

**A.R.V. Achar Vs. Madras State Represented by the Secretary, Local Administration Department, Fort St. George, Madras and anr.**

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**Court :** Chennai

**Decided On :** Sep-04-1953

**Reported in :** AIR1954Mad563; (1954)IMLJ102

**Judge :** Rajamannar, C.J. and Venkatarama Aiyar, J.

**Acts :** Madras City Municipal Act, 1919 - Sections 5(1), 45, 45(2), 46, 46(2) and 47; [Constitution of India](#) - Articles 14 and 226; [Evidence Act, 1872](#) - Sections 115; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

**Appeal No. :** Letters Patent Appeal Nos. 252 of 1952 and W.P. Nos. 799 and 800/52

**Appellant :** A.R.V. Achar

**Respondent :** Madras State Represented by the Secretary, Local Administration Department, Fort St. George, Madras

**Advocate for Def. :** Adv. General for ;Govt. Pleader

**Advocate for Pet/Ap. :** K. Umamaheswaram and ;A. Kuppuswami, Advs. ;S. Mohan Kumaramangalam, ;Row and ;Reddy, Advs.;V.C. Gopalaratnam and ;T. Aravamudha Iyengar, Advs. ;C. Vasudevan, Adv. ;K.C. Doraiswami, Adv.

**Judgement :**

1. The Letters Patent Appeal and the two writ petitions were heard together and can be disposed of by a common judgment. The Letters Patent Appeal is against the judgment of Subba Rao J. in W. P. No. 568 of 1952. The appellant filed that application for the issue of appropriate writ, orders and directions in the circumstances of the case and in particular for the issue of a writ of Mandamus directing the respondents, namely, the Madras State represented by the Secretary Local Administration Department, Madras, and the Commissioner of the Corporation of Madras, to forbear from holding the elections to the Council of the Corporation of Madras.

2. Under Section 55-A, Madras City Municipal Act (hereinafter referred to as the Act) vacancies arising by efflux of time in the office of Divisional Councillors shall be filled at ordinary elections which shall be fixed by the Commissioner to take place on such days in the months of August and September immediately preceding the vacancies as he thinks fit. The Commissioner accordingly advertised in the local daily newspapers fixing a programme of elections intimating that the nominations would be received by the Revenue Officer and by himself from 21-8-1952 to 23-8-1952, and fixing the 30th and 31st August 1952 for scrutiny and various dates in September 1952 for the elections to the several vacancies.

Section 5 of the Act provides for the constitution of the Council. The material part of that section runs thus :

"The Council shall consist of

(a) sixty six divisional councillors of whom fifty shall be persons elected to general seats, five to seats specially reserved for members of the scheduled castes, four to seats specially reserved for Muslims, two seats specially reserved for Indian Christians, one to a seat specially reserved for Anglo-Indians and four to seats specially reserved for women;

Provided that nothing in this clause shall be deemed to prevent members of any community or women for whom seats have been reserved from standing for

election to the non-reserved seats;

(b) four councillors to seats specially reserved for labour;

(c) two councillors, one elected by the members of the Madras Chamber of Commerce and the other by the members of the Madras Trades Association in such manner as may be prescribed:

(d) six councillors elected in such manner as may be prescribed by the members of the Southern India Chamber of Commerce, the Andhra Chamber of Commerce, the Muslim Chamber of Commerce, the Nattukottai Nagarathars Association, the Southern Indian Skins and Hides Merchants' Association, and the Piece-goods Merchants' Association, Madras, each of the bodies and associations aforesaid voting separately and electing one councillor;

(e) one councillor elected by the trustees of the Port of Madras.

(g) one councillor elected by the members of the Senate of the University of Madras; and (h) five aldermen, of whom one shall be a woman, elected by the councillors referred to in Clauses (a) to (g), in the manner specified in Section 56-C".

The appellant alleged in the affidavit filed in support of his application that after the coming into force of the [Constitution of India](#) reservation of seats for any section except for the Scheduled castes and women was void as inconsistent with Articles 14 and 15 of the Constitution. He also submitted that the power given to the Government under Section 45 of the Act to delimit territorial divisions by notification was arbitrary as no natural basis is indicated on the basis of which the delimitation should be made. He further stated that the power of the Government to specify the constituency from which seats were specially reserved for members of the Scheduled castes, Muslims, Indian Christians, Anglo Indians and women under Section 5 of the Act was entirely arbitrary. One other objection raised by the appellant was that after adult franchise had been introduced by the Constitution the number of voters in the various territorial constituencies varied enormously and elections held on the basis of the such unequally distributed constituencies

offended against the provisions of Article 14 of the Constitution.

3. Subba Rao J. disused of the application by his judgment delivered on 25-8-1952. He held that the reservation of seats for Muslims, Indian Christians and Anglo Indians was bad and the respondents had no power to hold elections in respect, of these reserved seats. He therefore directed the respondents to forbear from holding elections to the Council in respect of the aforesaid seats. In other respects he dismissed the application. On 11-9-1952 the above appeal was filed in so far as the judgment was against the appellant. We directed on 12-9-1953, the appellant to file typed papers and posted the appeal to a date in October 1952. Meanwhile the elections to all the seats in the Council, except to the reserved seats in respect of which Subha Rao J. had held that the reservations were bad, took place in September 1952.

Under Section 56-C of the Act vacancies in the office o the aldermen have to be filled by election at a meeting of the persons who on first day of November on which such vacancies will arise will enter upon office as councillors and such meeting Shall be convened by the Mayor and shall be held On such day in the month of October, immediately preceding the vacancies as he may determine. Accordingly the aldermen were elected on 15-10-1952 and the Councillors and the aldermen so elected were sworn in on 4-11-1952 as councillors. On 4-11-1952 one of the aldermen, T. Chengalvaroyan was unanimously elected as Mayor.

4. The two writ petitions before us are for the issue of writs for information in the nature of 'Quo Warranto', In W. P. No. 799 of 1952 the respondent is A. M. M. Murugappa Chettiar who Was elected to the seat reserved for the Nattu Kottai Nasarathars' Association. The petitioner who is also the appellant in the Letters Patent Appeal) challenges the validity of his election mainly on the ground that the reservation of the seat for the said Association offends Articles 14 and 15 of the Constitution. In W. P. No. 800 of 1932 the respondent is T. Chengalvaroyan who had been elected as alderman and then as Mayor. The ground on which the petitioner attacked the validity of the respondent's election in this case both as alderman and as Mayor was that his election was by a Council which was not properly constituted.

5. At the time of the hearing it became obvious that even if we agreed with all the contentions of the appellant, we could not grant to the appellant the relief which he had sought in his original application. That was for holding up the elections, but the elections had all been held. If the appellant desired to challenge the validity of the elections so held he could only do so by independent proceedings initiated after the elections had taken place. It was because of this difficulty that the appellant filed the two other applications, which, will be disposed of on their merits. The appeal must therefore be dismissed. It is only necessary to state that as the dismissal is only by virtue of our order today, the appeal should be deemed to be pending at the hearing of the two other applications. It is important to bear this in mind because of an argument which was pressed upon us in w. P. No. 799 of 1952 by learned Counsel for the respondent in that case.

6. We shall now take up W. P. NO. 800 of 1952 in which several interesting contentions were put forward by Mr. Kumaramangaiam. The contention which he first pressed and pressed most was that after the judgment of Subba Rao J. which had declared that the reservation for Muslims, Anglo-Indians and Christians was bad there could be no validly constituted Council. He developed this argument as follows. Section 5(1) of the Act provides that the Council shall consist of 66 divisional councillors out of whom four shall be persons elected to seats specially reserved for Muslims, two to seats specially reserved for Indian Christians and one to a seat specially reserved for Anglo-Indians. After the judgment of Subba Rao J. the Council could only consist of 66 minus 7 i.e., 59 councillors. The provision in the Act can only be amended by the Legislature and it is not competent for this court to make any amendments to the Act. As the Act contemplates a Council of 63 divisional councillors, a council consisting of 59 divisional councillors cannot be deemed in law to be a properly constituted council.

The petitioner's learned counsel tried to draw some support from the provisions in Section 8(2) of the Act that the State Government may at any time remove the Commissioner from office and shall do so if at a special meeting of the Council called for the purpose not less than 43 members thereof vote for such removal. He based his argument on an assumption that the number 43 mentioned in this subsection was fixed with reference to the total number of councillors, namely, 85. If

the total number should be reduced as it needs must be by reason of Subba Rao J.'s judgment, then there may be necessity to emend the provision and probably have a lower figure, but this the court was not competent to do. The counsel further contended that Section 5(1) of the Act cannot be split up into different parts and one part only declared invalid and unconstitutional leaving the other parts to stand. One cannot presume what the Legislature would have done if they were aware of the fact that these seven seats could not be reserved for the particular communities.

7. The learned Advocate General on behalf of the State and Dr. John, learned counsel for the Mayor, contended on the other hand that the abolition of the seats reserved for Muslims, Indian Christians and Anglo-Indians by reason of the judgment of Subba Rao J. does not affect the constitution of the Council and that applying the rule ES to severability, in whatever way it be Stated, the provisions relating to the constitution of the Council do not in their entirety become void and unconstitutional because a part of the provisions has been declared unconstitutional.

8. Though the Council is composed of Councillors it has a separate legal entity distinct from the councillors. Section 5(3) of the Act enacts that the Council shall by name of the "Corporation of Madras" be a body corporate and have perpetual succession and a common seal and may by such name sue and be sued. Section 36(1) of the Act is a special provision designed to save the validity of the acts done and proceedings taken under the Act by the Council impugned on the ground of certain defects and irregularities. It inter alia declares expressly that no act done or proceeding taken under the Act shall be questioned merely on the ground of any vacancy or defect in the constitution of the Council or of any standing committee. Though this provision may not in terms apply to the facts of the present case, it indicates the intention of the Legislature that the Council as such should have an existence apart from its councillors.

Reference was made to Section 5(1-A) which was inserted by Madras Act 0 of 1917. It gives power to the State Government by notification to increase or reduce the number of councillors to be elected to seats specially reserved under Clause

(a) or Clause (b) of Sub-section (1) and thereupon the number of councillors specified in those clauses shall be deemed to have been increased or reduced accordingly. This, in our opinion, conclusively establishes the fact that the number of reserved seats is not such an integral part of the constitution of the Council and there is nothing sacrosanct about the number of councillors mentioned in S, 5(1). The scheme of the Act as regards the constitution of the Council appears to be to provide for one councillor for each of the 50 wards into which the city is divided, these 50 forming as it were the basic strength. In addition to this number of 50 divisional councillors, there is a number, which is capable of variation of councillors elected to represent particular communities and special interests. Any change in the number of these additional seats cannot affect the basic strength. Even if all the reservations were declared to be illegal and unconstitutional, the basic strength of the 50 divisional councillors representing the general seats would remain and there would be no defect in the constitution of the Council.

9. Dr. John convinced us by reference to the provisions of the City Municipal Act as amended from time to time that the number of councillors mentioned in Section 8(2) does not bear any fixed ratio to the total number of councillors. In the Act as it stood in 1919 the total strength of the Council was 50 and the number mentioned in Section 8(2) was 33. In 1935 the Act was amended and the strength was increased to 65. There was then an alteration in Section 8(2) when the number was increased to 43. In 1947 the total strength went upto 80, but the number mentioned in Section 8(2) remained as before, namely,

43. No argument can therefore be built up on the supposed intention of the Legislature to adhere to any fixed ratio between the total strength of the Council and the number of councillors whose vote is necessary for the removal of the Commissioner from office.

10. Mr. Kumaramangalam cited to us Wil-loughby on the Constitution of the United States, 2nd Edn. at pp. 36-37 where the rule relating to separableness of statutes is formulated thus:

"The court will not permit the unconstitutionality of a particular provision of a law to invalidate the entire law if it is possible to separate the invalid provision from the

other provisions without destroying or impairing their efficiency to attain the results evidently intended by the Legislature that enacted it. Even when thus separable, however, the court will not hold the remainder of the law valid if there is doubt whether, the realisation of the whole of its will being rendered impossible, the legislature would have desired the execution of a part only .....

In result, it is clear that the courts possess and exercise a wide discretionary power in determining whether or not an invalid provision may be separated from the other provision of an Act, so as to leave valid those other provisions. In this matter the courts speculate freely as to what would probably have been the desires of the enactors of the law had they known that effect would not be given to those provisions of the law which the courts find to be unconstitutional."

Cooley in his constitutional Limitations discusses the rule in the following manner : (8th Edn. pages 330, Et seq) :

"Where .....a part of a statute is unconstitutional that fact does not authorise the courts to declare the remainder void also unless all the provisions are connected in subject-matter, depending on each other, operating together the same purpose, or otherwise so connected together in meaning that it cannot be presumed the Legislature would have passed the one without the other .....The point is not whether they are contained in the same section .....but whether they are essentially and inseparably connected in substance. If, when, the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained .....And if they (the provisions) are so mutually connected with and dependent on each other as conditions considerations or compensations for each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, the Legislature would not pass the residue independently, then if some parts are unconstitutional all the provisions which are thus dependent, conditional or connected must fall with them."

The rule has also been laid down in a slightly different form by the Privy Council in 'In re Initiative and Referendum Act', AIR 1919 PC 145 (A). If the offending

provisions are so interwoven into the scheme that they are not severable, then the entire enactment fails. But if the provisions left can continue to remain without the offending provisions, then those provisions do not 'ipso facto' become void and unconstitutional (vide also -- 'Attorney General for British Columbia v. Attorney General for Canada', AIR 1937 PC 93 (B)).

11. We think it safe to accept the rule which does not leave the Court to speculate as to what the legislature would have done if it had known that certain of the provisions would be declared illegal. The test should rather be whether omitting the offending provisions the remaining provisions can stand on their own.

12. The learned Advocate General referred us to three decisions of the Supreme Court of the United States to illustrate the rule as understood in America. In -- 'Illinois Central Railroad Co. v. Mckendree', (1903) 51 Law Ed. 293 (C), Day J. quoting from -- 'United States v. Reese', (1876) 23 Law Ed. 563, at p. 566 (D) said :

"We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate, that which is unconstitutional, if there be any such, from that which is not."

In -- 'Howard v. Illinois Central Railroad Co.', (1907) 52 Law Ed. 297 (E), White J. observed thus: "Equally clear it is, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable, and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save, the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated." That the application of the rule depends upon the circumstances of each case is made manifest by the decision in -- 'El Paso North Eastern Railway Co., City Nat. Bank v. Cutierrez', (1909) 54 Law Ed. 103 (P). It emphasises the doctrine of the duty of the court to maintain as far as possible the constitutionality of statutes.

"Whenever an act of Congress contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of this court, to so declare, and to maintain the act in so far as it is valid."

In the discussion earlier on in the judgment as to the scheme of the Act in respect of the Constitution of the Council, we have already said that the provision of seats for Muslims, Indian Christians and Anglo-Indians may well be omitted without affecting the constitution of the Council. It follows that in spite of the declaration of Subba Rao J. that- the said provision is illegal and unconstitutional, the remaining part of the enactment stands separate. We cannot accept the contention of Mr. Kumaramangalam on this point.

13. Dr. John referred us to the rules applied generally to applications for writs of 'Quo War-ran to'.

"An information in the nature of a 'Quo Warranto' is not issued as a matter of course and when a relator applies for an information it is in the discretion of the court to refuse or grant according to the facts and circumstances of the case .....The court may in its discretion decline to grant a writ of \*quo warranto' if it apprehends that to do HO would disturb the peace and quiet of the Corporation." (Vide Halsbury's Laws of England, 2nd Edn., Vol. IX, pp. 810-811)."

It is not necessary to deal at any length with this part of the argument because we have held on the merits that there is no ground for issuing the writ.

14. Mr. Kumaramangalam's next contention was with reference to the provisions of Sections 45 and 46 of the Act. According to him the following features offend Article 14 of the Constitution :

- (1) the disparity in voting strength of the several divisions,
- (2) the arbitrary power conferred on the Government to provide for reservations in such divisions as they choose, and
- (3) the privilege conferred on the voters in some of the divisions to vote for two councillors.

15. Under Section 45 (1) (a) of the Act, for the purposes of election of divisional councillors to fill the 50 general seats city is divided into 50 territorial divisions the boundaries, of which shall be fixed by the Government by notifications. It was not suggested by counsel for the petitioner that in making such territorial divisions originally there was any disparity in the voting strength. Under Section 47 of the Act every person whose name is included in that part of the electoral roll for any territorial constituency of the Madras Legislative Assembly which relates to any of the divisions referred to in Sub-section (1) of Section 45 is entitled to be included in the electoral roll for that division. Under the Government of India Act, 1935, it is well known that there was no adult franchise and there were many qualifications for inclusion in the electoral roll. On the basis of the electoral roll then in force the municipal divisions were made by the Government with more or less the same voting strength. It was only when the Constitution came into force and adult franchise was introduced and there was a consequent change in the electoral roll for the constituency of the Madras Legislative Assembly that disparity arose in the voting strength of the several divisions of the municipality.

It is easy to imagine how this came about. Divisions A and B might have each had about 5000 voters who had minimum qualifications, but when the qualifications were abolished and adult franchise came into force the number of voters in A might far exceed the number of voters in B. It is this that is attacked as discriminatory. The learned Advocate General conceded that there was necessity to revise the territorial divisions of the municipality on the basis of the adult franchise, but contended that the elections already held cannot be deemed to be void because the revision had not been made. We agree with him. For one thing, there was no act of discrimination by the Government. The territorial divisions were made long before the Constitution came into force and it is not disputed that there was nothing wrong with the division at the time it was made. Subsequently the Government did not do anything. It is by virtue of Section 47 of the Act that automatically the effect of the adult franchise introduced by the Constitution brought about a change in the voting strength of the several divisions. We fail to see how this result, in any way, made the elections held on the basis of the original divisions illegal or void.

16. The next two objections of Mr. Kumaramangalam relate to the provisions of Section 45(2)(a) read with Section 45(2) of the Act. Under Section 45(2)(a) for the purpose of election of councillors to fill the seats reserved under Section 5 the Government may by notification declare in which of the divisions the said seats shall be reserved & for whom such seats are reserved. Under Section 46(2) each of the divisions thus notified by the Government shall elect two councillors one of whom shall be a member of the reserved classes. We fail to see how the constitution of the Council is affected in any manner by these defects, assuming that they are such. The only ground on which the petitioner can question the election of the respondent as alderman and Mayor is by establishing that the Council has not been properly constituted and therefore the election is void. He is not complaining that he belonged to a division where the voters have only one vote, nor is he complaining of a discriminatory treatment in favour of the voters of any other division. In the absence of such a complaint we do not think this question arises for decision.

17. Even if it did, we think there is no substance in the contention. It cannot be said that reservation of seats 'per se' is unconstitutional. Indeed the Constitution itself provides for reservation of seats. Once it is conceded that reservation itself is not illegal, there must be some device to give effect to the scheme of reservation. Any scheme will, in some way or other, be open to the attack of discrimination. If only members of the class for which the reservation is made are allowed to vote at an election for that seat, such persons would also have two votes, namely, a vote in the general constituency on the basis of adult franchise and another vote as a member of the class for which reservation has been made. This kind of discrimination is inevitable and inherent in the very scheme of reservation. There is nothing unconstitutional in this.

18. We are therefore unable to accept any of the contentions of Mr. Kumaramangalam. W. P. No. 800 of 1952 is therefore dismissed.

19. In W. P. No. 799 of 1952 the petitioner challenges the election of the respondent to the seat reserved for the Nattukottai Nagarathar's Association. The respondent was elected from among the members of the said Association and

took his oath of office as councillor on 4-11-1952. The main attack was on the ground that the Association is based on caste and the reservation of a seat for the Association is therefore void as it is inconsistent with Articles 14 and 15 of the Constitution.

20. Mr. Gopalaratnam, besides arguing contra on the merits, raised two objections on either of which if sustained he submitted the petition should be dismissed 'in limine'. He contended firstly that the petitioner was concluded by the decision of Subba Rao J. and secondly that the petitioner was precluded from obtaining any relief by way of 'quo warranto' on account of his conduct. In our opinion the first objection is not tenable, but the second should prevail.

21. It is true that Subba Rao J. held against the petitioner on the merits. But then the petitioner has filed an appeal against the judgment of Subba Rao J. and once the appeal was filed the issue cannot be said to be 'res judicata'. That appeal was pending at the time of the hearing of the petition and it is only now today that we are dismissing the appeal. It is not as if we are dismissing the appeal on the merits. The dismissal is only on the ground that the petitioner can no longer obtain the relief which he sought in his original petition.

22. The second objection is founded on the following facts. After the elections were over at which the respondent was elected to represent the Nattukottai Nagarathar's Association, the petitioner acquiesced in his election & further actually canvassed for the respondent's vote when he stood as a candidate for an alderman's seat.' On 13-10-1952 the petitioner addressed the following letter to the respondent (marked as "A" and appended to the counter-affidavit of the respondent) :

"I am standing as a candidate for the alderman's seat. I shall be deeply thankful if you will kindly help me with one of your votes. I have been a live wire in the Corporation council for the past 16 years and I can still usefully serve the civic cause. Your one vote will be most helpful and I request you to give me your support. I shall be deeply grateful and thankful."

23. The petitioner however did not succeed in being elected.

24. It is well established that a relator will not be entitled to information in the nature of a 'quo warranto' if it can be shown that he acquiesced in the election to which he objects or that he is raising an objection which might have been put forward against himself at a previous election or that while cognizant of the objection he voluntarily so acted as to enable the respondent to exercise the office, (vide Halsbury's Laws of England, 2nd Edn., Vol. IX, Section 1384, and Short and Mellor's Crown Practice, p. 183). In -- 'the Queen v. Lofthouse', (1841) 1 QB 433 (G), at the election of a local Board of Health, voting papers were delivered duly filled up except that the column for the number of votes was left in blank. After the election a rule for a 'quo warranto' was obtained by M, one of the unsuccessful candidates against two of the persons declared elected on the ground that the voting papers having been left in blank the election was void. M had himself voted with a voting paper left in blank and had also taken part at former elections, when a similar course had been pursued and had been himself so elected. It was held that M was disqualified from becoming relator. Mellor J. referred to the rule as correctly stated in Short's Crown Practice thus:

"The relator must not be disqualified by having acquiesced or concurred in the act which he comes to complain of, or in similar acts at former elections".

Shee J. said :

"Cases have been brought to our notice which show that where a man with the knowledge of the irregularity of a particular course, nevertheless concurs in it, he cannot afterwards take advantage of the irregularity. In the present case Mr. Maw voted on a voting paper which he knew or believed to be irregular. He therefore comes precisely within the rule enunciated by Lord Kenyon C. J. in -- 'Bex v. Clarke', (1800) 1 East 38 (H), at pages 46-47. "The Courts have on several occasions, said and said wisely, that they would not listen even to a corporator who has acquiesced or perhaps concurred in the very act which he afterwards come to complain of when it suits his purpose; and so far I think we have determined rightly'. And there are other cases to the same effect. The present relator has concurred in the very act he now complains of, for he has used voting papers in blank in this very election and in others. Therefore, in the exercise of our

discretion, we ought not to assist him."

This principle was followed in a recent case by the Nagpur High Court in -- 'Miss Cama v. Banwarilal'. AIR 1953 Nag 81 (I).

25. The petitioner, in our opinion, undoubtedly suffers from the disqualification laid down by the above rule. Mr. Kumaramangalam tried to escape from the rule by pointing out that the petitioner was persistently challenging the validity of the reservation of a seat for the Nattukottai Naga-rathars' Association and therefore he should not be precluded from by the rule of acquiescence. We do not think he can thus escape. If all along the petitioner's belief was that the respondent was not validly elected as a councillor he ought not to have canvassed for his vote. Logically it must follow that if the petitioner had been elected and the respondent had cast his vote at the election the petitioner's election would itself have been illegal and void. Presumably the petitioner was not contesting the seat on the assumption that even if he be elected the election would be void. In our opinion, the petitioner has by his conduct precluded himself from obtaining any relief in this petition. An information in the nature of a 'Quo Warranto' is not issued as a matter of course and when a relator applies for an information it is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case, (Halsbury's Laws of England, 2nd Edn., Vol. IX, Section 1380). We uphold the objection of Mr. Gopalaratnam and dismiss the petition, in this view it is not necessary to deal with the merits.

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