

1972

Present : Pathirana, J.

R. A. D. W. RATNASEKERA and another, Petitioners and G. F. DIAS ABEYSINGHE (Commissioner of Elections), Respondent

S. C. 510/72—Application for Writ of Mandamus

Parliamentary election—Application by a political party to be treated as a recognized political party—Disallowance of it by Commissioner of Elections—Whether relief lies by way of Mandamus—Ceylon (Parliamentary Elections) Order in Council (Oap. 381), s. 28A—Interpretation Ordinance, as amended by Act No. 18 of 1972, s. 22.

Where the Commissioner of Elections has *ex facie* acted within the powers conferred on him by section 28A (5) (b) of the Ceylon (Parliamentary Elections) Order in Council in disallowing an application of a political party to be treated as a recognized political party for the purpose of elections, his order is, by virtue of subsection (6), final and conclusive and shall not be called in question in any court. Accordingly, the party cannot avail itself of the proviso to section 22 of the Interpretation Ordinance (as amended by Act No. 18 of 1972) to invoke the powers of the Supreme Court by Writ of Mandamus.

APPPLICATION for a Writ of Mandamus on the Commissioner of Elections.

Petitioners in person.

September 4, 1972. PATHIRANA, J.—

The Petitioners, who are the President and the Hony. Secretary of the Ceylon Independent Party, have made this application for a Writ of Mandamus on the respondent, the Commissioner of Elections.

The Petitioners stated that their Party, the Ceylon Independent Party, nominated candidates for the General Election in 1965 and 1970. The Hony. Secretary of the said Party had made written applications to the Commissioner of Elections on 14.8.1967, 26.3.1970 and also on 19.8.1972 that the said party be treated as a recognized political party in terms of Section 28A of the Ceylon (Parliamentary Elections) Order in Council (Chapter 381). The Petitioners stated that the said party had been engaged in political activities for a continuous period of five years prior to the date of application. They further stated that by letter dated 17.8.1972, the respondent, the Commissioner of Elections, has maliciously and without any cause disallowed the application made on behalf of the party for the said party to be treated as a recognized political party for the purpose of elections. The Petitioners stated that the act of the said Commissioner is illegal, contrary to law and principles of natural justice and public policy. The Petitioners therefore prayed for a Writ of Mandamus on the respondent ordering that the said party be treated as a recognized political party for the purpose of elections, and that the respondent be ordered to treat the party as a recognized political party for the purpose of elections and the forthcoming By-Elections be not held pending the decision of this Court in this case.

After hearing the 1st Petitioner, I refused the application.

Under Section 28A (5), the Commissioner has power to make order that if he is satisfied that such party had been engaged in political activity for a continuous period of at least five years prior to the date of the making of such application, that party shall be entitled to be treated as a recognized party for the purpose of elections. By Section 28A (5) (b), he has also the power, if he is not so satisfied, to make order disallowing the application.

The respondent, the Commissioner of Elections, had in my opinion, the power under Section 28A (5) (b) of the Ceylon (Parliamentary Elections) Order in Council, to disallow the application of the Petitioners.

Section 28A (6) states that the Order of the Commissioner on any application made under sub-section (4) shall be final and conclusive and shall not be called in question in any Court.

Under the Interpretation (Amendment) Act No. 18 of 1972 a new Section 22 has been introduced by way of amendment which reads as follows :—

Where there appears in any enactment, whether passed or made before or after the commencement of this Ordinance, the expression "shall not be called in question in any Court", or any other expression of similar import whether or not accompanied by the words "whether by way of writ or otherwise" in relation to any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under such enactment, no court shall, in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such order, decision, determination, direction or finding, made or issued in the exercise or the apparent exercise of the power conferred on such person, authority or tribunal.

Provided, however, that the preceding provisions of this Section shall not apply to the Supreme Court in the exercise of its powers under Section 42 of the Courts Ordinance in respect of the following matters, and the following matters only, that is to say—

- (a) where such order, decision, determination, direction or finding is *ex facie* not within the power conferred on such person, authority or tribunal making or issuing such order, decision, determination, direction or finding ; and
- (b) where such person, authority or tribunal upon whom the power to make or issue such order, decision, determination, direction or finding is conferred, is bound to conform to the rules of natural justice, or where the compliance with any mandatory provision of any law is a condition precedent to the making or issuing of any such order, decision, determination, direction or finding and the Supreme Court is satisfied that there has been no conformity with such rules of natural justice or no compliance with such mandatory provisions of such law.

I am satisfied that the respondent, the Commissioner of Elections had *ex facie* acted within the powers conferred on him under Section 28A (5) (b) in disallowing the application of the petitioners.

For these reasons, the Petitioners cannot avail themselves of the proviso to Section 22 introduced by the Interpretation (Amendment) Act 18 of 1972 to invoke the powers of this Court by Writ of Mandamus.

Application refused.