

1940

Present : Hearne J.

ALWIS v. THIAGARAJAH.

588—M. M. C. Colombo, 39.

Colombo Municipal Council (Constitution) Ordinance, s. 15 (2) (c) (Cap. 194)—Manager, State Mortgage Bank—Not a public office under the Crown.

The Manager of the State Mortgage Bank does not hold a public office under the Crown within the meaning of section 15 (2) (c) of the Colombo Municipal Council (Constitution) Ordinance.

A PPEAL from an order of the Municipal Magistrate of Colombo.

The appellant objected to the double qualification mark credited to the respondent in the list prepared under the provisions of the Colombo Municipal Council (Constitution) Ordinance on the ground that the respondent, who is the Manager of the State Mortgage Bank holds a public office under the Crown.

The Municipal Magistrate disallowed the objection.

H. V. Perera, K.C. (with him *J. L. M. Fernando*) for the objector, appellant:—The respondent is the Manager of the State Mortgage Bank. The question at issue is in regard to the interpretation of section 15 (2) (c) of the Colombo Municipal Council (Constitution) Ordinance (Cap. 194). The Magistrate has held that the respondent holds a public office, but not under the Crown. Various sections of the State Mortgage Ordinance (Cap. 277) make it clear that, from beginning to end, the Bank is a Government institution and under Government control. The ultimate authority is the Governor. The Manager is the chief executive officer, is appointed by the Governor and performs public functions.

It is the Governor who, as representative of the Crown, legislates in Ceylon, and the State Council is only an advisory body. The expression "public office under the Crown" does not imply that the holder of the office should be directly appointed by the Crown; he may be appointed by an agent or representative. The words "under the Crown" are words not of limitation but of explanation.

The position of the Crown in a place like Ceylon is considered in *Berriedale Keith's Governments of the British Empire* (1936) p. 25. The Crown is the creator of every office, and all public officers hold office under the Crown mediately or immediately—*Stephen's Commentaries* (5th ed.) p. 535; *6 Halsbury's Laws of England* (Hailsham ed.), paragraph 548; Article 72 of the State Council Order in Council, 1931. For meaning of public office, see *Cooray v. de Zoysa*¹; *Henley v. Mayor and Burgesses of Lyme*²; *Tennant v. Smith*³; and *Langston v. Glasson*⁴.

N. E. Weerasooria, K. C. (with him *E. B. Wickremanaike*) for respondent:—The respondent is not a public officer at all. His status is that of an officer in a public corporation. A public corporation is not a Government institution, although the Government may have some

¹ (1936) 5 C. L. W. 111 at 120.

² 130 English Rep. 995 at 1001.

³ (1892) 66 Law Times (N. S.) 327 at 329.

⁴ (1891) L. J. Q. B. 356.

control. The State Mortgage Bank is in the position of a public corporation similar to that of the British Broadcasting Corporation and Electricity Board in England. For nature, scope, constitution and powers of public corporations see Gordon's "*The Public Corporation in Great Britain*".

There are a number of other institutions in Ceylon where the Governor has certain powers, e.g., under the Rubber Control Ordinance (Cap. 300), the Tea Control Ordinance (Cap. 299), the Coconut Products Ordinance (Cap. 129), and the Tea Propaganda Ordinance (Cap. 130). Further there are departments which are state-aided and in which the Governor has certain powers of control and supervision; but it does not follow that those are Government departments, e.g., Municipal Councils, Urban Councils, and Village Communities. See particularly sections 57, 58, 66, 70, 78, 83, 84, 86-89, 91-93, 103 and 106 of the Municipal Council (Constitution) Ordinance (Cap. 194) and sections 2, 5, 6, 9, 10, 12, 14-16, 18-21, 31, 35, 54, 167, 171, 173, 175, 186, 193, 196-214 of the Urban Councils Ordinance (Cap. 195).

Section 26 of the Savings Bank Ordinance (Cap. 278) shows clearly that members of a public corporation are not public officers, for by that section the officers of that bank are specially declared to be public officers. Despite the fact that the funds of that bank are vested in the Governor, it was necessary to legislate that the officers of that institution should be regarded as public officers.

The State Mortgage Bank provides its own finance and the funds are under the control of the Directors. The debentures are made a charge on the Government revenue merely to create credit for the Bank. When the Governor appoints directors and officers he does not act in his executive capacity as a representative of the Crown but by virtue of special powers conferred on him by legislation.

H. V. Perera, K.C., in reply—if the office is one created by the Crown, it is necessarily a public office under the Crown.

In regard to section 26 of the Savings Bank Ordinance (Cap. 278) it was intended solely to extend the application of section 2 of the Widows' and Orphans Pension Fund Ordinance (Cap. 296) to officers of the Savings Bank.

Cur. adv. vult.

September 3, 1940. HEARNE J.—

The respondent to this appeal was credited with a double qualification mark in the "list" prepared under the provisions of the Colombo Municipal Council (Constitution) Ordinance. To this, G. William Alwis, a registered voter, objected on the ground that the respondent, who is the Manager of the State Mortgage Bank, holds a public office under the Crown and is, therefore, not entitled to the double qualification mark.

The Municipal Magistrate of Colombo took the view that the respondent holds a public office, but not under the Crown, and disallowed the objection. The objector has now appealed.

In the law of England "public office" has been given a very wide meaning for certain purposes, for instance in *Quo Warranto* proceedings. The rule, as originally understood, was that *Quo Warranto* was not the

remedy "unless there was an usurpation actually upon the Crown". But the procedure was later employed to determine disputed questions of right to Municipal offices and franchises. The sole test then became whether the office involved the discharge of functions of a public nature. Further, in certain statutes, which dealt in part at least with grounds of disqualification from public office, the latter, e.g., in the Corrupt and Illegal Practices Prevention Act, was expressly defined as "an office under the Crown" or "under any acts relating to local government". (Section 64.)

For other purposes, especially in the construction of financial Acts, "public office" has been interpreted in a much more narrow sense. A charge on the stipend of a workhouse Chaplain, who was paid by the Guardians out of the rates, was held not to be against public policy, as being on the emoluments of a public officer. *In re Mirams*¹. "For" as Cave J. said: "to make the office a public office, the pay must come out of national and not local funds." On the other hand in *Bowers v. Harding*², the post of a schoolmaster was held to be a public office, because his salary was paid "by persons, whose position and duty to manage the school was recognized by Act of Parliament, and out of sums principally contributed from the taxes for the purpose of making such payments"

In my opinion the words of limitation "under the Crown" in the relevant Ordinance point to an intention, on the part of the legislature, that the expression "public office under the Crown" should be given a restricted, rather than a wide, interpretation.

The respondent undoubtedly performs functions of a public nature. In that sense he holds a public office and his office, as indeed do all public offices, derives from the Crown. But, as he is paid by the Bank out of its own revenue and not the public revenue, he does not hold, in my view, within the meaning of section 15 (2) (c) of the Colombo Municipal Council (Constitution) Ordinance, "a public office under the Crown".

The appeal is dismissed with costs.

Appeal dismissed.