

1931

*Present: Driberg J.*FONSEKA *v.* GOVERNMENT AGENT, CENTRAL PROVINCE.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF MANDAMUS  
ON THE CHAIRMAN, LOCAL BOARD, HATTON.

*Local Board—Disqualification for membership—Holder of office of emolument under Government—Certification of lists—Eligibility for nomination and election—Local Boards of Health and Improvement Ordinance, No. 13 of 1898, ss. 6 and 8.*

A person who holds an office of emolument under Government is not entitled to have his name inserted in the lists of persons eligible for election to Local Boards of Health and Improvement prepared under section 8 (1) of the Ordinance.

An inquirer into sudden deaths holds an office of emolument under the Government within the meaning of section 6 of the Ordinance.

**T**HIS was an application for a writ of mandamus on the Chairman of Local Board, Hatton and Dikoya.

*N. E. Weerasooria*, for the applicant.

December 8, 1931. DRIEBERG J.—

This is an application by the petitioner for a writ of mandamus on the Chairman of the Local Board, Dickoya-Hatton, directing him to include the name of the petitioner in the list of persons qualified to be elected as unofficial members of the said Local Board prepared under the provisions of section 8 (5) of the Local Boards Ordinance, No. 13 of 1898.

The Ordinance provides for the preparation of lists of persons qualified to be elected and of persons qualified to vote three months before the date of a general election; provision is made for the hearing of claims for the insertion of names and for objections to names and the revised list has to be certified by the Chairman. The list so certified remains in force for the purposes of that election and any bye-election

and until new lists are prepared for the next general election. Sub-section (6) of section 8 enacts that a person whose name does not appear in the certified list shall not be entitled to be elected or to vote, as the case may be. Section 9 provides for publication of notice of an election and section 10 (2) provides that no one shall be entitled to be a candidate for election unless nominated in writing and the nomination paper has to be delivered at the office of the Local Board ten days before the meeting for the election.

Section 6 of the Ordinance states that " Every male inhabitant of any town brought under the operation of this Ordinance, of the age of twenty-one years and upwards, who is possessed of immovable property situate therein of the value of not less than one thousand rupees, and who does not hold any office of emolument under Government, and who has not been convicted of any infamous crime, shall be eligible as an unofficial member of the Board for such town " .

The petitioner holds the office of inquirer into sudden deaths for the Ambegamuwa korale. He was appointed by the Governor and receives fees for inquiries held by him. There is no evidence of this, but Mr. Weerasooria concedes that this is so. The petitioner therefore holds an office of emolument under Government. The petitioner in his affidavit of October 17 states that September 16 was the date appointed for the Government Agent to hear all claims and objections regarding the list; he claimed that his name should be inserted as a person qualified to be elected but that the Government Agent did not then decide his claim; section 8 (2) states that claims should be decided in a summary manner and that the decision should be final and conclusive.

I have been embarrassed in the decision of this matter by there being no counter-affidavit by the Chairman and by his not being represented at the hearing.

The petitioner says that the revised and certified list has not yet been exhibited at the office of the Local Board and it is contended for him that the list has not been certified. No copy has been produced of the decision of the Chairman on the petitioner's claim to have his name inserted in the list.

Mr. Weerasooria has given me from his brief the only material on which I can act. It is a copy certified by the Assistant Government Agent of certain proceedings the date of which does not appear on it, but I understand that these were the proceedings when the nomination paper of the petitioner was submitted. The presiding officer noted that the petitioner's name was not on the list as required by section 8 (6), and further that he was not a person entitled to be elected. He noted that, as he was informed that notice had issued on this application, he would file the petitioner's nomination paper and that if this court did not direct the insertion of the petitioner's name on the list before December 16, the day of the election, the petitioner's name would not be accepted as that of a candidate for election.

If the Government Agent had decided on the petitioner's claim as required by section 8 (2) and if the list revised thereafter had been duly certified, the decision of the Government Agent being final and con-

clusive, the petitioner's name being omitted from the list would render him not eligible for election. But Mr. Weerasooria contends that his ineligibility is only for election and that the omission of his name from the list for the reason of his holding an office of emolument under Government does not bar him from being nominated for election. He contends that the list made under section 8 (1) is a list of persons qualified, that not holding an office of emolument under Government is not a qualification, but rather that the holding of such office is a disqualification which a candidate can free himself of at any time before election. I cannot accept this distinction which he seeks to draw between a qualification and a disqualification, and further it is clear that a candidate should conform to the requirements of section 6 before the lists are certified, for no person not on the list is entitled to be elected. Nor can I accept the distinction which is sought to be drawn between eligibility for nomination and eligibility for election, for nomination is but one stage in the course of election.

I therefore hold that if the list was duly certified the omission of the name of the petitioner renders him not eligible for election and consequently not eligible for nomination.

If the petitioner is not concluded by the omission of his name from the list by reason of its not being certified, as suggested by him, I hold that he is not entitled to have his name inserted in it for the reason that he is the holder of an office of emolument under Government. I say this for the reason that there has been no counter-affidavit denying the averments in the petition and because the respondent has not claimed that the decision on the petitioner's claim was final and conclusive and has not in the proceedings I have referred to the possibility of this Court directing the insertion of the petitioner's name in the list.

The application is dismissed.

*Application refused.*

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