member. There is nothing in Chapter IXA of the Penal Code that excludes the application of section 169B in that Chapter to the exercise of the right to vote at the election of a Chairman of a Village Committee.

The contention of the counsel for the respondent that there are other equally effective remedies open to the petitioner is in my opinion correct. A writ of *quo warranto* will not as a rule issue when there are other remedies.

The petitioner comes to this Court on the footing that “there was no election of a Chairman for the Village Committee of Udagampaha.” If that be the case, *mandamus* and not *quo warranto* is the remedy. *Quo warranto* lies where the office is full *de facto*<sup>1</sup>. If the election is merely colourable, and therefore void, so that in point of law the office is vacant, then the dissatisfied person should ask for a *mandamus* to proceed to an election *de novo*, the pretended election being a mere nullity.

For the above reasons the rule is discharged with costs.

*Rule discharged.*

<sup>1</sup> The Law of Corporations by James Grant, p. 266.