

**INDRA KUMAR**  
**v.**  
**DAYANANDA DISSANAYAKE AND OTHERS**

COURT OF APPEAL.  
J.A.N.de SILVA, J.  
C.A. NO. 1017/2000.  
4<sup>TH</sup> OCTOBER, 2000.

▷ *Writ of Certiorari/Mandamus - Quash decision of Returning Officer accepting nomination paper - Parliamentary Elections Act 1 of 1981 - S. 19, S.7(5), S.19 1(a), S.19 1(b) Sec, 46(a) - Constitution - Article 99(3), and 140 - Returning Officer Should he hold a formal inquiry?*

The Petitioner, who is a candidate of the Tamil Elam Liberation Organisation for the Electoral District of Batticaloa sought to quash the decision of the Returning officer accepting the nomination papers of the National Unity Alliance, on the ground that the 4<sup>th</sup> Respondent's signature on the Nomination Paper was forged and that the 10<sup>th</sup> Respondent was under detention and that he too could not have signed the Nomination Paper.

**Held :**

(i) The scheme of Parliamentary Elections Act does not require the Returning Officer to conduct a formal inquiry. S.7(5) provides that an inquiry should be held in considering whether or not to recognise a political party.

(ii) Returning Officer has only to check that the Nomination Papers contain the total number of candidates. Inquiry must be strictly limited to the grounds in S.19(1). The functions are purely ministerial.

(iii) New material placed before Court cannot be taken into account to decide the correctness or legality of the decision of the Returning Officer, to whom such material was not available.

(iv) The specific remedy provided in respect of a forged nomination paper is only against the person responsible for the forgery or for the delivery of the forged nomination paper.

(v) Even if a signature of the candidate is found to have been forged the other candidates cannot be penalised for a fraudulent act of some other person. The entire list cannot be rejected. The voters are given an opportunity to vote for the party/group of their choice.

### **APPLICATION for a Writ of Certiorari/Mandamus**

#### **Cases referred to :**

1. *Cooper vs. The Board of Workers of the Wandsworth District - 1863 14 CBNS 180.*
2. *Ridge vs. Baldwin - 1964 AC 401.*
3. *Durayappa vs. Fernando - 1967 2 AC 337.*
4. *Wisemen vs. Baremen - 1971 AC 291*
5. *Virakesari Ltd. vs. Fernando - 66 NLR 145.*

*L. C. Seneviratne, PC with Ronald Perera and Abdul Najeem for Petitioner.*

*S. Stripavan DSG with A. R. Ameen, SC for 1<sup>st</sup> & 2<sup>nd</sup> Respondents.*

*Faiz Mustapha, PC with Faizar Mustapha and Ms. Faiza Marker for 3<sup>rd</sup> Respondent.*

*R. K. W. Gunasekera for 5<sup>th</sup> Respondent.*

*Dr. Jayampathy Wickremaratne with Abdul Kalan for the 6<sup>th</sup> & 7<sup>th</sup> Respondents.*

*N. M. Saheed with Nizam Kariappan for 10<sup>th</sup> Respondent.*

*Cur. adv. vult.*

October 09, 2000.

**J. A. N. DE SILVA, J.**

The petitioner is a candidate of the Tamil Elam Liberation Organization (TELO) for the Electoral District of Batticaloa at the forthcoming general elections due to be held on **10.10.2000**. By this application the petitioner seeks a mandate in the nature of a writ of certiorari to quash the decision of the Returning Officer for the Electoral District of Batticaloa, accepting the nomination paper of National Unity Alliance

(NUA) and for a writ of mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents that the said nomination paper be deemed to have been rejected.

The petitioner has pleaded,

- (a) That the 4<sup>th</sup> respondent Chelliah Rajadurai's signature on the nomination paper has been forged and was not lawfully attested by the Justice of the Peace for the reason that the 4<sup>th</sup> respondent was in Malaysia at that time.
- (b) That the 10<sup>th</sup> respondent was under detention by the Special Investigation Unit of the Kandy Police and that he too could not have signed the nomination paper.

The petitioner has further stated that these objections were raised by some others against the nomination paper of National Unity Alliance but the Returning Officer rejected the objections and accepted the nomination paper. The petitioner himself has not raised any objection. It is observed that the material referred to in paragraphs 17, 18, 19, 21, 22, 23, 24 and 27 of the petition were not brought to the notice of the Returning Officer at the time the objections were raised. These paragraphs contain averments relating to News Paper Reports regarding the 4<sup>th</sup> and 10<sup>th</sup> respondents.

When this application was supported in this Court notice was issued and on the notice returnable date several counsel represented the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup> respondents and raised several objections and invited the Court to reject the petitioners application in limine.

Mr. S. Sripavan, DSG, who appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the decision of the Returning Officer to accept the nomination paper of National Unity

Alliance was in accordance with Section 19 of the Parliamentary Elections Act No. 1 of 1981 as amended.

Under Section 19 of the Parliamentary Election Act the Returning Officer is required to examine the nomination paper received by him and reject any nomination paper on any grounds stated therein. The relevant ground is stated in Section 19(1)(b) as follows.

“that does not contain the total number of candidates required to be nominated in terms of Article 99(3) of the Constitution.”

Section 19(1)(a) provides that objections be entertained between 12 noon and 1.30PM on the last date of nomination and that no objections shall be entertained thereafter. Section 19(1) requires the Returning Officer to “examine the nomination paper”. Mr. Sripavan submitted that the Returning Officers scope of inquiry is restricted to “examine the nomination paper” and cannot go beyond it. It was his position that even if the material referred in paragraphs 17, 18, 19, 21, 22, 23 and 27 of the petition were brought to the notice of the Returning Officer at the time the objections were raised the Returning Officer would have to disregard those and decide the question as to whether or not to accept the nomination paper by “examining the nomination papers alone.”

It was contended on behalf of the petitioner that upon objections being duly made to any nomination paper the Returning Officer is legally obliged to hold an investigation or inquiry into the objection in order to decide whether the nomination paper should be accepted or rejected on the basis of the said objections. Counsel submitted that it is implicit in the provision of Section 19(1) and (1)(a) that an inquiry should be held and relied on the decisions of the following cases *Cooper Vs The Board of Workers of the Wandsworth District*<sup>(1)</sup>, *Ridge Vs Baldwin*<sup>(2)</sup>, *Durayappa Vs Fernando*<sup>(3)</sup>, *Wisemen Vs Baremen*<sup>(4)</sup> and Wade on Administration Law 6<sup>th</sup> Edition page 502.

It is to be noted that the petitioner has not pleaded that a

formal inquiry into the objection was requested from the Returning Officer. Furthermore the petitioner has also not pleaded that the aforesaid decision of the Returning Officer to accept the nomination paper was invalid for breach of the rules of Natural Justice.

In any event the scheme of the Parliamentary Elections Act No 1 of 1981 does not require the Returning Officer to conduct a formal inquiry. In section 7(5) of the Act it is specifically provided that an inquiry should be held in considering whether or not to recognize a political party as a recognised political party. It is clear from the wording of Section 19(1) that all that the Returning Officer is required to examine are the nomination papers received by him. He has only to check that the nomination papers contain the total number of candidates. Thus he only does a count of the names of candidates in the list. Whether a candidate is qualified or not is not a matter for him at this stage. This inquiry must be strictly limited to the grounds set out in 19(1), the grounds relevant to this application being the number of candidates on the list. The returning Officers function is purely ministerial and limited to the question whether the nomination paper contains the required number of candidates.

Mr. Mustapha, PC, who appeared for the 3<sup>rd</sup> respondent raised a further point. He referred to Article 140 of the Constitution which deals with the prerogative writs and the authority of the Court of Appeal "to inspect and examine the records of any Court in the first instance or tribunal or other institutions" and submitted that the record in this case is limited to the nomination paper that the Returning Officer was required to examine under Section 19(1). He cited the decision in *Virakesari Ltd. Vs Fernando*<sup>(5)</sup> where the Supreme Court dealt with the question as to what constitutes the "record" of an inferior Court. In that case the Supreme Court referred to several English decisions and quoted with approval the statement of Lord Denning that "all those documents which appear therefrom to be the basis of the decision that on which it was grounded." Relying on this Judgement Counsel submitted that this Court could only examine the nomination

papers the Returning Officer was required to examine and nothing more. I am in agreement with this submission. The new material placed before the Court cannot be taken into account to decide the correctness or legality of the decision of the Returning Officer to whom such material was not available.

It was also submitted that the petitioner has alternative remedies in terms of Section 92(2)(d) of the Act to proceed by way of an election petition. The petitioner can also apply for a writ of quo warranto. Mr. Mustapha, PC, submitted that the legislature had specifically addressed its mind to the possibility of a forged nomination paper and had prescribed a criminal sanction for the same in Section 66(a) of the Act. Under Section 66 of the Act a person who forges a nomination paper or deliver a nomination paper knowing it to be forged would be guilty of an offence and upon conviction be liable for imprisonment. He would also be incapable of being an elector or being elected to parliament for a period of seven years. If he has been elected his election would be vacated from the day of the conviction. It is to be noted that under Section 66(a) a forged nomination paper can only result in a member vacating his seat. This section does not provide any sanction against the political party. The specific remedy provided in respect of a forged nomination paper is only against the person responsible for the forgery or for the delivery of the forged nomination paper. Other candidates or the party are not penalised. This is in conformity with the principles of proportional representation.

Mr. R. K. W. Gunasekara drew the attention of Court to the Parliamentary Elections (Order in Council) that applied to individual electorates before proportional representation was introduced. Under the Order in Council a candidates name is proposed and seconded by electors from the electorates. The nomination paper is handed over by the candidate himself or by the proposer of the candidate. The political party plays a very limited role by only permitting a candidate to contest as a candidate of the party. A candidate may elect to contest as an independent candidate. Under the proportional representations, different considerations apply. Political

parties or independent groups contest the election. There is no room for an individual candidate to contest. Those wishing to contest must be nominated by a political party or be a member of an independent group. The voter cast the vote for a particular party or a group and may, if he so wishes mark preferences for up to three candidates. The form of the nomination paper is given in the first schedule to the Act. A candidate places his signature signifying his consent and certifying that he is not disqualified. The nomination paper itself is signed by the secretary of the party or the group leader. The difference between the first past the post system that applied to parliamentary elections before 1978 and the proportional representation system that applies now is very significant. Even if a signature of a candidate is found to have been forged the other candidates cannot be penalised for a fraudulent act of some other person. The entire list cannot be rejected. The voters are given an opportunity to vote for the party or group of their choice.

The result the petitioner in the instant case seeks to achieve is the exclusion of NUA from election. If the relief sought is granted, the election will be held without the name and symbol of NUA appearing on the ballot paper, thereby depriving the electors an opportunity to consider voting for NUA. By this process the petitioner is seeking to achieve a result which he cannot achieve by way of an election petition. I am of the view that to permit this would be to go against the policy of the Act and the principles of proportional representation. This is more so because the seats from the national list will be decided from the total number of votes a party receives. I am also mindful of the fact that postal vote is concluded and great prejudice would be caused to the people who are eligible to vote in the Electoral District of Batticaloa. In the circumstances I uphold the preliminary objections raised by the respondents and dismiss this application without costs.

*Preliminary objections upheld.  
Application dismissed.*