

1962

Present : G. P. A. Silva, J.

P. WEERASINGHAM, Petitioner, and K. KASITHAMBY and another, Respondents

S. C. 292 of 1962—Application for a mandate in the nature of a Writ of Quo Warranto under Section 42 of the Courts Ordinance

Town Council—Mode of election of Vice-Chairman when voting is equal—Effect of disqualification of one of the votes—Town Councils Ordinance (Cap. 256), ss. 18 (2) (a) (b), 22.

At a meeting of a Town Council held for the purpose of electing the Vice-Chairman of the Council, the petitioner and the 1st respondent were the two candidates, and each of them received four votes. The voting being equal, the Chairman, in spite of protests, exercised his casting vote in favour of the 1st respondent and declared him elected as Vice-Chairman. Further, one of the votes cast at the election in favour of the 1st respondent was that of a person who had no right to vote, his election as member having been declared void by the Supreme Court on the day before the meeting was held.

Held (i) that the proper procedure, when the voting was equal, was to decide the issue by drawing lots in terms of section 18(2)(b) of the Town Councils Ordinance.

(ii) that the disqualification of one of the votes rendered unnecessary the drawing of lots.

(iii) that, in the circumstances of the present case, the petitioner should not be declared to be the duly elected Vice-Chairman.

APPLICATION for a writ of *quo warranto* against the Vice-Chairman of the Town Council, Chavakachcheri.

V. Arulambalam, for petitioner.

No appearance for respondents.

Cur. adv. vult.

September 17, 1962. G. P. A. SILVA, J.—

The petitioner in this application seeks to question the validity of the election of the 1st respondent as Vice-Chairman of the Chavakachcheri Town Council. The petitioner and the 1st and 2nd respondents are members of three respective wards of the Town Council having been elected as such on 10th December, 1960, for a term of three years which terminates on 31st December, 1963. The said Town Council is composed of 8 members and the 2nd respondent was elected Chairman of the Town Council on 16th January, 1961.

Section 18 of the Town Councils Ordinance (Chapter 256 of the Legislative Enactments) sets out the procedure for the election of a Chairman and Vice-Chairman of a Town Council. Sub-section (2) (a) of this section provides that where only one candidate is proposed and seconded for election as Chairman or Vice-Chairman the presiding officer at the meeting at which the election takes place shall, without question put, declare that candidate to be elected. Sub-section (2) (b) says, *inter alia* that, if the number of votes cast at an election is equally divided, the determination of the election shall be made by lot to be drawn in the presence of the presiding officer in such manner as he shall direct.

The election of a Vice-Chairman of this Council was held at a special meeting on 10th February, 1962, at which the 2nd respondent, being the Chairman, presided. The names of the petitioner and the 1st respondent were duly proposed and seconded as candidates for the office of Vice-Chairman. At this election the petitioner received 4 votes and the 1st respondent also received 4 votes and, the voting being equal, the second respondent, in spite of protests, exercised his casting vote in favour of the 1st respondent and declared the 1st respondent elected as Vice-Chairman of the said Town Council.

The petitioner seeks to challenge the election on two grounds. Firstly, he contends that the 2nd respondent, in exercising his casting vote, contravened section 18 of the Town Councils Ordinance. The proper procedure should have been, when the voting was equal, to decide the issue by drawing lots in terms of this section. With this contention I agree. The petitioner submits further that one of the votes cast at the election in favour of the 1st respondent was that of Mailvaganam Manickam who had no right to vote. The reason for this submission is that an application had been made for a Writ of *Quo Warranto* in

respect of Mr. Manickam's election as a member of the Town Council and that the Supreme Court made order on the 9th February, 1962, that is the day before the election of the 1st respondent as Vice-Chairman, declaring Mr. Manickam's election as a member to be void. The certified copy of the order of the Supreme Court as well as a copy of the relevant minutes has been attached to the application. The petitioner therefore contends that, at the election of the Vice-Chairman on the 10th February, 1962, in point of fact, only 3 votes were cast in favour of the 1st respondent, as the member Mr. Manickam had no right to sit and vote, while the petitioner received 4 votes. It necessarily follows that the votes cast at the election of a Vice-Chairman on 10th February, 1962, were not equal but that the petitioner received 4 votes while the 1st respondent received only 3 votes, so that there was no occasion for the drawing of the lots or for a casting vote even if such casting vote was regular. There was no representation at the hearing for either of the respondents although notice had been served and these facts are not challenged. The petitioner's contention must, in the circumstances, prevail. I therefore declare the election of the 1st respondent as the Vice-Chairman of the Town Council of Chavakachcheri void.

Certain other matters, however, have to be taken into account on the question whether, according to the prayer in the petition, the petitioner should be duly declared elected the Vice-Chairman of the Town Council. There is no evidence nor even a suggestion that the decision reached by the Supreme Court on the 9th February, declaring Mr. Manickam's election as a member of this Town Council void, was conveyed to the Town Council before the Vice-Chairman's election on the 10th February. Had this been conveyed and the Town Council consisted of only seven members, it may well be that the election of the Vice-Chairman may have been postponed till the vacancy caused by the avoidance of Mr. Manickam's election was filled and all the wards of the Town Council were properly represented. If an election took place subsequently with a full complement of the members of the Town Council, it is not possible to say what the result of that election would have been. Further, according to the provisions of section 22 of the Town Councils Ordinance the term of office of a Vice-Chairman is confined to one year. Seven months of this period have thus elapsed since the date on which the last election was held. Very little purpose would therefore be served by this Court declaring the petitioner duly elected Vice-Chairman with effect from 10th February, 1962, even if it had the power to do so on the present application itself. In these circumstances, I make no order on this part of the prayer.

The rule *Nisi* issued on the respondent is made absolute. The two respondents will pay the costs of the petitioner, which I fix at Rs.250, in equal shares.

Rule made absolute.