

1942

Present : Hearne J.

JEELIN SILVA v. KULARATNE

IN THE MATTER OF ELECTION PETITION NO. 1 OF BALAPITTIYA

Election petition—Charges of undue influence—treating and impersonation—Charges of general intimidation, &c.—Charges in excess of three—Security insufficient—Ceylon (State Council Elections) Order in Council, 1931, Rule 12 (2) and (3).

Where an election petition contained charges of undue influence, treating and impersonation which had been committed by the respondent or with his knowledge or consent by his agents, and where it also prayed that the election be declared void by reason of general intimidation and impersonation on a large scale and general treating,—

Held, that as more than three charges had been laid and as a sum of Rs. 5,000 only had been tendered as security, the petitioner had failed to comply with the requirements of Rule 12 (2) of the Ceylon (State Council Elections) Order in Council, 1931.

THIS was an application by the respondent to dismiss the election petition on the ground that the security tendered by the petitioner was insufficient.

H. V. Perera, K.C. (with him *G. P. J. Kurukulasuriya* and *G. P. A. Silva*, instructed by *S. R. Ameresekere*) in support.

A. P. de Zoysa (instructed by *M. P. P. Samarasinghe*) for the respondent, petitioner.

Cur. adv. vult.

August 25, 1942. HEARNE J.—

The petition filed by the petitioner contained charges of undue influence, treating and impersonation which, it was alleged, had been committed "by the respondent or with his knowledge or consent or by his agents" and it was prayed that the election of the respondent be declared void by virtue of Article 74 (c) of the Ceylon (State Council Elections) Order in Council, 1931. It was also prayed that the election be declared void "by reason of general intimidation and impersonation on a large scale and of general treating" (Article 74 (a)).

Rule 12 (2) provides a minimum security of Rs. 5,000 and Rs. 2,000 for each charge in excess of three. The security is required to be given "at the time of the presentation of the petition or within three days afterwards", and if not so given Rule 12 (3) provides that "no further proceedings shall be had on the petition".

The respondent has moved for the dismissal of the petition under Rule 12 (3) on the ground that, as more than three charges were laid and as a sum of Rs. 5,000 only was tendered as security, the petitioner failed to comply with the requirements of Rule 12 (2).

It was argued on behalf of the petitioner that it was not his intention to make a charge of general intimidation, general treating and impersonation on a large scale: that what he intended was to suggest that the *general character* of the intimidation, treating and impersonation might and probably would be inferred from the widespread activities of the respondent and his agents of which proof would be offered: and, finally, that while the respondent's ingenuity has brought four charges to light, one of them can only be said to be "latent in the petition".

The intentions and mental reservations of the petitioner are beside the point now in issue. The notion of a "latent charge" is without any legal sanction. The only question is how many charges did the petition contain? The answer, as a matter of simple calculation, is four. There were three of corrupt practices alleged to have been committed by the respondent or his agents and one of general intimidation, general treating, &c. which, if proved, would have had the effect of unseating the successful candidate, even if connivance on his part or agency could not be established. It must, therefore, be held that the security tendered by the petitioner was insufficient.

It was further argued that even if the security was insufficient the petition would not be dismissed on this ground alone by reason of the provisions of Rules 19 to 21. It has been held by this Court that these rules have no application in cases where the petitioner has not furnished security to the right amount.

The motion is allowed with costs to the respondent.

Petition dismissed.