

*Privy Council Appeals Nos. 35 of 1964 and 36 of 1964*

Albert Joseph Arzu - - - - - Appellant

v.

Allan Edmund Arthurs and another - - - - Respondents

FROM

**THE SUPREME COURT OF BRITISH HONDURAS**

REASONS FOR REPORTS OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL UPON PETITIONS TO DISMISS THE APPEALS, DELIVERED THE 17TH FEBRUARY 1965

*Present at the Hearing:*

LORD MORRIS OF BORTH-Y-GEST

LORD PEARCE

LORD DONOVAN

*(Delivered by LORD PEARCE)*

The second respondent to the two appeals which are pending has petitioned their Lordships to advise their dismissal on the ground that they are not appeals that the Board will entertain. The purpose of this unusual procedure is to save the costs of a full hearing of the appeals, if in fact they are bound to fail. Whatever be the position where one of the parties is objecting to such a procedure, their Lordships feel no doubt that they should decide this preliminary point since both the parties desire a decision on it at this stage.

The appellant was an unsuccessful candidate in an election of members of the Stan Creek District Town Board in British Honduras held on the 27th December 1963. The first respondent was a successful candidate and the second respondent was the Returning Officer for the election. The appellant presented two election petitions to the Supreme Court of British Honduras. The ground of the petitions was that the second respondent had improperly allowed a third recount at the election and had failed to decide the election by lot when the votes for each candidate on such recount were equal. The petitions were dismissed on January 14th 1964 by Malone J. on the grounds that they did not state on whom they were served and that the first respondent had not been made a respondent thereto. The learned Chief Justice, on the appellant's application, granted leave to appeal to their Lordships' Board. The question of their Lordships' jurisdiction to entertain an appeal in respect of an election petition was not raised at the hearing of the application for leave.

The point has been well argued and the relevant authorities are not in dispute. It is, and must be, conceded that there is strong authority for saying that their Lordships will not entertain appeals in election petitions. Mr. Gatehouse however seeks to distinguish the authorities on two grounds. The first is that those authorities are concerned with elections to state legislative bodies, whereas the present case is concerned with an election to a local government authority. The second ground of distinction is that those authorities dealt with cases where there had been a hearing and investigation of the petition, whereas in the present case there has not been a hearing in the ordinary sense in that the petitions were dismissed on procedural grounds.

The relevant statutory provisions concerning election petitions in British Honduras are as follows:—

“ *Local Government (District Boards) Ordinance, Chapter 136*

...

12. The Governor in Council may make regulations to provide for the registration of voters and the conduct of elections of members of a Board.”

Pursuant to such provision there were made:

“ *Local Government (District Boards) (Registration of Voters and Elections) Regulations 1963*

...

59. A petition complaining of an undue return or an undue election of any member or members of a Board (hereinafter called “an election petition”) may be presented to the Supreme Court within ten days after such return or election . . .

...

62(1). Every election petition shall be tried by a Judge of the Supreme Court sitting alone without a Jury, in open Court.

(2) At the conclusion of the trial, the Judge shall determine whether the member whose election or return is complained of, or any other and what person was duly returned or elected, or whether the election was void, and shall certify such determination to the Governor, and upon such certificate being given, such determination shall be final; and the return shall be confirmed or altered or a new election shall be held, as the case may require, in accordance with such certificate.

63. At the trial of an election petition, the procedure shall, as near as circumstances will permit be the same, and the Judge shall have the same powers, jurisdiction and authority as if he were trying a civil action without a Jury, and witnesses shall be subpoenaed and sworn in the same manner, as near as circumstances will permit, as in the trial of a civil action in the Supreme Court, and shall be subject to the same penalties for perjury.”

In *Theberge v. Laundry* 2 App. Cas. 102 the Board declined to accept jurisdiction in a case that concerned the election of a member to the legislative council of Quebec. It held that on a fair construction of the Act and legislation there in question it was the intention of the legislature to create a tribunal for the purpose of trying election petitions in a manner which should make its decision final for all purposes and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative. In the judgment delivered by Lord Cairns it is said at page 107:

“ Now, the subject matter, as has been said, of the legislation is extremely peculiar. It concerns the rights and the privileges of the electors and of the Legislative Assembly to which they elect members. Those rights and privileges have always in every colony, following the example of the mother country, been jealously maintained and guarded by the Legislative Assembly. Above all, they have been looked upon as rights and privileges which pertain to the Legislative Assembly, in complete independence of the Crown, so far as they properly exist.”

In 1888 in *Kennedy v. Purcell* 59 L.T. 279 Lord Hobhouse delivering their Lordships’ judgment declined to give leave to appeal in respect of an election petition and having referred to *Theberge v. Laundry* and two other cases said at page 281:

“ In all three cases there is the broad consideration of the inconvenience of the Crown interfering in election matters, and the unlikelihood that the Colonial Legislature should have intended any such result. In all three there is the creation of a special tribunal for the trial of petitions in the sense that the litigation was not left to follow the course of an ordinary law suit, but subjected to a special procedure and limitations of its own, and in all three there is the same expression of the intention to make the colonial decision final.”

In *Strickland v. Grima* [1930] A.C. 285 a similar view was taken in an appeal from Malta concerning an election to the Senate. In *De Silva v. A.G.*

(1949) 50 Ceylon N.L.R. 481 a similar view was taken concerning an election to the House of Representatives in Ceylon. In that case the rules relating to election petitions were not unlike those in the present case. Lord Simonds at 483, having referred to *Theberge v. Laundry* said—"the preliminary question must be asked whether it was ever the intention of creating a tribunal with the ordinary incident of an appeal to the Crown. In this case it appears to their Lordships that the peculiar nature of the jurisdiction demands that this question should be answered in the negative . . ."

In *Senanayake v. Navaratne* [1954] A.C. 640 again the Board declined to hear an election petition from Ceylon. Lord Simonds there concluded (at page 651) "Suffice it to say that in their Lordships' opinion the peculiar nature of the jurisdiction and the importance in the public interest of securing at an early date a final determination of the matter and the representation in Parliament of the constituency affected make it clear that it was not the intention of the Order-in-Council to create a tribunal with the ordinary incident of an appeal to the Crown."

A similar view was taken in *Patterson v. Solomon* [1960] A.C. 579.

Thus the authorities have been clear and consistent.

Mr. Gatehouse makes the point that a municipal or local government body is less important than a parliamentary legislative assembly, and that the reluctance of the Crown to intervene would be greater for historical and constitutional reasons in the case of the latter than in the case of the former. That is largely a question of degree, and in their Lordships' opinion it would be difficult and undesirable for present purposes to draw a line between national and local government. Moreover where the rules relating to election petitions indicate that the decision shall be final, it is difficult to draw different conclusions as to their intentions according to whether they relate to elections of the members of a state legislative assembly or the elections of the members of local government.

In the present case the rules evince an express intention that the decision of the Judge shall be final and that there shall be no appeal in their peculiar jurisdiction. In local, no less than in parliamentary elections, it is of great importance that there shall be a quick and final decision as to who shall be entitled to sit as the elected representative of the voters. The delay inseparable from appeals would create doubt and difficulties in administration.

Their Lordships are unable therefore to distinguish the present case from the principles enunciated in the earlier cases on the ground that it relates to local government.

Nor can they find a distinction in the fact that the dismissal of the petitions was based on procedural grounds. If the decision in this peculiar jurisdiction is to be final such finality must apply irrespective of the reasons for the decision.

The fact that no evidence has been heard does not affect the general principle. The Court in the present case did not refuse jurisdiction; it decided in its peculiar jurisdiction that the petitions were defective. As a result the petitions were dismissed. A dismissal based on a procedural matter is none the less a decision in an election petition, even where the matter has not proceeded to the hearing of evidence.

Their Lordships are unable to create a distinction which would undermine the principle so uniformly laid down by the authorities.

Their Lordships are therefore of opinion that the appeals should not be entertained. They have accordingly humbly advised Her Majesty that the appeals should be dismissed. The appellant must pay the second respondent's costs of the appeals and of the petitions to this Board.

In the Privy Council

---

ALBERT JOSEPH ARZU

v.

ALLAN EDMUND ARTHURS AND ANOTHER

---

DELIVERED BY

LORD PEARCE

Printed by Her Majesty's Stationery Office Press,  
HARROW  
1965