

Present: De Sampayo J.

PERERA v. RAJAPAKSE.

In the Matter of an Application for a Writ of *quo warranto* in respect of the Office of Chairman of the Urban District Council of Negombo.

Writ of quo warranto—Discretionary writ—Undue delay—Chairman presiding over election meeting—Motion lapsing for want of a seconder.

The jurisdiction of the Supreme Court in respect of an application for a writ of *quo warranto* is entirely discretionary, and in exercising that discretion any circumstance of undue delay must be taken into consideration.

A person who presides at a meeting of an Urban District Council, summoned specially for the purpose of electing a Chairman of the Council, may himself be elected Chairman.

Seemle, a motion which has been defeated or which has lapsed for want of a seconder cannot be renewed at the same meeting.

AN application for a mandate in the nature of *quo warranto* to test the legality of the proceedings of the Urban District Council of Negombo, held on January 6, 1925, at which the respondent, Mr. A. E. Rajapakse, was elected Chairman. The respondent was moved into the chair to preside at the meeting. Then, a member, Mr. Ranasinghe moved that the respondent be elected Chairman of the Council for two years. This was seconded. Mr. Herft proposed as an amendment that the petitioner, Mr. J. H. Perera, be elected Chairman, but there was no seconder, and the motion fell through. Mr. Vijeyratnam then proposed that Mr. Ranasinghe be elected Chairman, whereupon Mr. Ranasinghe begged to be excused. Mr. Vijeyratnam then said that, in view of Mr. Ranasinghe's refusal, he seconded Mr. Herft's motion for the election of the petitioner. Objection was then taken by another member that Mr. Vijeyratnam was out of order. Mr. Herft then said that he would again propose Mr. Perera's name. On an objection by Mr. Ranasinghe, the Chairman ruled that Mr. Herft's motion could not be proposed again, and, as his name was the only one before the meeting, declared himself elected.

Allan Driberg, K.C. (with *Cooray* and *Amerasekera*), for the petitioner.—The respondent should not have presided over the meeting when he knew that his name was being proposed as Chairman. As President he would be called upon to rule on matters arising in the course of the election. It is against the principles of justice that a man should be judge in his own cause (*Queen*

n. ovens ¹). It is not correct to say that the proposal of Mr. Herft was in the nature of an amendment. It was a substantive motion on the only matter before the house, viz., the election of the Chairman. It was not a motion limiting the previous one. It was a distinct proposition. The remedy open to the applicant is one of a mandate in the nature of *quo warranto* (*Application for a Mandamus on Chairman, Municipal Council* ²).

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R. L. Pereira (with him *Canekarathne* and *H. V. Perera*), for respondent.—The issue of the writ is purely discretionary. It will not be exercised in case of delay or triviality (*Mani Lal Nahar v. Mqrudal Rahaman* ³).

No objection has been raised by the proposer Mr. Herft, who acquiesced in the proceedings, when the minutes were confirmed.

Driberg, K.C., in reply cited *Henderson v. Bank of Australia*.¹ Delay has been sufficiently explained.

April 6, 1925. DE SAMPAYO J.—

The jurisdiction of this Court in respect of applications for mandates in the nature of *quo warranto* is entirely discretionary, and any circumstance of undue delay must be taken into consideration. The election of the respondent as Chairman of the Urban District Council of Negombo, which is intended to be attacked, took place on January 6, 1925, and this application was not made till February 26, 1925. Accordingly, when the papers were submitted, this Court, while issuing notice on the respondent, required the petitioner to explain the delay. For this purpose the petitioner has filed an affidavit dated March 23, 1925. It is in the following terms:—

- “ (1) I am the petitioner in the above application.
- “ (2) I decided to move the Supreme Court to set aside the election of Mr. A. B. Rajapakse as Chairman of the Urban District Council, Negombo, after consulting Mr. Advocate Rodrigo practising in Negombo, who was instructed by my Proctor Mr. S. C. Sansoni of Negombo to draft the necessary papers.
- “ (3) I was thereafter advised to consult senior counsel in Colombo, and eventually retained Allan Driberg, Esq., K.C.
- “ (4) After consultation with Mr. Driberg and junior counsel in Colombo, I handed the papers to Mr. Driberg's clerk to be filed at the Registry of the Supreme Court.

¹ 2 *Ellis & Ellis*, 86.
² (1913) 18 N. L. R. 97.

³ 22 *Cal. Weekly Notes*, 951.
¹ (1890) 45 L. R. Ch. D. 330.

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“(5) I was obliged to do so as I had not retained a proctor to act for me in Colombo.

“(6) Owing to the remissness of the clerk which I was compelled to overlook, owing to my absence from Negombo on medical advice, the papers were not filed till February 26, 1925.”

This is wholly insufficient to explain the delay in applying to this Court for the extraordinary remedy of *quo warranto*. When the matter came to trial, a period of three months had elapsed since the election, the validity of which is questioned. In the interval the respondent must have had to do various executive and administrative acts which, if called in question, may cause serious public inconvenience, and unless there is some substantial ground of objection, which ought to be considered in the public interest, notwithstanding the delay, the discretion of this Court should not be exercised.

When the facts are examined, it will be found that practically only matters of form and not of substance are involved. The petitioner, Mr. John Henry Perera, was a member of the Urban District Council of Negombo, and was on January 5, 1924, elected Chairman of the Council. But in December, 1924, the Council was dissolved, and a new general election took place on December 6, 1924, and at that election the petitioner, the respondent, and certain other gentlemen, whose names will transpire in the course of this judgment, were elected members of the Council. A special meeting of the newly elected members was convened for January 6, 1925, for the purpose of electing a Chairman of the Council, and it is the proceedings of that meeting that are criticised now. The petitioner's contention is that having been elected Chairman of the Council on January 5, 1924, he continued to be Chairman, notwithstanding the dissolution of the Council itself in December, 1924, that he is legally entitled to hold that office till the end of 1927, and that, therefore, the election of the respondent as Chairman was wholly illegal and ineffectual. This is put in the forefront of the present application to this Court, but, as might be expected, counsel for the petitioner did not press it at the argument. The other grounds of objection have reference to what has been described as an irregularity in the proceedings of the meeting on January 6, 1925. The minutes of the meeting have been produced, and their accuracy is agreed upon. The respondent Mr. A. E. Rajapakse was moved into the Chair to preside at the meeting. Then Mr. Ranasinghe moved that the respondent be elected Chairman of the Council for two years. This was seconded, but Mr. Herft proposed as an amendment that the petitioner, Mr. John Henry Perera, be elected Chairman, but there was no seconder, and the motion therefore fell through. Mr. Vijeyratnam then proposed that Mr. Ranasinghe be elected

Chairman. This was duly seconded, but was not proceeded with further, as Mr. Ranasinghe begged to be excused. Mr. Vijeyratnam then said that, in view of Mr. Ranasinghe's refusal, he seconded Mr. Herft's motion for the election of the petitioner. This was the beginning of the whole trouble, for another member objected that Mr. Vijeyratnam was out of order, as Mr. Herft's motion had no seconder at the time, and was no longer before the meeting. "Mr. Herft said in that case (I am here quoting from the minutes) he would again propose Mr. Perera's name, and let Mr. Vijeyratnam second it." An objection was raised by Mr. Ranasinghe, and the Chairman ruled that Mr. Herft's motion could not be again proposed. I should myself say that a motion which has been defeated, or which has lapsed for want of a seconder, cannot be renewed at the same meeting. The Chairman's ruling in this instance is not seriously questioned. At this stage, by the process of elimination, the only name before the meeting for election as Chairman of the Council was that of the Chairman of the meeting himself. He observed in the right spirit (I again quote from the minutes), "he was placed in a peculiar position, but had to declare himself elected as Chairman, therefore, Mr. Ranasinghe's motion was carried. The Chairman then thanked the meeting for electing him and Mr. Perera for his services during the past year."

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In view of these proceedings, what was wrong in the election of the respondent as Chairman? It is said that as soon as his name was proposed, he should have left the Chair and ceased to take part in the proceedings. In that case, he would have had to leave the meeting altogether, because the only subject for consideration at that meeting was the election of a Chairman. - So far as I am aware, the practice sometimes observed for the Chairman of a meeting to vacate the seat temporarily is not enjoined by law, but is a matter of taste and delicacy of feeling. Mr. Drieberg, for the petitioner, relies on the authority of *Queen v. Owens (supra)*, which had reference to the election of town councillors for a borough under an old Act. The Mayor who presided was also the returning officer, and it was held on an information in the nature of *quo warranto* that the Mayor was precluded from being a candidate for election as town councillor, inasmuch as acting as returning officer, he could not return himself. The Court applied to the case the principle that no one should be judge in his own cause, and further observed that the duties of a returning officer were not purely ministerial. I think that that decision is clearly distinguishable. A person who is voted into the chair to preside at a meeting is not the holder of an office, and much less occupies the position of a returning officer. The respondent was only a casual Chairman of the meeting, and his duties as such are not affected because his name happens to be proposed for election as Chairman of the Council. In this connection it is strongly urged that the respondent declared himself elected as

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Chairman of the Council. and his election was his own declaration. This is not so. I have above quoted the whole relevant passage of the minutes. The language of the passage may not be perfect, but its meaning is clear. The Chairman in effect regretted that in the circumstances which arose he had the unpleasant task of putting his own name to the meeting. But his election was not due to any declaration of his own, but " Mr. Ranasinghe's motion was carried," which means and can only mean that the proposal to elect Mr. Rajapakse as Chairman was put to the meeting, and was carried by the meeting.

The election was, therefore, a corporate act. In my opinion there is no substantial objection to the election, and a sufficient foundation has not been laid for the exercise of our discretion in this matter.

On the ground of unreasonable delay and of the lack of real merits in the application, the notice on the respondent must be discharged with costs.

Rule discharged.

