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

C. S. RATWATTE, Appellant, *and* S. D. PIYASENA, Respondent

Election Petition Appeal No. 3 of 1966—Electoral District No. 141 (Balangoda)

Election petition—Appointment of Election Judge by Governor-General—Constitutional validity thereof—Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by Act No. 11 of 1959, and Act No. 72 of 1961, s. 78A (1)—Ceylon (Constitution) Order in Council, 1946, as amended by Act No. 71 of 1961, ss. 4 (2), 29 (4), 52, 55 (5)—Parliament (Powers and Privileges) Act (Cap. 383), s. 7.

The appointment of an Election Judge nominated by the Chief Justice in terms of section 78A (1) of the Ceylon (Parliamentary Elections) Order in Council to hear an election petition is not rendered constitutionally invalid by the fact that he is nominated from the panel of Election Judges appointed by the Governor-General with the advice of the Judicial Service Commission in terms of section 78 (1), as amended by Acts Nos. 11 of 1959 and 72 of 1961.

Per SANSONI, C.J.—"The Ceylon (Parliamentary Elections) Order in Council is subject to amendment or repeal, like any ordinary Act of Parliament, by a simple majority. It is certainly not a part of the Constitution, and it therefore has none of the sanctity which attaches to the latter."

Per H. N. G. FERNANDO, S.P.J.—"Assuming, but not deciding, that section 78 (of the Parliamentary Elections Order in Council), if it had stood alone, would conflict with the Constitution, I would hold that such conflict has been avoided by the amendment of section 55 of the Constitution."

Per TAMBIAH, J.—"Even if the view is taken that the Election Court is exercising judicial power, section 55 of the Constitution has been properly amended by Act 71 of 1961 which was passed by a two-third majority of the House."

ELECTION Petition Appeal No. 3 of 1966—Electoral District No. 141 (Balangoda).

G. E. Chitty, Q.C., with *E. R. S. R. Coomaraswamy, Felix R. Dias Bandaranaike, U. B. Weerasekera* and *Nihal Jayawickrema*, for Respondent-Appellant.

H. W. Jayewardene, Q.C., with *Izadeen Mohamed* and *D. S. Wijewardene*, for Petitioner-Respondent.

V. Tennekoon, Q.C., Solicitor-General, with *M. Kanagasunderam* and *Ananda G. de Silva*, Crown Counsel, for Attorney-General.

Cur. adv. vult.

BR 19358—1,064 (11/66)

August 11, 1966. SANSONI, C.J.—

The petition of appeal filed by the respondent-appellant whose election had been declared void by the Election Judge contains twenty-five paragraphs, but the only point seriously argued on his behalf is that contained in paragraph 25. It reads : " The election Court as constituted had no jurisdiction to enquire into and determine the said election petition in as much as the Court had not been validly constituted and the Judge of that Court had not been validly appointed according to law and in terms of the Constitution."

The Election Judge was nominated to try this election petition by the Chief Justice in terms of section 78A (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, from the panel of Election Judges appointed by the Governor-General with the advice of the Judicial Service Commission in terms of section 78 (1). That panel was appointed for one year from 15th June, 1965, and consisted of all the Judges of the Supreme Court and the District Judges of Colombo and Galle.

To appreciate the arguments put forward for the appellant it is necessary to refer to certain statutory provisions relating to the trial of Election petitions. Under s. 78 of the Ceylon (Parliamentary Elections) Order in Council, 1946, as originally enacted, every Election petition had to be tried by the Chief Justice or by a Judge of the Supreme Court nominated by the Chief Justice for the purpose. The Chief Justice or the Judge so nominated was described as the Election Judge. Section 78 was amended by Act No. 11 of 1959 which came into force on 7th May, 1959. Sub-section (1) provided that the Governor-General shall, with the advice of the Judicial Service Commission, appoint a panel of not less than five Election Judges. Under sub-section (2) a person appointed was to hold office for such period as the Governor-General may determine at the time of the appointment, unless he chose to resign earlier. A new s. 78A provided that the Chief Justice shall nominate from the panel of Election Judges an Election Judge for the trial of an election petition.

Act No. 72 of 1961 which came into force on 30th December, 1961, made further amendments to s. 78 (1) by providing that the panel of Election Judges should be appointed from among persons for the time being holding office as Judges of the Supreme Court, Commissioners of Assize, or District Judges of the Districts of Colombo, Kandy, Galle and Jaffna. The expression " District Judges " did not, for this purpose, include Additional District Judges. A new sub-section (3) provided that a Commissioner of Assize or a District Judge, for so long as he is an Election Judge for the trial of an election petition, shall be entitled to the same salary as a Commissioner of Assize.

On the very same day that the Amending Act No. 72 of 1961 came into force, the Ceylon (Constitution) Amendment Act No. 71 of 1961, also came into force. It was passed in accordance with the requirements of s. 29 (4) of the Ceylon (Constitution) Order in Council, 1946 (hereinafter referred to as the Constitution), including the Speaker's certificate. It amended s. 55 (5) of the Constitution in regard to the definition of "judicial officer", and as amended the sub-section reads :—

> " ' Judicial officer ' means the holder of any judicial office but does not include a Judge of the Supreme Court, a Commissioner of Assize, or an election judge appointed by the Governor-General under sub-section (1) of Section 78 of the Ceylon (Parliamentary Elections) Order in Council, 1946."

The resulting position with regard to Election Judges is that the Governor-General, with the advice of the Judicial Service Commission, appoints a panel of not less than five Election Judges from among the Judges of the Supreme Court, Commissioners of Assize, and the four District Judges mentioned. They hold office for such period as the Governor-General determines at the time of the appointment. This means that they cannot be removed earlier, although it is open to any of them to resign his office earlier. The Supreme Court Judges so appointed receive their normal salaries ; and a Commissioner of Assize or a District Judge, while he is an Election Judge for the trial of an election petition, receives the salary of a Commissioner of Assize (Section 78 (3)). And an Election Judge is not a judicial officer as that term is used in the Constitution.

The position is, of course, different from that which prevailed when the Ceylon (Parliamentary Elections) Order in Council, 1946, was first made. For whereas formerly all Supreme Court Judges were eligible to try election petitions, now only those who are on the panel may do so. Further, Commissioners of Assize and the four specified District Judges are also qualified to be appointed Election Judges. The appointment of a panel of Election Judges by the Governor-General acting with the advice of the Judicial Service Commission is yet another innovation.

All these changes were attacked as being unconstitutional by Mr. Chitty. He attacked the new power given to the Governor-General because, he urged,

(1) he could act maliciously or unfairly when he appointed the panel, and the Executive should not be given the power to select particular Judges especially where the parties to the election petitions were already known ;

(2) the Governor-General performs a judicial function when he appoints the panel ;

(3) the advice of the Judicial Service Commission may be vague; and even if it was not, the Governor-General was not obliged to follow it since the words in s. 78 (1) were " with the advice " and not " in accordance with the advice ".

He also urged that—

(4) the jurisdiction to try election petitions, which had previously been vested in all the Judges of the Supreme Court, had been taken away and vested in a new Court which need not include all, or even any of the Judges : and the new Court could include other Judges who were not Judges of the Supreme Court;

(5) Section 52 of the Ceylon (Constitution) Order in Council, 1946, which says that the Chief Justice and the Puisne Judges of the Supreme Court and Commissioners of Assize shall be appointed by the Governor-General, had not been amended to include a reference to the new class of Judges;

(6) Irremovability from office had not been provided for in the case of those Election Judges who were not Judges of the Supreme Court, even though they were invested with powers which had formerly belonged only to the Supreme Court.

Therefore, the argument ran, the changes should have been introduced by way of constitutional amendments in accordance with the provisions of s. 29 (4) of the Constitution.

It seems to me that these arguments against the validity of the amendments do not take account of the fact that the Ceylon (Parliamentary Elections) Order in Council is subject to amendment or repeal, like any ordinary Act of Parliament, by a simple majority. It is certainly not a part of the Constitution, and it therefore has none of the sanctity which attaches to the latter. The Constitution was first made on the 15th May, 1946, while the Ceylon (Parliamentary Elections) Order in Council was made on the 24th September, 1946, its object being to make provision for the election of Members to serve in the House of Representatives. It follows that the jurisdiction to try election petitions, which the latter conferred on all the Judges of the Supreme Court, was one which Parliament had the power to remove or alter by creating a new Election Court to be manned by a new set of Judges such as the amendments specify.

It was not necessary to amend s. 52 of the Ceylon (Constitution) Order in Council because that section says nothing about the jurisdiction of the Supreme Court. The amendments in question do not in any way affect the operation of s. 52. The Constitution, I may add, does not vest the jurisdiction to try election petitions in the Supreme Court. It is true

that there is no provision against the removal of an Election Judge from the panel after he has served the period fixed at the time of his appointment. But it must be remembered that only Judges of the Supreme Court are protected from removal under s. 52 (2) of the Constitution. If and when it is considered necessary to extend this protection to Election Judges or any other Judges, of whom there are many in Ceylon, no doubt a proper amendment of the Constitution will be made. The objection raised by Mr. Chitty under this head should properly be addressed to those who have the power to amend the Constitution.

The arguments that in consequence of the amendments the Governor-General can select particular Judges, and that he performs a judicial function in appointing the panel, are unsound. It is unreasonable to imagine that the amendments enable the Executive, in the person of the Governor-General, to interfere with the powers of the judiciary. Under the Constitution the Chief Justice and Puisne Justices of the Supreme Court and Commissioners of Assize are appointed by the Governor-General and nobody else. (S. 52 (1)). The amendments make the Governor-General the appointing authority in the case of Election Judges as well, and this seems to me an entirely proper provision. Section 4 (2) of the Constitution requires the Governor-General to exercise his powers, authorities and functions as far as may be in accordance with the constitutional conventions applicable to the exercise of similar powers, authorities and functions in the United Kingdom by Her Majesty. Hence the Governor-General would always act on the advice of a Minister.

Under the amendments, Parliament has wisely provided that instead of acting on the advice of a Minister when appointing the panel of Election Judges (as he would ordinarily have done according to the constitutional convention), the Governor-General should act with the advice of the Judicial Service Commission, a body which is expected to be entirely free from political influence. Parliament no doubt thought that since political questions may arise in the trial of election petitions to a greater extent than in the appointment of the Chief Justice and the Puisne Justices, it was more appropriate that instead of a Minister, the Judicial Service Commission should advise the Governor-General. Again, according to constitutional convention the Governor-General would be expected to act in accordance with the advice of the Judicial Service Commission and not independently of, or contrary to, such advice. The Commission will, in turn, advise the Governor-General with a due sense of responsibility, as one would expect of such a body.

The argument that the Governor-General performs a judicial function when he appoints the panel cannot be taken seriously. It seems to confuse the executive function, which the Governor-General performs when appointing Judges to their office, with the judicial function which the Chief Justice performs when he nominates a particular Judge to try

a particular election petition. It is not difficult to see why s. 55 of the Constitution was amended. The trial of election petitions had always been assigned in Ceylon to the Supreme Court. The Ceylon (Legislative Council) Orders in Council of 1920 and 1923 provided that every election petition should be tried by a Judge of the Supreme Court; and according to the Rules made under those Orders the Chief Justice appointed a particular Judge to preside at the trial of a particular election petition. Since, therefore, the jurisdiction to try election petitions had, ever since Parliamentary elections were first held, been vested in the Supreme Court, it was probably considered to be an exercise of judicial power. When the amendments made in 1959 and 1961 took away that power from the Supreme Court and vested it in another Court composed of a panel of Election Judges, it may well have been thought that the Judges on the panel who were not Judges of the Supreme Court or Commissioners of Assize appointed by the Governor-General would have to be appointed by the Judicial Service Commission under s. 55 of the Constitution, unless special provision was made to the contrary. Act No. 71 of 1961 was thus enacted to avoid a possible breach of the Constitution, for it was there stated explicitly that all Election Judges should be appointed by the Governor-General and not by the Judicial Service Commission.

At the root of the objections taken to the amendments seems to lie some groundless fear that the innovations would lead to a widespread abuse of power by all who wield it. One can, by flights of imagination, contemplate innumerable possible abuses of power by those who exercise it. But the question before us is not that, nor does the possibility that a particular power will be abused vitiate a constitutional vesting of that power in a particular officer.

Under the impugned amendments the power to try election petitions is now vested, as before, in a body of Judges, though they are not now all Judges of the Supreme Court. The Constitution does not require that they should be Judges of the Supreme Court; hence there is no breach of the Constitution.

I wish to refer briefly now to the submissions of Mr. Jayewardene and the Solicitor-General that an Election Judge does not exercise judicial power. Mr. Jayewardene relied on the right, which the House of Commons in England had regularly claimed, to determine all matters touching the election of their Members. According to Erskine May's Parliamentary Practice, ever since the reign of Queen Elizabeth I the exclusive right of the Commons to determine the legality of returns was recognized by the Courts. It was only in 1868 that the House of Commons delegated its jurisdiction in this matter to the Courts of Law. Mr. Jayewardene argued that by the same reasoning we should hold that the

jurisdiction exercised by Election Judges is a special jurisdiction which does not involve the exercise of a judicial power, being a mere delegation by the House of Representatives to Election Judges.

In view of my findings on the first point discussed at the beginning of this judgment, this point does not strictly arise. I have already held that the amendments made to empower the Governor-General to appoint a panel of Election Judges are perfectly constitutional, and their authority to exercise judicial power has been validly conferred on them. I would, however, draw attention to the fact that the power which the House of Commons exercised in England to try controverted elections is the exercise of a privilege of that House to provide for its own proper constitution. If that is so—and there is the authority of Erskine May for it—I do not find any reservation of such a privilege by the House of Representatives when it enacted the Parliament (Powers and Privileges) Act, Cap. 383, in 1953. In 1953, therefore, having regard to the terms of s. 7 of that Act, the House of Representatives would appear to have abandoned this privilege, even if it had existed before then. In this view of the matter the judgment in *The Queen v. Richards*[1] is inapplicable to the case we have to consider, because there was no such abandonment in Australia and no such legislation as our Act of 1953.

But I am not satisfied that it existed even before. When the first Parliamentary Elections were held in Ceylon in the 1920's, the trial of election petitions was entrusted by Orders in Council to the Judges of the Supreme Court. The privilege in question was never exercised by any legislature in this country, and as I have already said, the House of Commons in England had long since delegated its rights in this matter to the Courts of Law. Therefore it seems to me that this power to try controverted elections was never vested in any body but in a Court of Law exercising judicial power so far as this country is concerned.

The Privy Council decisions from *Theberge v. Laudry*[2] to *Senanayake v. Navaratne*[3] do not touch this question. They were only concerned with the right of appeal to that body. It was held that the jurisdiction of deciding election petitions and deciding the status of members of a legislative assembly is a special one which " should be exercised in a way that should as soon as possible become conclusive, and enable the constitution of the legislative assembly to be distinctly and speedily known". For this reason it was held that there was no appeal to the Privy Council in such cases.

Mr. Chitty made a lukewarm criticism of the finding of the Election Judge that the offence of treating had been proved beyond reasonable doubt against the appellant. The argument was that K. S. Perera,

[1] *(1955) 92 C. L. R. 157.* [2] *(1876) 2 A. C. 102.*
[3] *(1954) 56 N. L. R. 5.*

who the Judge found had committed this offence on polling day, was not proved to be an agent of the appellant. On this matter there is an admission made by the appellant's counsel at the trial that if the evidence of any one of the three witnesses called by the petitioner on this charge was accepted, then all the elements of the charge of treating had been made out. He also conceded in the course of his address that agency had been proved. In any event the findings of fact of the Judge are such that it is impossible for us to interfere.

I would affirm the decision of the Election Judge and dismiss this appeal with costs.

H. N. G. FERNANDO, S.P.J.—

Although the petition of appeal filed in this case challenged all the findings of fact of the learned Election Judge as being based on alleged misdirections in law, only one of such alleged misdirections was referred to in the arguments for the appellants, when Counsel adopted the contentions as to the meaning of the term " agent " in Election Law which had been put forward in an earlier appeal (Bentara-Elpitiya Appeal No. 8 of 1965). The principal argument, that Section 78 of the Parliamentary Elections Order in Council conflicts with the principle of the Separation of Powers, is not one which was taken before the trial Judge. To all appearances, advantage has been taken of the right of appeal on a question of law to prolong the Parliamentary life of a person whose election was declared void by the Election Judge.

Assuming, but not deciding, that Section 78, if it had stood alone, would conflict with the Constitution, I would hold that such conflict has been avoided by the amendment of Section 55 of the Constitution. I have no doubt that the intention of Parliament was to render valid by that amendment the provisions of the new Section 78 of the Parliamentary Elections Order for the appointment of a panel of Election Judges by the " Governor-General on the advice of the Judicial Service Commission ". One of Mr. Chitty's arguments has been that the amendment failed to achieve that intention.

Section 55 (in its original form) of the Constitution provided that appointments of " judicial officers " must be made by the Judicial Service Commission ; but it contained an explanation designed to exclude Judges of the Supreme Court and Commissioners of Assize from the category of " judicial officers ". The reason for this exclusion was that Section 52 of the Constitution already provided for the appointment of these Judges and Commissioners by the Governor-General. When in 1961 Parliament had in contemplation a new enactment providing for a panel of Election Judges, the explanation in Section 55 was amended so as to exclude also

Election Judges appointed by the Governor-General. Thus Parliament did intend to place such appointments, in the matter of validity, on a par with appointments under Section 52 of the Constitution.

This construction of the amendment of Section 55 is both reasonable and legitimate, for in any other sense it was futile. Even if Parliament's intention could have been expressed by some different and clearer provision, the intention has been sufficiently demonstrated by the amendment actually effected.

By reason of appointments actually made under the new Section 78 of the Parliamentary Elections Order, all Judges of the Supreme Court are eligible, as they formerly were, for nomination by the Chief Justice to hear an Election petition. The only change in fact has been that a few District Judges are now eligible for such nomination. If it can properly be said that there has thus been an encroachment upon the jurisdiction previously enjoyed by Judges of Supreme Court exclusively, those who thus encroach are themselves members of the Judicature. There has here been no encroachment by the Legislature or the Executive, which has been held in recent judgments to be unconstitutional. Moreover, the Governor-General's power of appointment under Section 78 must be understood in the context of the familiar convention which he is bound by law to observe. The presumption (*omnia rite esse acta*), that the Governor-General accepted in full the advice of the Judicial Service Commission, leaves no scope for the Courts to entertain speculative suggestion to the contrary. The mere possibility that an Act of Parliament can be utilised for an unconstitutional purpose is no ground for contesting the validity of something done under the Act which is itself constitutional. In this view of the matter it was perhaps not necessary to amend Section 55 of the Constitution.

I must add that I express no opinion on the question whether the powers of an Election Judge are merely powers delegated by Parliament, which might lawfully be exercised by Parliament itself.

I agree that the determination of the Election Judge in this case must be affirmed with costs.

TAMBIAH, J.—

I had the benefit of reading the judgment of My Lord the Chief Justice and I am in agreement with the conclusion reached by him. Since the appellant's counsel has raised an important constitutional point I venture to add a few observations.

The most satisfactory definition of judicial power is found in the dictum of Griffiths, C.J. in *Huddert, Parker & Co. Proprietary Ltd. v. Moorehead*[1], where he defined judicial power as "the power which every

[1] *(1908) 8 Commonwealth Law Reports 330 at 357.*

sovereign authority must of necessity have to decide controversies between its subjects or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action". This definition has been adopted by the highest tribunal of the Island (vide *Liyanage and others v. The Queen* [1] ; *Shell Company of Australia v. Federal Commissioner of Taxation* [2]).

Applying the tests suggested in this definition an Election Judge is not exercising the judicial power of the State when he hears an election petition. He does not adjudicate on the rights between subject and subject or between the State and the subject. Further the power that is exercised is not one which the sovereign authority has to decide when controversies arise between its subjects or between itself and its subjects. The Election Judge can only declare an election null and void if any of the grounds set out in sections 76 and 77 of the Ceylon (Parliamentary Elections) Order in Council of 1946 have been proved.

When he sets aside an election and sends a report to the Governor-General, the seat of that particular candidate is declared void. The resulting position is that the composition of the Parliament is altered.

In England the Election Judge's power is historically derived from the Parliament, which has the undoubted right to determine its own composition. His power to hear election petitions is delegated power. Till 1866 the House of Commons in England exercised the power to exclude its members who secured their election by illegal or corrupt means. In 1866 this power was delegated to the Courts (vide May's Parliamentary Practice, 16th Edition, p. 185).

The power to report persons found guilty of corrupt practice during elections and the resultant disqualification for seven years again show that the power of the Election Judge is really a delegated function of the Parliament which has the power to decide its own composition.

Since there is no exercise of judicial power of the State by an Election Judge, the Privy Council has repeatedly held that it has no power to entertain appeals from the judgments of the Election Courts unless such an appeal had been specially provided for by the Legislature of the Dominion concerned (vide *Strickland v. Grima* [3] ; *Senanayake v. Navaratne* [4]). In the case of *G. E. de Silva v. Attorney General* [5], Lord Simonds stated as follows :—

> " It was contended for the petitioner that different considerations apply where, as here, the jurisdiction of the election judge to hear election petitions is not substituted for that of the legislative body

[1] *(1965) 68 N. L. R. 265.*
[2] *(1931) A. C. 275 at 295.*
[3] *(1930) A. C. 285.*
[4] *(1954) 56 N. L. R. 5.*
[5] *(1949) 50 N. L. R. 481 at 483.*

itself but is created *de novo* upon the establishment of that body. But this appears to their Lordships to be an unsubstantial distinction and in effect to be met by the later case of *Strickland v. Grima* (1930 A. C. 285). Such a dispute as is here involved concerns the rights and privileges of a legislative assembly, and, whether that assembly assumes to decide such a dispute itself or it is submitted to the determination of a tribunal established for that purpose, the subject matter is such that the determination must be final, demanding immediate action by the proper executive authority and admitting no appeal to His Majesty in Council."

This principle has been extended to cover Election Petitions concerning local elections (vide *Arsu v. Arthurs*[1].

I have already held in my dissenting judgment that judicial power of the State is not vested in the Supreme Court and the other Courts in Ceylon. Even if it is held that in Ceylon the Charter of Justice of 1833 vested the judicial power of the Sovereign in the Courts in Ceylon, in 1833 no jurisdiction was vested in any Election Court to set aside the election of any person to the Legislature of Ceylon as Ceylon was a Crown Colony at that time and there was no representative Government. Till 1924 the Governor had the discretion to discontinue a member of the Legislative Council for misconduct. The power to try election petitions was conferred on a Judge of the Supreme Court by the Legislative Council Order in Council of 1923 (vide section XXXVII (2)). At the time this Order in Council came into force the supreme legislative power was in the Sovereign. When His Majesty conferred this power on our Courts by the Order in Council of 1923, he delegated his powers as the Supreme Legislator and not as the repository of judicial power of the State. From 1924 till Ceylon attained Dominion Status Election Courts exercised their function not by virtue of judicial powers vested in them but as a delegated function of the Sovereign who retained his undoubted power to legislate.

When the Constitution Order in Council of 1946 conferred a Constitution on Ceylon, the Ceylon (Parliamentary Elections) Order in Council of 1946 provided for the conduct of elections. By section 12 of the Ceylon (Constitution) Order in Council a person who is qualified to be an elector is also declared to be qualified to be elected or appointed to either Chamber of Parliament. The Ceylon (Parliamentary Elections) Order in Council can be amended by a simple majority of the House. Therefore the Parliament has the power to amend this Order in Council by a simple majority.

The power to try election petitions was conferred on a Judge nominated by the Chief Justice from a panel of Judges selected by the Governor-General (vide section 78 of the Ceylon (Parliamentary Elections) Order in

[1] *(1965) P. C. 1 W. L. R. 675.*

Council of 1946). Later this provision was amended by section 22 of Act 11 of 1959 and section 2 of Act 72 of 1961. These amendments to the Order in Council do not contravene the provisions of the Ceylon (Constitution) Order in Council of 1946 and the Ceylon Independence Act of 1947.

Even if the view is taken that the Election Court is exercising judicial power, section 55 of the Constitution has been properly amended by Act 71 of 1961 which was passed by two-third majority of the House. The Speaker's certificate is appended to this amendment. Therefore this amendment is in order. The amendment is as follows :—

> " Section 55 of the Ceylon (Constitution) Order in Council, 1946, is hereby amended in, sub-section 5 of that section, by the substitution, for the words ' Supreme Court or a Commissioner of Assize ', of the words ' Supreme Court, a Commissioner of Assize, or an Election Judge appointed by the Governor-General under sub-section (1) of section 78 of the Ceylon (Parliamentary Elections) Order in Council, 1946'."

Thus it is clear, that by a proper constitutional amendment, the Election Judge appointed by His Excellency the Governor-General, is recognised as a person empowered to hear election petitions by the paramount law.

Therefore I hold that the Election Judge had the power and jurisdiction to hear election petitions. The appeal is dismissed with costs.

Appeal dismissed.