LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Chopra, J.

BINDRA BAN AND OTHERS,—*Appellants.*

versus

SHAM SUNDER AND OTHERS,—*Respondents.*

Letter Patent Appeal No. 162 of 57 in Civil Writ No. 607 of 1957.

1958

April, 17th

Constitution of India (1950)—Article 226—Petition for writs under—By whom can be made—Writ of Quo Warranto *—Nature of—At whose instance and when can be issued—Alternative remedy—Whether bar to the grant of the writ.*

Held, that the normal rule is that a petition under Article 226 of the Constitution can only be made by a person who has some right and whose right has been infringed. This rule, however, is not an inflexible or an absolute one. There are some well-known exceptions to the rule. For instance, an application for a writ of *habeas corpus* may, in certain circumstances, be made by a near relation or friend of the person under illegal detention. Similarly, it is not necessary in the case of an application for *quo warranto* that the applicant should have suffered a personal injury or should seek redress of a personal grievance. In proceedings for a writ of *quo warranto*, the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of any duty towards him. What is in question is the right of the non-applicant to hold the office; the order that is passed is an order ousting him from that office. The rule is now well-settled that any private person may apply for a *quo warranto* in the matter of a public office, for every person must necessarily have an interest in matters which concern the public Government.

Held, that in cases of *mandamus* and *certiorari* no relief in respect of a wrongful act of a public nature may be given to a person unless the act prejudicially affects his personal interest or some specific legal right. But this cannot be said where a writ of *quo warranto* is prayed for by a member of the public in respect of a public act of the State. The only limitation in such a case is that the application is *bona fide* and it is in the interest of the public

that the legal position should be judicially decided. The rule that any public-spirited citizen can file an information in the nature of a *quo warranto* against a person who occupies a public office applies equally where the office is held by election or nomination in a statutory corporation or Municipal Committee. To question the title to a municipal corporate office or public corporation or any unit of Government, the petitioner need not be a member of the Municipal Council or other governing body but need only be a resident of the area under the Government or control of that body. Every voter of a Municipal Committee is interested to see that those members alone sit in the Board who are not in any way disqualified under the law, an application for writ of *quo warranto* can, therefore, be filed by a voter.

Held, that in the face of the constitutional provision (Article 226) the bar to any other remedy, except by an election petition, can be of no consequence. The power of the High Court cannot be affected by any legislative provision; in spite of anything contained in any legislative enactment, the High Courts can issue such writs, directions and orders under Article 226 of the Constitution, as they deem fit. It cannot be said that when there is an adequate alternative remedy, an application to the High Court under Article 226 will not lie. All that can be said is that in such cases the High Court will not generally, in the exercise of its discretion, grant the application and will refuse to interfere. The rule is only a rule of discretion and expediency and not one of jurisdiction or limitation on the power of the High Court. In the case of *quo warranto* also, the existence of alternative remedy, which is adequate for the needs of a case, is a matter to be taken into consideration in granting the writ. Where the proposed alternative remedy is of a doubtful character or is more cumbersome and not equally appropriate or efficacious and the circumstances of the case demand interference, the High Court will be well within its rights to exercise its discretion in favour of the petitioner and issue an appropriate writ, direction or order under the Article.

Held, that in the circumstances of this case the alternative remedy by way of election petition was not open to the petitioners nor was it convenient or adequate.

Case law discussed.

Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bishan Narain, dated 28th July, 1957, passed in Civil Writ No. 607 of 1956.

J. N. KAUSHAL, for Appellants.

D. C. GUPTA and L. D. KAUSHAL, Deputy Advocate-General, for Respondents.

JUDGMENT

Chopra, J.

CHOPRA, J. These two Letters Patent Appeals arise out of the same judgment of a learned Single Judge of this Court declaring the office of the ten elected members of Municipal Committee, Barnala, to be vacant and ordering that these members be restrained from discharging any of the functions, rights and duties of a member of the Municipality. Letters Patent Appeal No. 209 of 1957 is presented by the State and the other, No. 162 of 1957, by the members whose seats are declared to be vacant.

Elections for the Municipal Committee, Barnala (a second class Municipality) were held in September, 1956. The ten appellants were elected as members from the nine election-wards into which the town was divided. On 26th December, 1956, two of the residents and voters entered on the rolls of the Municipality filed a petition under Article 226 of the Constitution for a writ, direction or order in the nature of *quo warranto* challenging the right of the appellants to act as members of the Municipality. The petition was based on the allegation that the election was void and invalid and was vitiated by certain illegalities and irregularities. After the elections, the State of Pepsu, in which the town of Barnala was situate, was merged in the State of Punjab and, therefore, the State of Punjab and Deputy Commissioner, Sangrur, were joined as respondents

to the petition, in addition to the ten elected members. The petition was opposed by the opposite party alleging that the election proceedings were legal and regular and that the High Court should not interfere as the petitioners had not availed of alternative and effective remedy by way of an election petition, as provided by the Election Rules.

The learned Single Judge found in favour of the petitioners only on one of the grounds on which the validity of the elections was challenged, viz, that after the addition of some more territory within the jurisdiction of the Barnala Municipality in 1953, no fresh wards were constituted by the Government and the residents of that area were not included in the electoral rolls as voters. In the opinion of the learned Judge, the earlier delimitation of 1952 had become obsolete when the boundaries of the Municipality were extended in 1953, and no election could validly take place without new and fresh delimitation under section 240 (i) (b) and (c) of the Punjab Municipal Act. As provided by Rule 6 of the Election Rules, framed under the Act, every resident within the Municipal limits was entitled to vote, unless he was not a citizen of India or was below the age of 21 or was of unsound mind. The residents of additional area entitled to vote under this Rule could not be deprived of their right to vote and participate in the elections. The result was that an appreciable portion of its inhabitants was not allowed to vote in the elections meant for the entire municipal area and that, too, without any valid order of the Government. This was regarded as a serious matter and an illegality which vitiated the elections. The objection that the petitioners ought to have challenged the election by means of an election petition and, therefor, a direction in the nature of *quo*

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warranto should not be issued was turned down. An order in favour of the petitioners, as already stated, was consequently made.

The findings of the learned Judge regarding the alleged illegality and its effect on the elections is not being seriously challenged before us. The only points canvassed in these appeals are—

(i) that the two petitioners had no *locus standi* to present the petition and pray for the writ of *quo warranto* ;

(ii) that the writ petition was not the proper remedy and therefore the discretion ought not to have been exercised in favour of the petitioners.

The normal rule is that a petition under Article 226 can only be made by a person who has some right and whose right has been infringed. This rule, however, is not an inflexible or an absolute one. There are some well-known exceptions to the rule. For instance, an application for a writ of *habeas corpus* may, in certain circumstances, be made by a near relative or friend of the person under illegal detention. Similarly, it is not necessary in the case of an application for *quo warranto* that the applicant should have suffered a personal injury or should seek redress of a personal grievance. In proceedings for a writ of *quo warranto,* the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of any duty towards him. What is in question is the right of the non-applicant to hold the office; the order that is passed is an order ousting him from that office. Since the basic authority *Rex* v. *Speyer* (1), the rule is well-settled that any private person may apply for a *quo warranto* in the

(1) (1916) 1 K.B. 595.

matter of a public office, for every person must necessarily have an interest in matters which concern the public Government. In this case, the rule was obtained against the respondents that under the law they were not entitled to be members of the Privy Council. An objection was raised that the remedy could only be sought at the instance of the Attorney General by an information *ex-officio*, and that the rule should be discharged because it was issued at the instance of a private relator against a member of the Privy Council, whose appointment is alleged to be invalid. In the opinion of his Lordship, the applicant appeared to have brought the matter before the Court on purely public grounds without any private interest to serve and it was to the public advantage that the law should be declared by judicial authority.

In India also, the principle laid down in *Rex* v. *Speyer* (1), is being consistently followed. Legality of the appointment of an Advocate General was questioned by a private relator in a writ petition under Article 226 of the Constitution in *G. D. Karkare* v. *T. L. Sheyde and others* (2). One of the objections raised was that since no question of any fundamental right was involved and the applicant himself had no complaint to make of any infringement of his personal right, the applicant could not invoke the power of the Court under the said Article. The rule laid down in *Rex* v. *Speyer* (1), was followed and it was held that there was no reason to refuse a citizen under the democratic republic constitution to move for a writ of *quo warranto* for testing the validity of a high appointment of a public nature and of grave public concern, as that of an Advocate General.

(1) (1916) 1 K.B. 595.
(2) A.I.R. 1952 Nag. 330.

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The offices of Vice-Chancellor, Registrar and Assistant Registrar of the University in respect of which a writ was prayed for by a private individual, having no personal interest in the matter, were regarded as important statutory offices of public nature in *Rajendar Kumar Chandanmal* v. *Government of State of M. P. and others* (1). It was held that for the issue of a writ of *quo warranto* no special kind of interest in the relator is needed. nor is it necessary that any of his specific legal rights be infringed. It is enough for its issue that the relator is a member of the public and acts *bona fide* and is not a mere pawn in the game having been set up by others. If the Court is of the view that it is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared, it can issue a writ of *quo warranto* at the instance of any member of the public.

In *Biman Chandra Bose* v. *Dr. H. C. Mukherjee, Governor, West Bengal and others* (2), the nomination of certain persons as members of the State Legislative Council by the Governor under Article 171 (3)(e) of the Constitution was questioned and it was prayed *inter alia* that suitable directions upon the nominated members preventing them from exercising their rights under the said nomination be issued. On behalf of the respondents, it was contended that the petitioner had no *locus standi* to maintain the application, as no right or interest of his was infringed by the nomination. Reliance, in support of the objection, was placed on an unreported decision of Chandra Reddi, J. of the Madras High Court (subsequently reported as A.I.R. 1953 Mad. 96). Bose, J., did not agree with the reasonings and the conclusion of Chandra

(1) A.I.R. 1957 Madh. Pra. 60.
(2) A.I.R. 1952 Cal. 799.

Reddi, J. to the effect that unless a person's personal right is infringed or unless he has suffered a legal injury, he cannot maintain an application for *quo warranto*. The learned Judge concludes by saying—

> "It is sufficient to point out that an application for a writ of *quo warranto* challenging the validity of appointment to an office of a public or substantive nature is maintainable at the instance of any private person even though he is not seeking enforcement of any fundamental right under the Constitution or any legal right of his or of any legal duty towards him."

In cases of *mandamus* and certiorari, no relief in respect of a wrongful act of a public nature may be given to a person unless the act prejudicially affects his personal interest or some specific legal right. But this cannot be said where a writ of *quo warranto* is prayed for by a member of the public in respect of a public act of the State The only limitation in such a case is that the application is *bona fide* and it is in the interest of the public that the legal position should be judicially decided. The Rule of *Rex* v. *Speyer* that any public spirited citizen can file an information in the nature of a *quo warranto* against a person who occupies a public office, applies equally where the office is held by election or nomination in a statutory corporation or Municipal Committee. In America, the remedy of *quo warranto* to test the right or title to office was allowed to a member of the public in cases of municipal officers such as mayors, town commissioners, town councilors, judges, sheriffs, marshals and other officers (*vide* 44 Am. Jur. 107).

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In England, an information calling upon a corporation, or a number of individuals claiming to be a corporation, to show cause by what authority they, as an aggregate body, claimed to act as a corporation, could only be filed *ex officio* by the Attorney-General on behalf of the Crown, and not by a private relator, (Para 282 of Halsbury's Laws of England, by Lord Simonds, Vol. II). But a private relator could apply for an information against the several members of a corporation on grounds affecting their individual titles, to show by what authority they respectively claimed to exercise their individual functions. (Para 283, Halsbury) *Rex* v. *Corporation of Carmarthen* (1), is one of the authorities on which the above observation in Para 282 is based. In this case, the motion was for an information in the nature of a *quo warranto* against the whole corporation (as a body) to shew by what authority they claimed to act as a corporation. It was doubted whether such a species of information (viz. filed by the Clerk of the Crown, under leave of the Court, at the relation of a private prosecutor) could be claimed under the statute (V. 9 Amm. C. 20 Sec. 4). The Council concluded that "there was no instance of any information in nature of a *quo warranto* being brought against any corporation *as a corporation,* for an usurpation upon the Crown, but by and in the name of the Attorney-General, on behalf of the Crown". Thereupon, the Council made their motions against the several individuals, "to show by what authority they respectively claimed to exercise their particular franchise", and obtained the ordinary rules against them in the usual form. *Rex* v. *Ogden* (2), is another decision relied upon in Para 282. In this case, a rule *nisi* was obtained calling upon the defendants to show cause why an information, in the nature of a *quo warranto*, should not be

(1) (1759) 2 Burr. 869.
(2) (1829) 109 E.R. 436.

exhibited against them for acting as a corporation, by the name and style of the Freemen and Stallingers of the Borough of Sunderland, without being authorised so to do. In the affidavits it was stated that "these persons had constituted and formed themselves into a certain supposed body or corporation within the town of Sunderland and that they claimed to exercise and enjoy and did exercise and enjoy certain corporate powers, authorities, and privileges within the said town over the rest of the inhabitants of the said town, that the said pretended corporation consisting of the respondents denominated and represented themselves to the world as a corporate body, that they claimed to have and exercise and did exercise the power of electing their own members, in perpetual succession for ever * * * ". *Rex* v. *Corporation of Carmarthen* (1), was relied upon for the objection that an information in the nature of a *quo warranto* cannot be filed against an entire Corporation by the Master of the Crown Office, but by the Attorney-General only. Lord Tenterden, C. J., accepted the objection and observed—

> "If any member of individuals claim to be a corporation without any right so to be, that is an usurpation of a franchise; and an information against the whole corporation, as a body, to shew by what authority they claim to be a corporation, can be brought only by and in the name of the Attorney-General."

Rex v. *Briggs,* (2), was a rule calling upon Mr. Briggs to show cause why an information in the nature of *quo warranto* should not be filed against him for exercising the office of a commissioner of the town of Harrogate. Validity of the election of

(1) (1759) 2 Burr. 869.
(2) (1864) XI L.T. 372.

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Mr. Briggs was challenged on the ground that a certain number of those who voted for him (sufficient to put him in a minority) were not duly qualified. The respondent showed cause and contended that the applicant was not qualified to vote at the election. Dealing with the preliminary objection Cockburn, C. J., observes—

> "It is not because a person has not a right to vote at an election that he has not an interest in it. His tenant is rated, and the rates therefor are taken into consideration in the rent. He is owner of property in the town, and how therefore can it be said he is not interested in the election of the governing body?"

And Crompton, J., expressed himself as follow:—

> "The object of having a relator who has an interest is, that a mere man of straw should not be put forward; but surely in such a case as this an owner of property in the town has an interest".

A distinction between an information in the nature of a *quo warranto* in respect of a whole corporate body and one where the same objection applies to every member of the corporation, was drawn in *Rex* v. *Andrew White,* (1). It was held that while in the former case an information in the nature of a *quo warranto* cannot be filed against a whole corporate body, except by and in the name of the Attorney-General, the Court, however, will grant an application to file such an information, at the instance of a private relator, although the ground of objection to the party's right to hold the office affects every individual belonging to the corporation. As

(1) (1836) 111 E.R. 1297.

regards the two previous decisions referred to above Lord Denman, C.J., observes—

> "It appears to me that *The King* v. *Ogden* (1), is satisfactorily distinguished from the present case. The question there was, whether the court would suffer a private person to file an information in the nature of a *quo warranto* against individuals who were claiming to act as a corporate body; but in *The King* v. *The Corporation of Carmarthen* (2), it does appear that the Court did permit informations to be filed against individuals of a corporation for a defect, which was made the ground of application for an information against the corporate body".

A similar view was taken by Cockburn, C. J., in *Rex* v. *Geo Price Lloyd and others* (3), it was held that the Court will grant a *quo warranto* information at the instance of a private relator when private rights are interfered with, although the result may be that the existence of the corporation may be called in question. Here, it was found that there had been no corporation for centuries; suddenly persons come forward and say they will reinstate the corporation, and they proceed to exercise the powers and duties of corporate officers. The rule was obtained by a resident and tax-payer of the town against the persons professing to have been elected as mayor and bailiffs of the corporation.

The rule that flows from these decisions is, that where the same objection applies to every member of the corporation, a private relator can

(1) (1829) 109 E.R. 436.
(2) (1759), 2 Burr. 869.
(3) (1860) 11 L.T. 232.

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in effect assail the whole corporation, and the information will not be refused simply because to grant it involves the possible dissolution of the corporation.

In India, the High Court's power to do justice in such cases is further clarified by the insertion of the words "for any other purpose" in Article 226 of the Constitution. About the quantum of interest necessary to file a petition for *quo warranto,* the most repeated proposition is that to question by *quo warranto* the title to an office of public Government the questioner need not show any personal injury but need only be a *bona fide* citizen who is not a man of straw set up by some one else, and it is in the public interest that the legal position should be clarified once and for all. To question the title to a municipal corporate office or public corporation or any unit of Government, the petitioner need not be a member of the Municipal Council or other governing body but need not only be a resident of the area under the Government or control of that body. Every voter of a Municipal Committee is interested to see that those members alone sit in the Board who are not in any way disqualified under the law, an application for writ of *quo warranto* can, therefore, be filed by a voter, *Vishwanath and another* v. *the State* (1).

Realising the force of the authorities against him, the learned Deputy Advocate-General had to change his position and submitted that the present was a case to which the principle laid down in *Rex* v. *Carmarthen,* (2), and *Rex* v. *Ogden* (3), and Para 282 of Halsbury applied and, therefore, an information in the nature of *quo warranto*

(1) A.I.R. 1957 Raj. 75.
(2) (1759), 2 Burr. 869.
(3) (1829) 109 E.R. 436.

at the instance of the two voters was not competent. In my view, the contention is without force. The present information does not call upon a corporation, or a number of individuals claiming to be a corporation, to show cause by what authority they, *as an aggregate body*, claimed to act as corporation. The constitution or existence of the Municipal Committee is not being questioned. Section 4 of the Punjab Municipal Act provides for the Provincial Government to declare, by notification, any local area to be, for the purposes of this Act, a Municipality of the first or second class. Section 11 of the said Act lays down that there shall be established for each Municipality, a Committee having authority over the Municipality and consisting of such number of members, not less than five, as the Provincial Government may fix in this behalf. Section 12 deals with the appointment and election of members; they may be appointed by the Provincial Government either by name or by office, or elected from among the inhabitants in accordance with the rules made under the Act, or partly appointed and partly elected. The constitution of a committee or the authority of the Provincial Government to nominate or elect its members, as provided by the rules, is not in question. The grievance is that the members of the present committee, may be all of them, have not been elected in accordance with the rules framed under the Act and therefore they are not entitled to hold the office of a municipal commissioner. Our attention has been repeatedly drawn to Para 14 of the petition which says—

> "That the grave illegalities and irregularities narrated above committed by the authorities render the while elections of the Municipality void. The Committee is not validly constituted. Election of Respondents Nos. 3 to 12 as

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Municipal Commissioners being void, they have no authority and are not competent to act as such. The Committee thus is not legally competent to perform its functions. The various powers exercised, functions and duties performed by the Committee so far and likely to be exercised or performed in future are without authority, unlawful and *ultra vires* and materially affect the rights of the residents of the Municipality including those of the petitioners".

To find out the true nature of the information we have to look to the petition as a whole, and that leaves no doubt in my mind that what is complained of is the mode and manner in which the elections took place and the authority of the present members to act as Municipal Commissioners. The objection as to the mode of the elections being common and equally applicable to every member of the Municipal Committee, the effect of a writ may be to dissolve the Committee. But, it does not amount to saying that the information calls upon the Municipal Committee to show cause by what authority they, *as an aggregate body*, claimed to act as a Committee. Obviously, it is an information against the several members of the Municipal Committee on grounds, common to them all, affecting their individual titles, and therefore falls under the rule laid down in *Rex* v. *White* (1) and *Rex* v. *Geo. Llyod* (2) and Para 283 of Halsbury's Law of England. I am consequently of opinion that the information on behalf of the private relators was competent.

On the second point, it is submitted that the proper remedy to challenge the elections was by

(1) (1836) 111 E.R. 1297.
(2) (1860) 11 L.T. 232.

presenting an election petition, as provided by the rules and, threfore, a writ of *quo warranto* ought not to have been issued. Rule 51 of the Municipal Election Rules, 2006, framed by the Patiala and East Punjab States Union under section 240 of the Punjab Municipal Act, reads—

> "Subject to the provisions of rule 67 no election shall be called in question except by an election petition presented in accordance with these rules".

Rule 67 relates to the power of the Government to order an enquiry of its own motion and has no relevancy here. Sub-rule (1) of rule 52 says—

> "An election petition against the return of a candidate at a municipal election * * * * * * *
>
> on the ground of a corrupt practice or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at the election or by not less than five electors and the petition shall be presented to the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf within 14 days after the day on which the result of the election was declared, provided that the limit of fourteen days prescribed by this rule may be extended by the Deputy Commissioner if there are in his opinion sufficient grounds for such extension."

In the face of the constitutional provision the bar to any other remedy except by an election petition can be no consequence. The power of the High Court cannot be affected by any legislative

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provision; in spite of anything contained in any legislative enactment, the High Courts can issue such writs, directions and orders under Article 226 of the Constitution, as they deem fit. Rule 52 only provides an alternative statutory remedy. It cannot be said that when there is an adequate alternative remedy, an application to the High Court under Article 226 will not lie. All that can be said is that in such cases the High Court will not generally, in the exercise of its discretion, grant the application and will refuse to interfere. The rule is only a rule of discretion and expediency and not one of jurisdiction or limitation on the power of the High Court. In the case of *quo warranto* also, the existence of alternative remedy, which is adequate for the needs of a case, is a matter to be taken into consideration in granting the writ. Where the proposed alternative remedy is of a doubtful character or is more cumbersome and not equally appropriate or efficacious and the circumstances of the case demand interference, the High Court will be well within its rights to exercise its discretion in favour of the petitioner and issue an appropriate writ, direction or order under the Article. In a number of cases, under almost similar circumstances, the High Courts in India have interfered in election matters of a Municipality, even though the rules provided an alternative remedy by way of an election petition. *Kanglu Baula Kotwal* v. *Chief Executive Officer* (1), *Maseh Ullaha Shah* v. *Abdul Rehman Singh* (2); *Pivat Chandra Sircar* v. *R. S. Sen* (3).

In America, it has been consistently held that the right to resort to *quo warranto* to prevent an unauthorised practice of a profession is not defeated merely by the fact that other remedies are made

(1) A.I.R. 1955 Nag. 49 (F.B.)
(2) A.I.R. 1953 All. 193
(3) A.I.R. 1955 Cal. 83

available by the express provisions of the statute which prohibits such practice, or because other remedies may be obtained under the general equity powers of the Courts. Although injunction may be resorted to *quo warranto*, rather than injunction, should be invoked where the unlawful practice does not constitute a nuisance. (American Jurisprudence Vol. 44 P. 113).

Now, the present is a case where the learned Single Judge has, on a consideration of all the facts and keeping in view the rule, exercised the discretion and issued a writ. We have thus only to see if the discretion has been so improperly exercised as to call for interference under the Letters Patent. Rule 52 *prima facie* relates to the individual disqualifications or defects of procedure in the election of a particular returned candidate. It is doubtful if the rule would include an objection relating to delimitation of constituencies and disenfranchisement of the residents of a considerable area falling within the Municipality. Moreover, an election petition can only be filed by a defeated candidate or by five electors. The remedy by way of an election petition was not open to residents of the extended area. since they were not entitled to vote in this election. The petitioners also could not avail of the remedy, for their number is less than five. As already observed, every member of the public within the municipal area has the right to apply for information in the nature of a *quo warranto* against every member of the corporation. Every subject has the inherent right in seeing that public duties are performed by those competent to exercise them. It is not disputed that under the rules only one election petition can be filed against the return of a particular candidate at the municipal election. Ten election petitions, even if permissible, were therefore, to be filed in the present case, and each of them on behalf of five of the elec-

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tors. In the circumstances, I am not inclined to think that the discretion has been improperly exercised or that any interference is necessary.

For all these reasons, these appeals fail and are dismissed. The respondents shall be entitled to costs in the appeal filed by the State, in the other appeal the parties are directed to bear their own costs.

BHANDARI, C.J., I agree.