1968 *Present :* **Weeramantry, J., and Wijayatilake, J.**

M. P. NAVARATNAM, Petitioner, *and*
S. K. SABAPATHY and 2 others, Respondents

S. C. 395/68—Application for a Writ of Quo Warranto and/or Certiorari

Village Councils Ordinance (Cap. 257), as amended by Ordinance No. 60 of 1961—Sections 17 (1) and 19 (2)—Mode of election of Chairman—Writ of quo warranto*—Circumstances when it will not be granted.*

(i) Section 19 (2) (*b*) of the Village Councils Ordinance reads as follows :—

"Where two or more candidates are proposed and seconded for election as Chairman, the mode of election shall be either by open or secret voting according as the members present may by resolution determine . . . . . "

[1] *(1963) 65 N. L. R. 29 at page 32.*

Held, that the question whether the mode of electing the Chairman should be by open or secret voting need not itself be decided by secret vote if a member proposes that it should be so decided. The presiding officer of a meeting ought ordinarily to be considered as being vested with a discretion to decide such ordinary matters of procedure as are not expressly provided for by statute or by rules governing the meeting.

(ii) At a meeting held to elect the Chairman of a Village Council in terms of section 19 (2) of the Village Councils Ordinance, the presiding officer, instead of calling the name of each member and asking him how he desired to vote, called upon those in favour of the candidate contesting the first respondent to vote first and thereafter called upon those in favour of the first respondent to vote. The voting body, however, was small, being sixteen in number.

Held, that, although there was a non-compliance with the requirements of section 19 (2) (c) of the Village Councils Ordinance, the irregularity complained of did not really affect the result of the election. In such a case, a writ of *quo warranto* is not granted.

Held further, that an application for a writ of *quo warranto* is not generally granted to quash proceedings in which the petitioner has acquiesced without raising any objections at the time.

APPLICATION for a writ of *quo warranto* and/or *certiorari*.

C. Chellappah, for the Petitioner.

S. Sharvananda, with *N. Tiruchelvam*, for the 1st and 2nd Respondents.

V. C. Gunatilaka, Crown Counsel, for the 3rd Respondent.

Cur. adv. vult.

November 7, 1968. WEERAMANTRY, J.—

By this petition the petitioner seeks to challenge the election of the first respondent as Chairman of the Kokuvil Village Council and the election of the second respondent as its Vice Chairman.

These two councillors were elected to their respective offices at a meeting convened by the Assistant Commissioner of Local Government, the third respondent to this petition, in terms of section 17 (1) of the Village Communities Ordinance (Cap. 257) as amended by section 7 of the Village Communities (Amendment) Ordinance, No. 60 of 1961. The journal maintained by the third respondent in respect of this meeting, which was held on July 13th, 1968, has been produced before us at the instance of the petitioner. It is common ground that the election of the first respondent was by open and not by secret vote.

It would appear that when the name of the first respondent was proposed for election as Chairman of this Council and duly seconded, a resolution was proposed by the second respondent that the mode of election should be by open vote. A contrary motion was moved by another member that the mode of election should be by secret vote.

According to the journal produced by the third respondent it would appear further that after the proposals for open ballot and secret ballot had been made the member proposing the secret ballot stressed that the decision on this question should itself be by secret ballot.

There is variation between the journal maintained by the third respondent in regard to this matter and the contention of the petitioner whose position it is that in fact the member proposing a secret ballot had not merely stressed the importance of secret ballot but had in fact proposed that the manner of election should be decided upon by secret ballot.

It is not necessary to determine this conflict of versions in view of the decision we have arrived at in regard to the question whether secret ballot was necessary in law in order to decide whether the actual election should take place by secret ballot or by open vote. However, it is necessary to point out that we are not entirely satisfied with the manner in which the third respondent has maintained his journal and that, as we shall remark later, there has been no strict compliance with the requirements of law in his conduct of the meeting.

The first matter of complaint on the part of the petitioner is that the decision to permit the election to take place by open vote should itself have been taken by secret ballot, and was not so taken.

Section 19 (2) (*b*) of the Village Communities Ordinance provides that where two or more candidates are proposed and seconded for election as Chairman the mode of election shall be either by open or secret voting according as the members present may by resolution determine.

There are various averments in the petition suggesting that certain members had been subjected to some form of undue pressure by the supporters of the first respondent and had been kept in a group from the date of their election to office till the date of the meeting and in fact had been brought in a body to the meeting hall just prior to the commencement of the meeting, so that they had thus been prevented from exercising a free vote. These averments are made with a view to indicating that had the question of the manner of voting been decided by secret ballot these persons who had been thus subjected to undue pressure may well have voted differently and may in fact have favoured a secret vote. It should also be observed that the respondents deny these averments.

Although learned Counsel for the petitioner has been unable to cite any principle from the law relating to meetings indicating that where an option is given to a meeting to decide a matter by open or by secret vote such decision should itself be taken by secret vote, he relies on the circumstances set out in the preceding paragraph as indicating that in the circumstances of this case such a procedure should have been resorted to.

However we find the contention put forward on behalf of the petitioner to be unsustainable. Before it is decided that the decision on the nature of the vote should itself be by secret ballot, there would have to be a prior decision as to how such a decision in its turn ought to be reached, and this process may well go on *ad infinitum*. Furthermore where a statute gives a body of persons the option of deciding whether they shall vote openly or secretly, the decision in regard to their manner of voting ought presumably be taken in the normal way, that is by open vote, unless the statute or other rule applicable otherwise expressly provides. We may also add that the Chairman or President of a meeting ought ordinarily to be considered as being vested with a discretion to decide such ordinary matters of procedure as are not expressly provided for by statute or by rules governing the meeting and we have no reason to think that the discretion of the presiding officer in regard to the manner in which the decision on the manner of voting should be reached was exercised wrongly or *mala fide*.

In all the circumstances we therefore find ourselves quite unable to uphold the contention of the petitioner that the decision whether voting should be open or secret should itself have been taken upon a secret vote.

I pass now to the second ground urged on behalf of the petitioner, namely, that the presiding officer is required in terms of section 19 (2) (c) to take the votes at the actual election by calling the name of each member present and asking him how he desires to vote and recording the votes accordingly.

The journal of the third respondent shows that at the election he called upon those in favour of the candidate contesting the first respondent to vote first and thereafter called upon those in favour of the first respondent to vote. This procedure is clearly not in conformity with the imperative requirements of section 19 (2) (c), for the legislature has quite clearly specified that the presiding officer shall take the votes by calling the name of each member present and asking him how he desires to vote. It is not difficult to visualise cases, particularly in large assemblies, where voters whose minds are not firmly decided may be swayed by the temper of the house and may well be dissuaded from voting for a candidate by a total lack of support for him in the house or be persuaded to vote for him by the fact that he apparently enjoys an overwhelming majority.

In this connection we must observe that the affidavit filed by the third respondent though purporting to be in amplification of his journal does in fact contradict the journal in regard to the manner in which the voting took place, for in the affidavit he states that the election of the Chairman was decided by open voting, and that he took the votes of the members present by calling the name of each member present and asking him how

he desired to vote. This would seem to be contradicted by his journal wherein he states that he called upon those in favour of the other candidate to vote *first*.

It is very important that public officers conducting statutory duties in this way should adhere strictly to the requirements of the law in regard to the manner in which those duties are discharged and further that where a record is required to be kept in regard to their acts there should be scrupulous accuracy in the keeping of that record.

We are satisfied that in the present instance there has been a non-compliance with the requirements of section 19 (2) (*c*) and the next question we have to determine is whether this non-compliance by itself merits the interference of this Court through the extraordinary remedy of a Writ.

The governing principle in regard to such matters would appear to be that the extraordinary jurisdiction of this Court cannot ordinarily be invoked in order to set aside election to an office unless the irregularity complained of is such as may be expected to affect the result in question. It is relevant to refer at this point to the case of *Jayasooria v. de Silva*[1] where it was held that this Court would not in the absence of bad faith grant a Writ of *Quo Warranto* where the irregularity complained of did not really affect the result of the election. This judgment was given in reliance of the judgment of Blackburn, *J.* in *Rex v. Ward*[2]. So also Halsbury, in reliance on the case of *Blackburn v. Ward*[3] states the law in terms that the Court would refuse to disturb the peace and quiet of a corporation where there has been an irregularity in election to office which was without any material result or which could not be shown to have been productive of harm.[4]

In the present case there is no basis on which we can say that the non-compliance with the statutory provision referred to has materially affected the result. The voting body was small, being sixteen in number, and the division was such that no member is likely to have been swayed by any appearance of overwhelming support or lack of it in relation to any particular candidate. Without any more affirmative material before us we cannot therefore think that the result would in any way have been affected in this particular case had the voting been taken strictly as prescribed by statute.

The petitioner further attacks the election of the second respondent on the basis that such election took place under the chairmanship of the first respondent and that the first respondent's election being defective the subsequent election held under his chairmanship was itself bad. Since, for the reasons we have indicated, we are not inclined to uphold

[1] *(1940) 41 N. L. R. 510.*
[2] *(1873) L. R. 8 Q. B. 210.*
[3] *(1873) L. R. 8 Q. B. 210.*
[4] *Halsbury, 3rd ed., Vol. II, p. 149.*

the petitioner's contention that the first respondent's election is bad, it follows that the validity of the second respondent's election remains unaffected.

We must also advert to the circumstance that the name of the second respondent was in fact proposed by the petitioner for the office of Vice Chairman and that the petitioner by his acquiescence in all these proceedings and lack of objection thereto at the time, has in any event deprived himself of the right to urge the irregularities he now complains of as a ground of objection to these elections. In *Jayasooria v. de Silva*,[1] already referred to, it was pointed out that a voter who has acquiesced in the procedure adopted and comes forward thereafter "insisting upon the letter of the law, straining at a gnat so to speak" will not find a Court of law too ready to exercise in his favour a discretion vested in it.

For the reasons already enumerated the petitioner's application must fail and is dismissed with costs.

WIJAYATILAKE, J.—I agree.

Application dismissed.