

RAJINDRANATH
v.
COMMISSIONER OF ELECTIONS & OTHERS

COURT OF APPEAL
TILAKAWARDENA, J.
C.A. EP 3/2000
MARCH 02ND, 2001

Parliamentary Elections Act 1 of 1982 - S.92, 96(a) - Rule 14 of Parliamentary Election - Petition Rules 1981 - Time limit of 14 days - Irregularity in the procedure followed at the Registry.

The petitioner filed the Election Petition on 02. 11. 2001 challenging the results of the Parliamentary General Elections held on 10. 10. 2000 for the Electoral District of Maha Nuwara.

The Registrar of the Court of Appeal has intimated to Court that No Notice of the presentation of the Petition had been tendered to the office of the Registrar. Ex-facie it appeared that on the Records that there was cause for the Petition to be rejected, for non compliance with the time limit of 10 days in Rule 14.

Held :

- (i) An irregularity in the procedure followed at the registry had led to an error in the information furnished by the Registrar, Election Petitions, Notices or Motion pertaining to Election Petitions should have been, upon an acceptance by the Registry endorsed in the Elections Register and not in the General Motion Book.

The litigant should not suffer the hardship or mistakes deliberately or otherwise made by the Registry.

In the matter of an Election Petition.

Cases referred to :

1. *Nanayakkara v. Kiriella (Decd) and others* - 1985 2 SLR 391.
2. *Chandrakumar v. Kirubakaran and others* - 1989 2 SLR 35.

K. N. Choksy PC with Daya Pelpola, S. J. Mohideen, Ronald Perera and S. H. A. Mohamed for Petitioner.

Cur. adv. vult.

March 22, 2001.

SHIRANEE TILAKAWARDENA, J.

The Petitioner filed this Election Petition on 02. 11. 2001, challenging the results of the Parliamentary General Elections held on 10. 10. 2000 for the Electoral District of Mahanuwara. In terms of section 96 (a) of the Parliamentary Elections Act No: 1 of 1981 as amended, he sought that the said election for the District of Mahanuwara be declared void in terms of Section 92(1) of the aforesaid Act.

The **Registrar of the Court of Appeal** had intimated to this Court (by J. E. dated 1. 1. 2000) that **no notices of the presentation of the Petition had been tendered** to the office of the Registrar. No proof of service by the Petitioner on the Respondents of notice of the presentation of the Petition and a copy of the Petition had been furnished. No documents had been filed to prove service of the aforesaid notices on the Respondent either by post or other mode of delivery. Therefore this Court issued notice on the Petitioner to show cause as to why the petition should not be rejected by the Court as *ex facie* it appeared that 'the presentation of the Petition' had not been in compliance with the terms of Rule 14 of the Parliamentary Election Petition Rules, 1981. This Rule reads as follows:-

14(1) Notice of the presentation of a Petition, accompanied by a copy thereof shall, **within ten days** of the presentation of the Petition-

- (a) be served by the Petitioner on the Respondent: or
- (b) be delivered at the office of the Registrar for service on the Respondent, and the Registrar or the officer of his department to whom such notice and copy is delivered shall, if required, give a receipt in such form as may be approved by the President of the Court of Appeal.

(2) The service under paragraph (1) of notice of the presentation of a petition and copy thereof by the Petitioner on the Respondent may be effected either by delivering such notice

and copy to the agent appointed by the Respondent under rule 9 or by posting them in a registered letter to the address given under rule 9 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or by a notice published in the Gazette stating that such petition has been presented and that a copy of it may be obtained by the respondent on application at the office of the Registrar.

- (3) Where notice of the presentation of a petition, accompanied by a copy thereof, is delivered under paragraph (1) at the office of the Registrar for service on the respondent, such service may be effected in the same manner as the service of a notice issued by a court is effected under the Civil Procedure Code.

President's Counsel conceded on behalf of the Petitioner that rules pertaining to procedure as well as limits set on time were mandatory. In the case of *Nanayakkara v. Kiriella (Deceased) and others*⁽¹⁾, Collin Thome J had held that the time limit prescribed by Rule 15(1) of the Parliamentary Elections Petition Rules of 1946 Rules (which was identical to the present Rule 14 adverted to above) for service of notice of the presentation of an Election Petition on the Respondents was mandatory and applied to every mode of service set out under the sub paragraphs (a) and (b). Even where the Petitioner delivered to the Registrar the notices and copies of the Petition under the aforesaid Rule the **actual service must be affected within ten days**.

This section envisages that notice of presentation must be tendered within ten days and further allows the Petitioner a choice of one of several modes of service.

- (a) By service of the notices and a copy of the Petition by the Petitioner on the Respondent **directly**. The Petitioner could directly send the notices and a copy of the Petition under **Registered Cover** - and a Registered Article Receipt would be sufficient proof of such service.

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- (b) **Delivery** of such notices and a copy of the Petition to the Agent appointed under Rule 9 of the said Parliamentary Elections Act 1 of 1981.
- (c) By **posting** the notices and a copy of the Petition under Registered Cover to the address of the aforesaid Agent. However the date of posting must be such that, in the ordinary course of post, the letter would be delivered within ten days of the lodging of the Petition.
- (d) **By notice published in the gazette** stating that such Petition had been presented to the Court of Appeal and that a copy of it may be obtained by the Respondent on demand or upon an application at the Office of the Registrar.
2. To be delivered at the office of the Registrar for service on the Respondent - it being incumbent upon the Registrar, if so requested, to issue a receipt in such form as may be approved by the President of the Court of Appeal.

Where the Petitioner serves a copy of the Petition and notices, and **obtains the services of the Registrar** for service on the Respondent directly, such service may be effected in the same manner as the service of a notice issued by a Court **is effected under the Civil Procedure Code**. (Section 356 read with 59 - 70 of the Civil Procedure Code). This would include service by **registered post, personal service, substituted service**, such service being in accordance to the manner prescribed in the Civil procedure Code.

Whichever mode of service that the Petitioner chose out of the several options referred to above, it remains mandatory that it would be within the time limit of ten days from the lodging of the Petition in the Registry of the Court.

Non compliance within the aforesaid prescribed period of ten days would entitle this Court to reject the Petition. (*Chandrakumar v. Kirubakaran and others*⁽²⁾)

As ex facie it appeared on the Court of Appeal records, that there was cause for the Petition to be rejected notice was issued on the Petitioner. Upon being noticed, the Agent and the Attorney

at law for the Petitioner filed a motion dated 26. 02. 2001. According to this motion, notices together with a copy of the Petition had been served on all the Respondents by Registered Post on the 02. 11. 2000. The Petitioner had also submitted as proof of posting Registered Article Receipts 4761 to 4774 dated 02. 11. 2000 together with the list referred to therein. According to the motion none of the packages so posted were returned. The obvious inference being that the Respondents had received the notices and Petition.

The motion also adverted to the fact that additionally, notices had been gazetted in the Gazette Extraordinary bearing No. 1156/43 dated 3rd November 2000, and fourteen copies of the Election Petition had been tendered to the Registrar. A copy of such notices had been handed over and had been registered in the **Motion Register** (not the Register for Election Petitions) on 06. 11. 2000. A scrutiny of the Motion Register substantiated this position. The relevant Motion Register bears a corresponding endorsement dated 06. 11. 2000.

This information is however contrary to the Journal Entry of the Registrar dated 01. 01. 2001, where in reply to a query by Court he had stated that no notices had been tendered to the Registry. Undoubtedly an irregularity in the procedure followed at the Registry had led to an error in the information furnished by the Registrar. Election Petitions, notices or motions pertaining to Election Petitions should have been, upon acceptance by the Registry, endorsed in the Elections Register. Inexplicably they had instead been accepted and filed in the General Motion book, and an endorsement made therein. Clearly, the litigant should not suffer the hardship or mistakes deliberately or otherwise made by the Registry.

I therefore hold that *ex facie* it appears that the Petition had been duly Presented to the Registrar in compliance with the manner prescribed in section 14 of the Parliamentary Elections Act 1 of 1981 as amended.

The Election Petition has been duly presented to the registrar.