

ELECTION PETITION RE EUROPEAN MEMBERS

HIGH COURT. 1961. 3, 16, March. MARSACK C.J.

Election petition to declare result of election void - alleged irregularity - compilation of Supplementary Roll without public notice.

An election conducted substantially in accordance with the electoral laws of Western Samoa ought not to be held void by reason of an irregularity - as in this case, the compilation by the Registrar of Electors of a supplementary roll without the public notice prescribed by Regulation 21 of the Western Samoa Legislative Assembly Regulations 1957 - where the Court is satisfied that the irregularity disclosed did not materially affect the result of the election.

Islington West Division case 17 T.L.R. 210 followed.

Petition dismissed.

PETITION to declare result of election of European members of the Legislative Assembly void.

Petitioner Botham in person.  
Registrar of Electors in person.

Cur. adv. vult.

MARSACK C.J.: This is a petition asking that the election of five European members of the Legislative Assembly in February 1961 should be declared void under Regulation 87 by reason of an irregularity which materially affected the result of the election. The petitioners are one defeated candidate, William Frederick Botham, and five other electors all of the district of Aleisa. The grounds on which the petitioners rely are that after the electoral roll was officially closed 55 names were added thereto contrary to Regulation 21; and that the addition of those 55 names to the roll after the official date of closing materially affected the result of the election.

The facts are not in dispute. By public notice dated 4th November 1960 the Returning Officer fixed the 9th December 1960 as the date for closing the European Electoral Roll.

By the 9th December only 770 persons out of a possible total of 1400 had been enrolled; and the Registrar of Electors concluded, I think with complete justification, that the poor response had been due to a misunderstanding as to the provisions regarding the taking of the oath of allegiance, a procedure previously unnecessary. The Registrar then took the proper and prudent course of consulting the Acting Attorney-General, and also the Minister of Justice, asking that the appropriate steps should be taken to extend the time for the closing of the roll in order that the election should prove to be an expression of opinion of the great body of electors and not merely of about half of them. He was advised that persons whose names appeared on previous rolls, and were therefore qualified for inclusion in the roll, should be entitled to be registered on a Supplementary Roll as soon as they had taken the oath of allegiance. In the result the 55 names with which the petition is concerned were added to the roll after the date fixed by the Returning Officer under Regulation 21.

A total of 665 valid votes were recorded at the election. The votes polled by the respective candidates were as under:

Successful:

Botham, G.F.D.

450

Nelson, F.C.F.	432
Keil, H.J.	383
Plowman, P.	313
Gurau, A.M.	230

Unsuccessful:

Allen, T.M.	205
Betham, W.F.	121
Morgan, P.L.M.	94

It is clear that no possible manner of voting on the part of the 55 persons can have affected the result of the election with regard to petitioner W.F. Betham or to P.L.M. Morgan. The only candidate with regard to whom there is even a remote possibility of the election being affected is Mr T.M. Allen, who is not a petitioner and did not appear either in person or by a representative at the hearing of the petition.

It is a little difficult to understand why after the report of the Registrar of Electors the Returning Officer did not by virtue of his powers under Regulation 21 fix a further date for the preparing of the Supplementary Roll. It is true that Regulation 23, which gives the Registrar power from time to time to prepare Supplementary Rolls, is silent on the question of public notice; but it is a fair inference from Regulation 21(2) that fifteen days' notice shall be given of the date fixed of the closing of the Supplementary Roll in the same way as must be in the case of the main roll.

But it must be remembered that the routine of a General Election is a new thing to Western Samoa. Regulation 15 lays down that it shall be the duty of the Registrar to make the European roll as complete as possible, and with that object from time to time to place thereon the name of every person who has transmitted a claim to the Registrar and of whose qualifications he is satisfied. The evident intention of the regulations is to ensure that every effort be made to obtain a representative poll of electors; to ensure that the result of the election is the freely expressed wish of the majority of the electors.

In this respect I adopt the words of the judgment in the Islington West Division case 17 T.L.R. 210 at 230:

"An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the Returning Officer or his subordinates in the conduct of the election, where the Court is satisfied that the election was, notwithstanding these transgressions, an election really and in substance conducted under the existing law."

In the instant case I am satisfied that the 55 persons whose names appear on the Supplementary Roll were persons fully qualified to be European electors in Western Samoa; that all of them had previously been on the electoral roll and were omitted from the main roll on this occasion only or mainly because of misunderstanding with regard to the necessity of taking the oath of allegiance.

The main purpose of giving public notice of the preparation of a supplementary roll would appear to be to ensure that all qualified persons would know of their right to enrol, and that the roll should accordingly be as nearly complete as possible. One purpose of closing the roll a stated period before polling day would no doubt be to enable objections to be lodged against the inclusion of unqualified persons. That would have little application in the present case as all the 55 names had been included without objection in previous electoral rolls.

The election was accordingly in my view conducted substantially in accordance with the electoral law for the time being in force in Western

Samoa, and the compilation by the Registrar of a supplementary roll without the public notice prescribed in Regulation 21 is not such an irregularity as should cause the avoidance of the election.

There is, in any event, another ground on which I think the petition cannot succeed. Before an order can be made under Regulation 87 the Judge must be of opinion that the irregularity disclosed materially affected the result of the election. No evidence was called by the petitioners on this aspect of the matter. It was merely suggested that as the supplementary roll contained 55 names and Mr Gurau's majority over Mr Allen was 25 votes, then conceivably the result might have been different if the 55 persons had not been allowed to vote. This contention will, however, not stand close examination. Of the 665 valid votes polled, 205 persons or 30.8% voted for Allen and 230 or 34.6% for Gurau. If then the result of the election were affected by the voting of the 55 persons whose names appear on the supplementary roll, then Gurau must have gained 26, i.e., 47.5%, of those votes more than Allen did. Those 55 persons represent a cross-section of the community and there is no reason to suppose - and no evidence from which the inference might be drawn - that they would vote differently from the rest of the community. Small variations, of course, might be looked for, but no instances of that very great preponderance of votes which in political circles is occasionally referred to as a landslide.

If then Allen could be expected to obtain the votes of 30.8% of those 55 persons he would have received 17 votes. In that case, for the election to be affected, Gurau would have had to receive the votes of 43 persons out of the 55, that is very little short of 80%, contrasted with his 34.6% over the electors as a whole. I cannot find from the evidence any justification for considering this a probability, or anything more in fact than a remote possibility. If of these 55 persons Gurau had received his normal percentage of 34.6% in votes, then the election would not have been affected even if Allen had received no votes at all from the 55 persons.

In the result I am unable to say that in my opinion the result of the election was materially affected by any irregularity there may have been by the action of the Registrar in compiling a supplementary roll of 55 names without the public notice provided for in Regulation 21.

The petition accordingly fails.

Of the sum of £10 deposit in the Court, £4 will be applied to the costs of Court and the balance of £6 will be forfeited to the Samoan Treasury under Regulation 89(2).