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1966 *Present :* **Sansoni, C.J., H. N. G. Fernando, S.P.J., and T. S. Fernando, J.**

R. G. SAMARANAYAKE, Appellant, *and*
A. KARIAWASAN, Respondent

Election Petition Appeal No. 8 of 1965—Bentara-Elpitiya

Election petition—Agency—Wide meaning of term "agency" in election matters—Sub-agent of a candidate—Responsibility of candidate for false statements made by such sub-agent at an election meeting—Corrupt practice—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 58 (1) (d), 77 (c), 82.

A person can become the agent of a candidate, not merely by direct appointment by the candidate himself, but also by appointment made by an agent who himself has authority to employ other people to further the election of the candidate. A person, therefore, who, on invitation from a candidate's agent, makes a speech at an election meeting to promote the election of the candidate is a subordinate agent of the candidate and is an "agent" within the meaning of that term in section 77 (c) of the Parliamentary Elections Order in Council. "When a candidate engages the services of a person generally to promote his candidature, any act of that person performed with the object of promoting the candidature is the act of an agent within the meaning of section 77 (c). Accordingly, any person who is invited by a candidate, or by his agent authorised to convene an election meeting, to speak at any such meeting in support of the election, has implied general authority, amounting perhaps to a *carte blanche*, to make any speech which in the opinion of that person is likely to promote the election, and a false statement made by that person in such circumstances is made by an 'agent' within the meaning of section 77 (c)."

An act done by a person who with the consent of the candidate promotes the election of the candidate, is one for which the candidate is responsible. It does not then matter whether the candidate knew that the particular person would in fact do the very act which he ultimately performs for promoting the election.

The petitioner and the appellant were rival candidates for election to a seat in the House of Representatives. In an election petition filed by the petitioner, one ground on which the election of the appellant was declared void under section 77 (c) of the Parliamentary Elections Order in Council was that one W was an "agent" of the appellant, and that she was guilty of corrupt practice

under section 58 (1) (*d*) of the Order in Council in that she had made a false statement of fact in relation to the personal character or conduct of the petitioner.

At a number of election meetings held in support of the appellant, W made false statements alleging that the petitioner took a bribe of Rs. 500 from her on the promise that he would obtain a job for her. At a meeting held on 5th March, W spoke in the hearing of the appellant, who himself followed with his speech on that occasion. There was no evidence that in that speech the appellant attempted to discourage or prevent W from making such statements. Another meeting, which was held on 20th March, was organised by a person who was the admitted agent of the appellant, for the purpose of arranging meetings. In regard to both those meetings, the Trial Judge held that W made the statements as the agent of the appellant, and that her agency had been proved beyond reasonable doubt. He found that, after her first speech at an earlier meeting on 25th February, W was invited to speak at the other meetings by the organisers of those meetings.

Held, that the presence of the appellant at the meeting on 5th March, and the fact that he himself spoke there, clearly established that the meeting was convened with the appellant's knowledge and consent. Inasmuch as the meeting was convened with the knowledge and consent of the appellant, the organiser of the meeting had authority to invite speakers to that meeting. That being so, the finding of the Trial Judge that agency was established in this instance depended quite obviously upon a finding of fact that the organiser of the meeting was an agent of the appellant and that, as such agent, he invited W to speak at the meeting. W was thus a subordinate agent of the appellant, having been chosen by the organisers of the meeting, who did have authority so to choose her. The Trial Judge's reference to the fact that organisers called upon W after her first speech was virtually a finding that the organiser of the meeting of 5th March invited her to speak at that meeting because he knew what she had stated at the first meeting. W had general authority to promote the appellant's election by her speeches. In the circumstances, the election of the appellant was void under section 77 (c) of the Parliamentary Elections Order in Council on the ground that a corrupt practice falling within section 58 (1) (d) was committed by his " agent " W.

ELECTION Petition Appeal No. 8 of 1965—Bentara-Elpitiya.

H. V. Perera, Q.C., with *Izzadeen Mohamed* and *S. S. Basnayake*, for the Respondent-Appellant.

Nimal Senanayake, with *Desmond Fernando* and *Suriya Wickremasinghe*, for the Petitioner-Respondent.

Cur. adv. vult.

August 1, 1966. H. N. G. FERNANDO, S.P.J.—

This Appeal is from the determination of an Election Judge in an election petition filed in respect of the Parliamentary General Election held in March, 1965, for Electoral District No. 57, Bentara-Elpitiya. The petitioner in the case was one of the unsuccessful candidates at that election, and he is hereinafter referred to as " the Petitioner ". The successful candidate is the Appellant in this Appeal and will be referred to as

such. The determination of the Election Judge was that the election of the Appellant was void under section 77(c) of the Parliamentary Elections Order in Council, on the ground that two persons, Tillak Karunaratne and Soma Withanachchi, both agents of the Appellant, were guilty of corrupt practices under section 58 (1) (*d*) of the Order in Council.

In relation to the finding concerning Tillak Karunaratne the principal argument before us was that the learned Election Judge misdirected himself in law in holding that Karunaratne was guilty of a corrupt practice. It is not necessary to consider that argument in this judgment in view of the conclusion we have formed, that the election was properly declared void on the ground that Withanachchi had been guilty of a corrupt practice. It suffices, therefore, now to state reasons for that conclusion.

The corrupt practice stated in section 58 (1) (*d*) consists of the making or publishing, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate. Except in regard to one matter (I will refer to it later), it has not been argued before us that the Election Judge misdirected himself in holding that Withanachchi was guilty of the offence defined in section 58 (1) (*d*). In this instance, the principal ground argued has been that the Trial Judge erred in law in holding that two offences under section 58 (1) (*d*) which were committed by Withanachchi, were in terms of section 77 (*c*) of the Order in Council, committed by her as agent of the Appellant, and that one of such offences had in addition, been committed with the knowledge and consent of the Appellant.

Withanachchi admitted in evidence that at a number of meetings held in support of the candidature of the Appellant, she made statements alleging that the Petitioner took a bribe of Rs. 300 from her on the promise that he would obtain a job for her. After stating in the judgment that this admission had been made, the Trial Judge proceeded to consider the evidence regarding some only of these meetings. He held expressly that she made the statement at meetings held at Balagala on 25th February, 1965, at Thanabaddegama on 27th February, at Bodiwela on 5th March, and at Kahambiliyakande on 20th March. In regard to the Bodiwela meeting on 5th March, he held that she spoke in the hearing of the Appellant, who himself followed with his speech on that occassion. In regard to the next meeting on 20th March, he held that the meeting was organised by Karunaratne who was the admitted agent of the Appellant, for the purpose of arranging meetings. In regard to both these meetings, he held that Withanachchi made the statements as the agent of the Appellant, and that her agency had been proved beyond reasonable doubt. In deciding this question he relied on what he described as the principle enunciated in the *Barnstaple Case.*[1]

> " I say that if an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent, and if he is employed by persons who have authority to employ

[1] *(1874) 2 O'M. & H. at p. 105.*

people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct. As Mr. Harrison vary fairly puts it, he cannot take the benefit of the services of the individual and repudiate them at the same time. But the Judge must be satisfied that the man, when he was acting, was acting as the agent for furthering the election of a particular candidate."

The same principle is referred to in the *Wakefield Case* [1]:—

" Accordingly a wider scope has been given to the term ' agency ' in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object. "

There was apparently no evidence as to who precisely was responsible for arranging the election meeting held on 5th March ; but the presence of the Appellant at that meeting and the fact that he himself spoke there quite clearly established (although the Trial Judge did not find it necessary expressly so to hold), that this meeting was convened with the Appellant's knowledge and consent. In connection with his finding of agency he relied on Withanachchi's statement that after her first speech (i.e., on 25th February), she was invited to speak at the other meetings by the organisers of those meetings. If then the meeting on 5th March was convened with the knowledge and consent of the Appellant, the organiser of that meeting had authority to invite speakers to that meeting. That being so, the finding of the Trial Judge that agency was established in this instance depends quite obviously upon a finding of fact that the organiser of the meeting was an agent of the Appellant, and that as such agent, he invited Withanachchi to speak at the meeting. The language of the *Barnstaple* judgment does not exactly fit the evidence concerning Withanachchi, because it refers to the making of a threat or promise in the course of canvassing, and not to the making of false statements in a speech. But the language of the citation from the *Wakefield Case*, when it refers to the responsibility of a candidate for the deeds of those *who to his knowledge for the purpose of promoting his election*, canvass and *do such other acts as may tend to promote his election*, in my opinion is clearly intended to include acts other than canvassing, which may tend to promote the election of the candidate. For present purposes the importance of what has been called the *Barnstaple* principle is that a person can become the agent of a candidate, not merely by direct appointment by the candidate himself, but also by appointment made by an agent who himself has authority to employ other people to further

[1] *2 O'M. & H. at p. 100.*

the election of the candidate. The reasoning of the Trial Judge in the present case, when he stated that the *Barnstaple* principle applies, is quite clearly that in the case of Withanachchi's participation at the meeting on 5th March she was, in the language of the *Barnstaple* principle, a subordinate agent of the candidate, having been chosen by the organisers of the meeting, who did have authority so to choose her. The Trial Judge's reference to the fact that organisers called upon her after her first speech is virtually a finding that the organiser of the meeting of 5th March invited her to speak at this meeting because he knew what she had stated at the first meeting.

There is a further statement in the judgment concerning the meeting of 5th March to which I must now refer. The Trial Judge states that although the Appellant spoke at this meeting only after Withanachchi had spoken there is no evidence that the Appellant either stopped her from speaking or repudiated her statement in his own speech which followed. The Trial Judge in this connection states his opinion that if the Appellant did not consent to what Withanachchi had previously said, he should have either stopped her or subsequently repudiated her statement. In this way the Judge has inferred that Withanachchi's statement had been made with his knowledge and consent.

What was in my understanding, the principal contention for the Appellant, is that a person who on invitation from a candidate or his agent, makes a speech at an election meeting in support of the candidate is not an ' agent ' within the meaning of that term in section 77 (c). For this contention reliance was placed on the language of the *Barnstaple* judgment when it refers to acts done by a subordinate agent *in the course of canvassing*, and also certain observations in the *Dungannon Case*[1] :—

> " I think it must be made out that a party, before he is chargeable as an agent, has been entrusted in some way or other by the candidate with some material part of the business of the election which ordinarily is performed, or is supposed to be performed, by the candidate himself. Whether it has any distinct reference to canvassing or anything of that kind, appears to me to be immaterial, but in some sense or another he must be considered as entrusted by the candidate with the performance of some part of the business of the election, which properly belongs to the candidate himself, though he is unable to perform it in many cases without somebody to aid him. "

Relying upon these observations it was argued that, whereas canvassing is something which can ordinarily be performed by the candidate himself, making a speech about a candidate is not something which the candidate can himself do, but which essentially is something which can only be done by other persons.

[1] *3 O'M. & H. at p. 101.*

The brief report of a part of the judgment in the *Dungannon* Case does not reveal the context in which the observation I have cited was made. But the headnote shows that the election in that case was declared void on the ground of bribery by agent. The question, whether a candidate is responsible for the making of a false statement by a person invited to speak at an election meeting, was not considered in the case. On the contrary, that case was decided in 1880, at a time when there was no statutory provision declaring it to be an illegal practice to make false statements relating to the personal character or conduct of a candidate. Statutory provision for that offence was made only in 1895. The *Barnstaple* Case itself was a decision of 1874, and one can well understand why, in that judgment there was no occasion to use language pronouncing upon the question whether, the making of a speech may or may not be the act of a candidate's "agent". But the *Wakefield* Case, although it was also decided in 1874, does contain a statement of the law in terms which are of assistance to us, because it refers to the deeds of persons who do acts for the purpose of promoting an election.

The argument that authority to canvass is essential in order to constitute "agency", was rejected in the *Borough of Plymouth* [1] where Swift, J. stated :—

> "It seems to me that a person may well be the agent of a candidate, with the consequence of affecting him with any impropriety of which the agent is guilty, although he is not a canvasser in the strict sense of the word at all. There are many ways in which a man can become an agent, quite apart from being an authorised canvasser."

An election meeting is clearly intended for the purpose of promoting the election of the candidate whom the organisers of the meeting support, and persons who are invited by the organisers to speak at that meeting must surely be presumed to speak with the purpose of promoting the election of the candidate. Even upon the narrowest application of the principle of responsibility stated in the *Wakefield* Case, an act done by a person who with the consent of the candidate promotes the election of the candidate, is one for which the candidate is responsible. It does not then matter whether the candidate knew that the particular person would in fact do the very act which he ultimately performs for promoting the election. The passage which I have cited from the *Wakefield* Case is preceded immediately by the observation that although by the ordinary Law of Agency a person is not responsible for the acts which his alleged agents choose to do on their own behalf, that construction of agency may not be put upon the acts done at elections.

I have stated my reasons for the opinion that the restricted language of the *Dungannon* judgment cannot be relied on in the present case, but the language of the *Barnstaple* judgment should, in my opinion, be applied

[1] *(1929) 7 O'M. & H. 101.*

by analogy to the new situation which later arose in England, when in 1895, the making of false statements was declared to be an illegal practice. If a subordinate agent chosen to promote an election by the canvassing of voters renders a candidate responsible for the agent's illegal manner of canvassing (e.g., by bribery, threats or promises), then equally a person chosen to promote a candidate's election by making a speech at a meeting, will render the candidate responsible for the agent's illegal manner of promoting the election, in this instance, by making false statements concerning the character of another candidate.

I have referred to English cases because they were cited in support of the arguments of counsel for the Appellant ; but in fact, our law is in many respects so different from the English law, that it is perhaps safer for our courts to construe our own law on this matter, without too much reliance upon English decisions. The English law requires an election judge to report whether or not *a candidate has by his agents been guilty of the illegal practice* of making false statements as to character, etc. On the other hand, section 82 of our Order in Council requires the judge to report whether any (in this context), *corrupt practice has been committed by*, or with the knowledge and consent of, any candidate, or by *his agent*. Similarly, section 77 (c) declares the relevant ground of avoidance to be that a *corrupt practice was committed* by the candidate or with his knowledge or consent, or *by any agent of the candidate*. While in England avoidance follows only because *the candidate committed the offence*, either by himself or by his agents, in Ceylon the ground of avoidance is that an offence committed by some other person was committed either with the knowledge or consent, or by an agent, of the candidate. In view of these differences it is safer to rely on English decisions only in so far as they appear to support what would be the *prima facie* construction of our own law. Here then, was an offence committed by Withanachchi. The learned Trial Judge, relying upon the *Barnstaple* principle, held that she was a subordinate agent of the Appellant, and that the statements she made were made as such agent. There is no question that she made the statements in the course of promoting the election of the Appellant. There is no difficulty in placing upon section 77(c) the construction that a corrupt practice committed by an agent in the course of her known object of promoting a candidate's election is one within the contemplation of section 77 (c). Even if English decisions *in pari materia* may be of assistance in construing our law, no decision was cited during the argument, which held, that to make a speech at an election meeting is not to promote the election of a particular candidate.

I accept Mr. Perera's argument that every corrupt practice committed by any and every agent of a candidate must not be held, within the meaning of section 77 (c) of our Order in Council, to have been committed *by an agent*. The decision in *Tilekewardene v. Obeysekere* [1], clearly supports that argument, since it holds that an express authorisation to *borrow* motor cars for election purposes, but not to hire them, does not

[1] *(1931) 33 N. L. R. 126.*

render a candidate liable if the agent in excess of his authority hires cars instead. Nor do I disagree with the reliance there placed on English decisions to the effect that a restricted, as opposed to a general, authority to canvass *specified voters* did not render a candidate responsible for illegal acts done by his agent of his own accord in canvassing *other voters*. But in the present case, Withanachchi had general authority to promote the Appellant's election by her speeches.

In *Rutnam v. Banda* [1], the second charge was that the respondent (the successful candidate at the election) " by persons acting on his behalf used force and violence in order to induce and compel voters to refrain from voting at the election ". According to the findings of Hearne, J. on this charge, the force and violence was exercised on polling day itself by two named individuals. The reasons stated for the finding, that " undue influence was exercised by two agents of the respondent ", and that the election must therefore be declared to be void, are important for the present purposes. In the case of one individual, the respondent had admitted at the trial that he was aware that the individual was working to get him voters, and that he was content to rely on his support. In the case of the other individual, Hearne, J. held on the evidence, that this individual had been clearly authorised to canvass voters for the respondent, and that the respondent had solicited this individual's support on his behalf. Hearne, J. decided that the authority to canvass established the ' agency ' for the purpose of rendering the respondent liable for the acts of the agents in preventing voters from voting on polling day. With respect, the justificaton for that decision is his other finding that the respondent had solicited the support of the agents, not only for canvassing, but to promote his election.

In my opinion there is here authority for the proposition that, when a candidate engages the services of a person generally to promote his candidature, any act of that person performed with the object of promoting the candidature is the act of an agent within the meaning of section 77 (c). Accordingly, any person who is invited by a candidate, or by his agent authorised to convene an election meeting, to speak at any such meeting in support of the election, has implied general authority, amounting perhaps to *carte blanche*, to make any speech which in the opinion of that person is likely to promote the election, and a false statement made by that person in such circumstances is made by an ' agent ' within the meaning of section 77 (*c*).

It was argued that section 77(*c*) should not be construed in this way, because of the consequent avoidance of an election and the disqualification of the candidates. But that is not the only consideration involved. There is the need to prevent the infringement of every candidate's right that his chances of election must not be prejudiced by false statements which discredit him, and which indeed are expressly prohibited by section 58 (1) (*d*). If such false statements are made by persons invited to

[1] *(1944) 45 N. L. R. 145.*

promote a candidate's election by making speeches, it is not unreasonable that the candidate should be penalised. There is no evidence that the Appellant in this case attempted to discourage or prevent Withanachchi from making such statements.

I must consider now the objection taken on behalf of the Appellant that the Election Judge erred in law in holding that Withanachchi had committed a corrupt practice. The objection was in substance, that there was misdirection regarding the burden of proving the falsity of Withanachchi's statement that the Petitioner took a bribe from her. The evidence relevant to this matter was—

1. That of witnesses who claimed to have heard the statement made by Withanachchi at meetings.
2. The denial at the trial by the Petitioner that he took the bribe.
3. The evidence of Withanachchi at the trial that the Petitioner took the bribe.
4. Certain other matters, some of which the Election Judge regarded as being matters which negatived the truth of Withanachchi's statements, and some of which showed her to be an untruthful witness.

In the first part of his judgment, the Election Judge stated his intention not to act upon the Petitioner's denials (cf. 2 above), without examining them with reference to surrounding circumstances. He thereafter considered Withanachchi's evidence and stated three different grounds for disbelieving her. Firstly, because of falsehoods in her other evidence ; secondly, because he inferred from a letter written by her in October 1964 and from certain other matters that her story concerning her relations with the Petitioner was untrue. The third ground relating to her motives was not, I agree, a valid one. The Election Judge did not expressly state that he ultimately accepted the Petitioner's denial of the bribe. On this score, Mr. Perera contended that in the result he disbelieved both Withanachchi and the Petitioner, and that accordingly, the falsity of Withanachchi's statements had not been established.

I must reject this contention for two reasons. One is that the Judge did not in fact disbelieve the Petitioner on this question of a bribe. He at first left that question open to be decided after a consideration of all the relevant evidence, and his ultimate finding that Withanachchi's statements were false shows that he accepted the Petitioner's denial as being true. My second reason is that disbelief of *Withanachchi's evidence* of the alleged bribe necessarily meant disbelief of the truth of her *former statements* concerning the bribe. Wherever the burden of proof lay initially, the position at the end of the trial was that the Judge rejected the evidence of the bribe as being untrue. With great respect, it would be contrary to common sense to hold that nevertheless the falsity of the same story as told by the same person on previous occasions had not been established.

Before concluding this judgment, I must concede that I have attributed to the Trial Judge, in some instances, inferences and assumptions which he has not expressly stated in his judgment, although in all these instances it is readily apparent that the findings of fact could only have been reached with the aid of such inferences and assumptions, which properly arose on the evidence. I may also, in one or two instances, have found support for the Judge's findings of fact in evidence which he has not expressly accepted, but only when it was manifest that the Judge did intend to act upon such evidence, or would have so acted. The determination of an Election Judge can only be reversed on the ground of misdirection on a question of law, and the jurisdiction to reverse his findings of fact on such a ground is a strictly limited one. In such a context, the Appellate Tribunal has not merely the power, but also the duty, to seek valid reasons upon which to support the findings of fact. at least to the extent which I have thought fit in this case.

I hold that there was no misdirection in the finding that a corrupt practice was committed by the Appellant's agent Withanachchi. The determination of the Election Judge is affirmed with costs.

SANSONI, C.J.—I agree.

T. S. FERNANDO, J.—I agree.

Appeal dismissed.