

**MUTTETUWEGAMA
V.
GUNASEKERA AND OTHERS**

SUPREME COURT
SAMARAKOON, C.J., WANASUNDERA, J., AND SOZA, J.
S.C. NO. EP 2/82
JANUARY 24, 1983.

Election Petition — Ceylon (Parliamentary Elections) Order-in-Council, Section 80 B (C) — “Material Facts”.

The 1st Petitioner-Respondent challenged the election of the Respondent-Appellant as a member of Parliament setting out, inter-alia, “material facts” in the petition. The Respondent-Appellant contended that the pleading did not comply with the provisions of Section 80 of the Elections Order-in-Council (Cap. 381) as it had not contained “full particulars”.

Held —

There is a statutory distinction between “material facts” and “full particulars” and it is sufficient if the petition shows the *prima facie* ground for avoiding the election.

Case referred to :

1. *Wijewardena V. Senanayake* 76 NLR 97 at 106.

H. L. de Silva, S. A. with *K. Shanmugalingam, Sidat Sri Nandalochana, Peter Jayasekera* and *S. H. M. Razeek* for Respondent-Appellant.

K. Shanmugalingam with *D. S. Wijesinghe* and *Miss Saumya de Silva* for 2nd and 3rd Respondents.

George Candappa with *S. C. Crossette Thambiah, V. Basnayake, Daya Pelpola* and *Ronald Perera* for Petitioner-Respondent.

Cur. adv. vult

February 11, 1983.

SAMARAKOON, C. J.

The Appellant was elected as Member of Parliament to the Kalawana Constituency at a by-election held on 12-01-81. The first Respondent challenged this election setting out two grounds in his petition.

We are here concerned with the second ground alleging general intimidation committed by the supporters of the Appellant within the meaning of section 77(a) of the Ceylon (Parliamentary Elections) Order in Council 1946. Paragraph 7 of the petition sets out the material facts as follows :

“The material facts on which the Petitioner relies are as follows :—

“(a) The harassments, threats and intimidation of supporters of the petitioner and the threats and intimidation held out to Voters and Electors and even polling agents by those who were supporting the 1st respondent.

(b) Physical violence, use of firearms, attacks on supporters of the said Petitioner during the Election campaign and attacks on motor vehicles which were used by the supporters of the Petitioner all of which were carried out by the supporters of the 1st Respondant.

(c) That the supporters of the 1st Respondent prevented the petitioner from attending the petitioner’s election meeting of Aiyagama on 10-1-1981 by use of road blocks on the said road to Aiyagama.

(d) That the Voters of Medagalature were threatened with swords by supporters of the 1st Respondent on 10-1-1981.

(e) That the supporters of the 1st Respondent threatened and or used physical force and violence during the period on 4-1-1981 to 11-1-1981 preventing the Voters of Alupathgala Koswatta, Singharajahandiya, Meddagala, Galature, Nikagoda, Manane, Pimbura, Uthuru Meddagala, Ramburakotuwa, preventing the said Voters from exercising the choice of their free will.

(f) That the supporters of the 1st Respondent did on 12-1-1981 threaten, harass and intimidate the Voters of Galature,

Manane, Pimbura, Pelawala and Niriella and thereby prevent the said Voters from exercising their free will."

The Appellant contends that this pleading is not a compliance with the provisions of section 80 B(C) of the Election Order in Council as amended by Act No. 9 of 1970 which states that the Petition "shall contain a concise statement of the material facts on which the Petitioner relies". Counsel submitted that merely stating the acts which are relied on is insufficient. He contends that the Petition must provide the names of the perpetrators, the names of the victims of such acts and the names of the places at which such acts were committed. He stated that full particulars must be given. Throughout his argument he used the words "full particulars". It is significant that whereas the provisions of Section 80B(d) require full particulars, Section 80 B(C) does not require "full particulars". It only requires "material facts" to be pleaded and that too, only a concise statement. I have always understood a "concise statement" to be one that is brief and comprehensive. This is one of the basic rules of pleadings in Civil Courts. (Vide Section 40 of the Civil Procedure Code). Such a requirement eliminates prolixity. This concise statement must set out the "material facts" on which the Petitioner relies. A comparison of Section 80B(c) and (d) shows a statutory distinction between "material facts", and "full particulars". The latter has a wider range in that it includes as full a statement as possible of names of parties and the date and place of commission of the corrupt or illegal practice. One rule common to both is that evidence need not be pleaded. For the purpose of providing material facts the Petitioner is not obliged to give full facts. All he need do is to plead such facts as are essential to show *prima facie* ground for avoiding the election, and also all such essential facts which he seeks to rely on to establish the ground or grounds of avoidance. If he is in possession of more facts than one he must plead all those he relies on. In a charge of general intimidation "a Petitioner must specify at the least the nature of the alleged intimidation; whether it consisted of actual violence, or of threats of violence, or of some other kind of intimidation, and when and where such intimidation is alleged to have occurred. A petitioner cannot be permitted merely to

specify a ground of general intimidation in an election petition with the hope that he can substantiate it with evidence subsequently secured". per Fernando, C.J. in *Wijewardena v. Senanayake*. The Respondent is entitled to know the nature of the charge against him.

Looked at in this light I do not think the pleadings in para 7 of the petition are wanting in any manner. There are sufficient pleadings to proceed to inquiry on the charge and the Petitioner is restricted to such instances as are therein set out. I would therefore dismiss the appeal with costs.

WANASUNDERA, J. — I agree

SOZA, J. — I agree

Appeal dismissed.