

**JAYASINGHE**  
v.  
**JAYAKODY AND OTHERS**

SUPREME COURT.

SHARVANANDA, C.J., WANASUNDERA, J., COLIN-THOMÉ, J., ATUKORALE, J. AND  
L. H. DE ALWIS, J.

S.C. ELECTION PETITION – APPEAL No. 4/84.

C.A. No. 3/83.

FEBRUARY 25, 26, 27 AND 28 AND MARCH 1, 4, 5, 7 AND 8, 1985.

*Election Petition – Sections 80A, 80B, 80C of the Ceylon (Parliamentary Elections) Order-in-Council 1946 as amended by Act No. 9 of 1970 – Rule 12 of the Parliamentary Election Petition Rules 1946 as amended by Act No. 9 of 1970 of the Third Schedule to the Order-in-Council – Non-joinder of parties – Security – Affidavit – Effect of defective affidavit – Full particulars – Power of amendment.*

The petitioner challenged the election of the 1st respondent to the Mahara seat at the Parliamentary Election held on May 18, 1983 on the grounds that –

1. The corrupt practice of undue influence was committed by the 2nd and 3rd respondents as agents of the 1st respondent.
2. By reason of general intimidation (of which 14 instances were particularised of which three were acts of undue influence committed by Surānimala Rajapakse, S. D. Tennison Wimalaratne and Jayantha Rajapakse and three were instances of assaults and threats by several supporters of the 1st respondent) or other misconduct (like,

organised impersonation or other circumstances like arrest and detention of polling agents and one Chief Organiser. Police and officials permitting entry of unauthorised persons into polling booths and refusal of loudspeaker permits) the majority of the electors may have been prevented from electing the candidate whom they preferred.

3. By reason of non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council 1946 relating to elections and with the principles of such provisions the results of the election were affected and under this ground reference was made to the fact that the votes counted in three ballot boxes did not tally with the number of ballot papers issued.

4. Full particulars of the several corrupt practices alleged had not been set out.

Of the four preliminary objections the Election Judge upheld three and dismissed the petition :

(1) There was non-joinder of Suranimala Rajapakse, S. D. Tennison Wimalaratne and Jayantha Rajapakse as respondents as required by section 80A (1) (b) of the Ceylon Parliamentary Elections (Order in Council) as amended by Act No. 9 of 1970.

(2) The security lodged was insufficient in terms of Rule 12 (2) of the Parliamentary Election Petition Rules 1946 as amended by Act No. 9 of 1970 set out in the Third Schedule to the Order in Council.

(3) The affidavit was defective in terms of section 80B (d) of the Order in Council.

**Held -**

(a) The grounds on which an election can be avoided are set out in section 77 of the Order in Council.

There is a distinction between "charge" and "ground" in new Rule 12 (2) of the Third Schedule to the Ceylon (Parliamentary Elections) Order-in-Council 1946. There can be several charges under each distinct ground and such charges attract security. The first charge on each distinct ground attracts Rs. 5,000 as security and each additional charge on the same ground attracts Rs. 2,500.

(b) There is only one single ground of avoidance under section 77 (a) namely the prevention or likely preventing of free voting of which the components enumerated in the section are general bribery, general treating or general intimidation or other misconduct or other circumstances. Thus the first charge, namely, general bribery attracts Rs. 5,000 as security and every additional charge of general bribery or general treating or general intimidation attracts Rs. 2,500. Also every allegation of misconduct and every distinct circumstance under other circumstances would constitute additional charges.

(c) Non-compliance with the provisions relating to the conduct of elections and the failure to conduct the election in accordance with the principles of such provisions constitute a ground of avoidance and there being one charge on this ground the security under this head would be Rs. 5,000.

(Wanasundera, J. dissenting) :

- (d) The Election Judge applied the right principles of computation of security and correctly decided that the security required was Rs. 52,500 whereas the security deposited was only Rs. 50,000.
- (e) Rule 12 (3) of the Rules set out in the Third Schedule stipulates that no further proceedings should be heard on the petition if the security required is not furnished. Hence the dismissal of the petition on this ground by the Election Judge was correct.

**Held further (unanimously) :**

(2) Suranimala Rajapakse, S. D. Tennison Wimalaratne and Jayantha Rajapakse were not alleged to be agents of the 1st respondent nor has it been alleged that the corrupt practice alleged to have been committed by them was done with the knowledge or consent of the 1st respondent. Proof of the said corrupt practice is not by itself sufficient to avoid the election. It has to be further established that the majority of the electors were prevented from electing the candidate whom they preferred by the said acts of corrupt practice. Hence they need not have been joined as respondents. Only those persons should be joined as respondents to the petition whose acts by itself render the election void. There must be a nexus of cause and effect between the offence complained of and the prayer for the avoidance of the election.

(3) The petitioner cannot be expected to mention the names of persons whom he cannot identify or whose names he does not know. Hence he cannot be faulted for not naming the offender in regard to the assaults and threats.

(4) Although the affidavit accompanying the petition was defective in that it included averments based on information received from others the petition should not have been dismissed on this ground of defect in the verification. The allegation of corrupt practice cannot be ignored merely on this ground of defect in the verification because the form of the mandatory affidavit is not prescribed and it is not a requirement of law that the source of information or the ground of the deponent's belief should be set out. Hence the dismissal of the petition on the ground that the affidavit was bad is wrong.

(5) The petitioner has furnished as full particulars as he could. If more particulars were needed in the opinion of the Judge recourse could be had to the Judge's power of amendment under section 80C (i) of the Order in Council.

**Case referred to :**

- (1) *In re Fred E. de Silva* (1949) 51 NLR 55, 57.

**APPEAL** from the judgment of the Election Judge.

*Nimal Senanayake, P.C., with Saliya Mathew, Nimal Siripala de Silva, K. Balapatabendi, Sanath Jayatilleke, Mrs. A. B. Dissanayake, L. M. Samarasinghe, and Miss A. D. D. N. Telespha, for the petitioner-appellant.*

George Candappa, P.C. with Ben Eliyathamby, Daya Pelpola and Ronald Perera for 1st respondent.

2nd respondent absent and unrepresented.

K. N. Choksy, P.C. with Daya Pelpola, Lakshman Perera and Ronald Perera for the 3rd respondent.

S. W. B. Wadugodapitiya, Additional Solicitor-General with N. Y. Cassie Chetty, S.C. for the 4th respondent-respondent.

*Cur. adv. vult.*

July, 8, 1985.

### SHARVANANDA, C. J.

The petitioner-appellant filed an election petition under the provisions of Article 161E of the Constitution as amended by the 5th Amendment to the Constitution read together with sections 79, 80, 80A and 80B of the Ceylon (Parliamentary Elections) Order-in-Council, to set aside the by-election to the Mahara Electoral District held on 18.5.1983. The 1st respondent was, at the election, returned by a majority of 45 votes.

The petitioner-appellant alleged that the election of the 1st respondent was void in the grounds that :

- (a) The corrupt practice of undue influence was committed by the agents of the 1st respondent ;
- (b) By reason of general intimidation or other misconduct or other circumstances the majority of the electors may have been prevented from electing the candidate whom they preferred ;
- (c) Non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council 1946, relating to elections and the failure to conduct elections in accordance with the principles of such provisions, which non-compliance affected the results of the election.

In his petition, he had joined as parties the 2nd and 3rd respondents who he alleges as agents of the 1st respondent, committed the corrupt practice of undue influence. In paragraph 3(a) as against the 2nd respondent, he has alleged three distinct acts of undue influence committed on three different persons who are voters. In paragraph 3B, he has alleged, as against the 3rd respondent, two separate acts of undue influence on the same person who is a voter.

Paragraph 4A contains an allegation that the majority of electors may have been prevented from electing the candidate whom they preferred by reason of general intimidation or other misconduct or other circumstances. In regard to general intimidation, the petitioner has furnished 14 items or instances of intimidation. In regard to "other misconduct", in paragraph 4 B, the petitioner has given 41 cases of impersonation and has stated that the said acts of impersonation and numerous other acts of impersonation of electors were organised by the 1st respondent's supporters and facilitated by several police officers and members of the official staff at polling stations. In paragraph 4 C, the petitioner has set out matters that constitute "other circumstances". In paragraph 4C(i) it is alleged that 31 polling agents of the Sri Lanka Freedom Party candidate attached to 12 polling booths were arrested by the Veyangoda and Nittambuwa Police on the election day at about 4 a.m. and held in custody for several hours after the polling had commenced until pre-noon and thereby they were unable to perform their functions; that their detention facilitated impersonation, demoralised the sympathisers of the S.L.F.P. and created the impression that government machinery could be used against persons sympathetic to or espousing the S.L.F.P. cause. In paragraph 4C(ii), the petitioner alleges that applications for loudspeaker permits to hold three public meetings of the S.L.F.P. were refused by the police officers anxious to support the U.N.P. In paragraph 4C(iii)(a), the petitioner complains that police officers throughout the electorate harassed and threatened the S.L.F.P. party organisers and supporters throughout the election campaign and on election day, that they permitted unauthorised persons to enter polling booths and to intimidate electors in the polling queues (4C)(iii)(b), that they unlawfully arrested the Chief Organiser for the S.L.F.P. in Uruval Peruwa area, one Reggie Ranatunga, on 5.5.83, and held him in unlawful custody and that this was done in order to prevent him from carrying out his functions and to dissuade other organisers and supporters of the S.L.F.P. - 4C)(iii)(c).

Finally in paragraph 5, the petitioner makes the allegation that there was non-compliance with the provisions of the Elections Order-in-Council, which non-compliance has affected the results of the election. Three instances are set out—a ballot box from Netbuduwa polling booth contained 49 ballot papers more than the number issued at the polling station; a ballot box from Ihala Karagahamuna polling booth contained one ballot paper less than the total issued at the

polling station ; a ballot box from Kahatana polling booth contained one ballot paper less than the total issued at the polling station.

The petitioner filed his own affidavit to verify the allegations of fact stated by him in his petition. He deposited Rs. 50,000 as security.

At the hearing of the election petition four preliminary objections were raised on behalf of the 1st, 2nd and 3rd respondents—

1. Sufficient security has not been given by the petitioner.
2. Persons required to be joined as respondents to the petition have not been joined.
3. The petition has failed to set out full particulars of the several corrupt practices alleged by the petitioner.
4. The affidavit filed by the petitioner is inadequate.

The Election Judge upheld the preliminary objections—

- (a) That sufficient security has not been given by the petitioner,
- (b) That persons required to join as respondents to the petition have not been joined,
- (c) The affidavit filed by the petitioner is defective,

and has dismissed the Election Petition. The petitioner has preferred this appeal from the said order of dismissal.

I shall first deal with the holding of the Election Judge that the petitioner has failed to join as respondent to his petition persons required to be joined in terms of Section 80 A (1)(b) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 and that non-compliance with the requirement invalidates the entire petition. (All references in this judgment to sections are references to sections in the Ceylon (Parliamentary Elections) Order-in-Council 1946.) Section 80A(1) provides "A petitioner shall join as respondents to his election petition—

- (a) where the petition, in addition to claiming that the election of all or any of the returned candidates is void or was undue, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates, other than the petitioner, and where no such further declaration is claimed, all the returned candidates ; and

(b) any other candidate or person against whom allegations of any corrupt or illegal practice are made in the petition."

Section 80A (1) in clear preemptory terms obligates the petitioner to join as respondents to his petition not only the returned candidate but also any other candidate or person against whom allegations of corrupt or illegal practice are made in the petition. The petitioner has accordingly, in this petition joined not only the 1st respondent, the returned candidate, but also the 2nd and 3rd respondents who he alleges have committed the corrupt practice of undue influence as agents of the 1st respondent. He has specifically pleaded that the election of the 1st respondent is void on the ground of corrupt practice of undue influence committed by the 2nd and 3rd respondents, agents of the 1st respondent.

In paragraph 4A the petitioner has further alleged that by reason of general intimidation the majority of electors may have been prevented from electing the candidate whom they preferred and that hence the election of the 1st respondent was void. He has set out fourteen instances of general intimidation. Paragraph 4A (iv), (viii) and (ix) are three such instances. In each of these the petitioner mentions the names of the persons alleged to have committed the acts stated therein :

#### 4 (a) (iv)

Name	Date	Place	Act
Suranimala Rajapakse	18.5.83 at about 2.30 p.m.	At weboda near the polling booth of Weboda North	Assaulting Alahakoon Appuhamillage Somasiri who was an organiser of the Sri Lanka Freedom Party in the presence of several electors, to instil fear into the minds of several electors who were present and to place them under duress.

#### 4 (a) (viii)

S. D. Tennison Wimalaratne UNP supporter and another UNP supporter	18.5.83	At Enderamulla	Using force on one Ratnasena, a supporter of the SLFP. The attack on the said Ratnasena was directed to intimidate and to induce electors favourable to the Sri Lanka Freedom Party to refrain from voting.
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Name	Date	Place	Act
4 (a) (ix)			
Jayantha Rajapakse and several other supporters of the 1st respondent	18.5.83	At Buthpitiya-Mahwathu Hiripitiya Public Road	Jayantha Rajapakse fired two shots killing one Nimal Premasiri a SLFP supporter standing very close to Wijaya Kumaranatunga the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting. The other supporters of the 1st respondent who came, with Jayantha Rajapakse threatened to assault with clubs and swords the supporters of the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting.

It was not the case of the petitioner and he has not averred that the aforesaid acts of undue influence were committed by agents of the 1st respondent or with the knowledge or consent of the 1st respondent

It was the contention of counsel appearing for the 1st, 2nd and 3rd respondents that since these items disclose allegations of corrupt practice of undue influence against persons other than the respondents cited, they should have been joined as respondents to the petition and since the petitioner has failed to comply with the mandatory provision of section 80A (1) (b) the petition was bad and should be rejected.

The Election Judge has accepted this contention that the aforesaid (i) Suranimala Rajapakse, (ii) S. B. Tennison Wimalaratne and (iii) Jayantha Rajapakse, referred to in paragraph 4(a) of the petition, should have been joined as respondents as allegations of corrupt practice have been made against them in the petition.

In appeal, Mr. Senanayake contended that the Election Judge has misdirected himself in construing the word "allegation" in paragraph 80A (1) (b) to mean an assertion or averment. According to the Election Judge every person against whom it is asserted or averred for whatever purpose, that he had committed a corrupt or illegal practice in the petition has to be joined as a respondent. Mr. Senanayake has



sought to put a restricted interpretation upon the word 'allegation', in section 80A (1) (b). According to him section 80A (1) (b) should be read as "any other candidate or person against whom allegations of any corrupt or illegal practice such as would avoid the election are made in the petition. He submitted that in the context of election petitions the meaning of the term 'allegation' is well settled : "every allegation which, if proved, would suffice to avoid an election on any of the grounds of avoidance enumerated in section 77, should be treated as a charge within the meaning of Rule 12." (Per Wimalaratne, J. in Election Appeal 1, 2 and 3 of 1977). He urged that the word 'allegation' in section 80A (1) (b) should be construed in relation to the concept of 'charge'. He referred to the words in section 83 (1), proviso (a) –

"an election petition questioning the return or the election upon the ground of a corrupt practice and specifically *alleging* . . ." and the words in section 83 (2) "an election petition presented in due time may, for the purpose of questioning the return of the election upon an *allegation* of corrupt or illegal practice" and submitted that the 'allegation' in section 80A (1) (b) is referable to a corrupt practice which avoids the election.

Mr. Senanayake submitted that only a corrupt practice committed in connection with the election by the candidate, or with his knowledge or consent, or by any agent of the candidate will invalidate an election – section 77c, and that a corrupt practice committed by any other person without the knowledge or consent of the candidate will not be a ground for avoidance of an election and will not be sufficient to constitute a charge. He drew attention to section 80B which requires an election petition to contain a concise statement of the material facts on which the petitioner relies and to set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and date and place of the commission of such practice. He elucidated that by the averments in paragraph 4 of the Election Petition, the petitioner was seeking to avoid the election on the ground that by reason of general intimidation or other misconduct the majority of electors may have been prevented from electing the candidate whom they preferred. Section 77 of the Order-in-Council provides that –

"The election of a candidate as a Member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely -

- (a) that by reason of general bribery, general treating or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate whom they preferred . . . . "

According to him 'general intimidation' consists of a series or aggregation of acts of undue influence, and that each one of the allegations in paragraph 4 (a) of the petition may constitute acts of undue influence in terms of section 56 (1). He admitted that each one of the acts referred to in paragraph 4 (a) in the petition constituted a corrupt practice, in terms of section 58(1) (b). He urged that the several acts of undue influence pleaded in paragraph 4 (a) generated 'general intimidation' and that they had the consequence of preventing the majority of electors from electing the candidate whom they preferred (section 77 (a)). He submitted that to establish the grounds set out in section 77 (a) it was not sufficient to establish individual acts of undue influence. The petitioner had to establish that the effect of the several acts of undue influence was to prevent the majority of electors from electing a candidate whom they preferred. His case was that when a petitioner seeks to found his petition on the ground of 'general intimidation' under section 77 (a), he is not charging anybody with the commission of any corrupt practice, though he incidentally had to prove a number of acts of undue influence to establish that ground under section 77 (a). It was therefore not necessary for him to join the persons who had committed the acts of intimidation. Mr. Senanayake's submission in short, was that section 80A (1) (b) requires that the petitioner should join as parties to the election petition only the returned candidate and any agent who commits a corrupt practice and any other person who commits a corrupt practice with the knowledge or consent of the candidate. According to him section 80 A does not require the joining of persons as respondents whose alleged acts of corrupt practice will not be a ground for invalidating the election. He pointed out that if the interpretation that he contends for is not given to section 80A(1) (b) then great inconvenience will be caused. He gave as illustration the case of general intimidation or general bribery where fifty instances of such corrupt practice are alleged in the petition. The petitioner would

then have to join the fifty persons as respondents to the petition and the proceedings will become unmanageable. Counsel for the respondents on the other hand argued that the legislature has used the word 'allegation' in the sense of an 'assertion' or 'averment' and that is the meaning that should be given to the word 'allegation' in section 80A (1) (b). They submitted that since the petitioner had in paragraph 4 (a) (iv), (viii) and (ix) made allegations that Suranimala Rajapakse, Tennison Wimalaratne and Jayantha Rajapakse had committed the corrupt practices of undue influence, they should have been joined as parties.

Mr. Choksy submitted when a charge of general intimidation is alleged in a petition and several instances are relied upon to substantiate the charge, the court has to examine whether any such instance discloses an allegation of corrupt practice against any person. He referred to the dual functions of an Election Judge at the conclusion of the trial (a) he will have to make a determination whether the election was void or not and also (b) make a report whether any corrupt practice had been committed by the candidate or with his knowledge and consent or by his agent, and whether any person had been proved at the trial to be guilty of any corrupt or illegal practice (Sections 81 and 82). He said that the hazard of being reported to the President rendered obligatory on the petitioner the joining as respondents to his petition all persons against whom he was making allegations of any corrupt practice in the petition (Section 80A(1) (b)).

The Election Judge has agreed with Counsel for the respondents that the term 'allegation' in section 80A(1) (b) is used in the sense of 'assertion' or 'averment' and has held that in deciding this question whether a person should be made a party or not, one has to look at the petition to see whether it discloses any allegation of corrupt practice against such person and that the court cannot be controlled by the purpose or reason given by the petitioner for making specific charges of corrupt practice of undue influence in the petition, whether to establish a charge of corrupt practice by an agent or to establish general intimidation such as may have prevented the majority of electors from electing the candidate whom they preferred. According to him whenever there are allegations that persons exercised undue influence then such persons have to be impleaded as respondents, irrespective of their nexus to the relief claimed by the petitioner.

Section 80A(1) (b) cannot be looked at in isolation. One has to appreciate the scheme relating to election petitions to give the correct

answer as to who are the persons who ought to be joined as respondents in terms of that section.

Section 77 spells out the grounds for the avoidance of an election on an election petition.

Section 77 (a) provides that an election shall be declared void on the ground that by reason of general bribery, general intimidation or other misconduct, the majority of electors were or may have been prevented from electing the candidate whom they prefer.

Section 77 (c) provides that the election of the candidate shall be declared void on an election petition on the ground of corrupt practice committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate.

Section 79 states as to who may present an election petition.

Section 80 sets out the relief which the petitioner may claim on an election petition.

Section 80A sets out as to who shall be joined as respondents to the election petition.

In my view section 80A is related to section 77, which sets out the grounds for the avoidance of an election. The petitioner who claims that the election is void will have to base his claim on any one or more of the grounds set out in section 77 and for the purpose he will have to cite as respondents to his petition persons whose conduct constitutes the ground of avoidance set out in section 77 and for which the candidate is liable. The petitioner is only interested in having the election declared void on the charges made by him. The person joined as respondent and the act which is alleged to vitiate the election must have a nexus to the relief sought. Thus when the election of the 1st respondent is sought to be avoided on the ground of corrupt practice of undue influence committed by the agents of the 1st respondent (1) S. Rajakaruna, (2) Ranil Wickremasinghe, they had to be joined as 2nd and 3rd respondents respectively. If the petitioner succeeds in proving any one of the corrupt practices referred to in paragraph 3 of the petition he succeeds in his election petition and the election will be declared void. The corrupt practice, if established - committed by either 1st (the returned candidate) or the 2nd or 3rd • respondents (the agents of the returned candidate) will be sufficient to avoid the election.

On the other hand in paragraph 4 of this petition, the petitioner has also stated that the election of the 1st respondent is void on the ground that by reason of general intimidation . . . . . the majority of electors may have been prevented from electing the candidate whom they preferred. The petitioner then particularised in paragraph 4 (a) fourteen acts of undue influence which resulted in the general intimidation complained of. Of these fourteen acts, three have been committed by the 2nd respondent, two by the 3rd respondent and four by the 1st respondent himself, then two by unnamed supporters of the 1st respondent, three by Suranimala Rajapakse, Tennison Wimalaratne and Jayantha Rajapakse, third parties who are neither the agents of the 1st respondent nor persons who had committed the impugned acts with the knowledge or consent of the 1st respondent. The acts of corrupt practice alleged to have been committed by the last category of persons viz : Suranimala Rajapakse, Tennison Wimalaratne and Jayantha Rajapakse, cannot by themselves constitute grounds of avoidance of the election. In order to succeed in his petition, the petitioner has got to prove a further ingredient viz : that the majority of electors may have been prevented from electing the candidate whom they preferred, in order to succeed in his election petition.

The corrupt practice referred to in section 77 (c) has a consequence different from that of the corrupt practice that may be exhibited by general intimidation under section 77 (a). If it is proved that a corrupt practice had been committed by the returned candidate or an election agent or by any other person with the knowledge or consent of the returned candidate, then the Election Judge has to declare the election void. But if the corrupt practice had been committed by a person other than the persons mentioned in 77 (c), then it must be further established that majority of electors thereby were or may have been prevented from electing the candidate whom they preferred, for the Election Judge to declare the election void. In the absence of an allegation that general intimidation has affected the result of the election, pleading of the several acts of undue influence which individually or cumulatively constitute general intimidation is irrelevant to the relief prayed for by a petitioner under section 80. The allegations in the petition have to be related to the relief sought and accordingly in my view only those persons need be joined as respondents against whom charges of corrupt practice vitiating the election are made in the petition.

Section 82 relating to the report of the Election Judge draws the distinction between the two categories of corrupt practice, founded on the kind of impact it has on the determination under section 81.

- (a) corrupt practice committed by, or with the knowledge and consent of any candidate at the election, or by his agent – this affects the validity of the election.
- (b) the corrupt practice committed by other persons – this will not vitiate the election.

In my view this distinction between the two categories of offenders in section 82 is based on the fact that all those who are mentioned in section 82 (a) would be necessary parties to the election petition in terms of section 80A(1) (b), while the other class of offenders referred to in section 82B would not be necessary parties and need not be joined in the election petition and their non-joinder will not affect the proper constitution of the election petition.

Persons who are not necessary parties and therefore have not been joined as parties, will, under the proviso to section 82, before being reported, be given an opportunity of being heard and of giving and calling evidence to show why they should not be so reported.

But it was argued that, had they been parties to the election petition, they would have had the opportunity of showing, before the conclusion of the trial that they are not guilty of any corrupt practice and they should not be placed under a handicap, as they would be, of having to show cause under the proviso to section 82 after they have been proved without their being heard at the trial, to have been guilty of a corrupt practice. I see the force of this submission. But in my view, it has to yield to the argument of inconvenience urged by Mr. Senanayake. This submission will involve having trials within the election trial and the proceedings will become unmanageable. The main trial will miss its focus and the parties being not interested in the main trial will have to be helpless spectators of the trial. I prefer the construction urged by Mr. Senanayake as to who should be joined as parties under section 80A(1) (b) especially as the proviso to section 82 provides as required by principles of natural justice for an opportunity of being heard, to those who had not been joined before they are reported.

The Election Judge is in error in holding that all those against whom allegations of corrupt practice are made, for whatever purpose, have to be joined as respondents to the petition. In my view only those persons whose alleged acts of corrupt practice will, in terms of section

77(c), vitiate the election will have to be joined as respondents in addition to the returned candidate. On this construction of section 80A (1) (b) 'any other candidate' referred to in that section will mean any other candidate who is charged in the election petition with having committed a corrupt practice such as would avoid the election in terms of section 77(e). The reference to such candidate is significant. Any allegation against him of a corrupt practice must have some relevancy to the prayer for the avoidance of the election.

In paragraph 4 (a) of his petition the petitioner alleges that by reason of general intimidation the majority of electors may have been prevented from electing a candidate whom they preferred and has set out fourteen instances or items in substantiation of the ground of general intimidation. Paragraph 4 – (iv), (viii) and (ix) refer to three such instances ; in each of these the petitioner mentioned the names of the persons who are alleged to have committed the acts stated therein. In paragraph 4 (a), (i) and (x) the petitioner has not specifically named any offender but has stated "assaults and threats by several supporters of the 1st respondent." The petitioner cannot be expected to mention the names of persons whom he cannot identify or whose names he does not know. It is necessary to reproduce paragraphs 4 (a) (iv), 4 (a) (viii) and 4 (a) (ix), to appreciate the question in issue :-

#### 4 (a) (iv)

Name	Date	Place	Act
Suranimala Rajapakse	18.5.83 at about 2.30 p.m.	At Weboda near the polling booth of Weboda North	Assaulting Alahakodn Appuhamillage Somasiri who was an organiser of the Sri Lanka Freedom Party in the presence of several electors, to instil fear into the minds of several electors who were present and to place them under duress.

#### 4 (a) (viii)

S. D. Tennison Wimalaratne UNP supporter and another UNP supporter	18.5.83	At Enderamulla	Using force on one Ratnasena a supporter of the SLFP. The attack on the said Ratnasena was directed to intimidate and to induce electors favourable to the Sri Lanka Freedom Party to refrain from voting.
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Name	Date	Place	Act
<b>4 (a) (ix)</b>			
Jayantha Rajapakse and several other supporters of the 1st respondent.	18.5.83	At Buthpitiya Malwatu Hiripitiya Public Road	Jayantha Rajapakse fired two shots killing one Nimal Premasiri a SLFP supporter standing very close to Wijaya Kumaranatunga the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting. The other supporters of the 1st respondent who came with Jayantha Rajapakse threatened to assault with clubs and swords the supporters of the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting.

The aforesaid three persons namely Suranimala Rajapakse, S. D. Tennison Wimalaratne and Jayantha Rajapakse were not alleged to be the agents of the 1st respondent nor has it been alleged that the corrupt practice alleged to have been committed by them was done with the knowledge or consent of the 1st respondent. Proof of the said corrupt practice is not by itself sufficient to avoid the election. It has to be further established that the majority of the electors were prevented from electing the candidate whom they preferred by the said acts of corrupt practice. Hence in my view they need not have been joined as respondents. In my view, only those persons should be joined as respondents to the petition, whose acts by itself render the election void. There must be a nexus of cause and effect between the offence complained of and the prayer for the avoidance of the election.

#### Objection regarding security

that the security shall be an amount not less than Rs. 5,000 in Elections) Order-in-Council 1946 provides that –

- that the security shall be an amount not less than Rs. 5,000 in respect of the 1st charge constituting a distinct ground on which the petitioner relies, and a further amount of not less than



Rs. 2,500 in respect of each additional charge constituting any such ground”.

In the election appeals S.C. 1, 2 and 3 of 1977, it was held by a majority of four Judges constituting the Divisional Bench of five Judges that –

- (a) There is a distinction between ‘charge’ and ‘ground’ in the new Rule 12 (2). A ‘charge’ is not the same thing as a ‘ground’ and cannot be equated with it.
- (b) The grounds on which an election can be avoided are found in section 77 of the Order-in-Council.
- (c) There can be several charges under each distinct ground and such charges attract security. The 1st charge on any one distinct ground attracted Rs. 5,000 as security and each additional charge on the same ground attracted Rs. 2,500.

This view of the majority was accepted in S.C. Appeals No. 2 & 3 of 1978 (Election Petition No. 10/77 –Avissawella.) The Supreme Court agreed with the observations of Wimalaratne, J. that –

“every allegation which, if proved, would suffice to avoid an election on any of the grounds of avoidance contained in section 77 should be treated as a charge within the meaning of Rule 12, and each such charge attracts security”.

and with the observation of Samarawickrema, J. that –

“the word ‘charge’ has been applied to any allegation against the validity of an election”.

I agree with the Election Judge that there is only one single ground of avoidance under section 77 (a), namely the prevention or likely prevention of free voting. That each component enumerated in section 77 (a) namely –

“general bribery, general treating or general intimidation, or other misconduct, or other circumstances. . . . .”

which is alleged to have resulted in the majority of electors being prevented from electing the candidate whom they preferred would constitute a charge. The first charge, namely ‘general bribery’ attracts Rs. 5,000 every additional charge of general bribery or general treating or general intimidation would attract Rs. 2,500.

I agree with Wimalaratne, J.'s observation in the above case that –

“Under the category of ‘other misconduct’ there can be more than one charge. So also under the category of ‘other circumstances’ each distinct circumstance specified in the petition will attract security . . . . . ‘other misconduct’ or other circumstances’ would constitute at least two other charges.”

It would appear from the material facts given in the petition more than one type of “other circumstances” or “other misconduct” may be disclosed and each distinct type will constitute a separate charge attracting security.

For a proper appreciation of the computation of the total amount of security that had to be deposited by the petitioner it is relevant to reproduce that part of the petition containing the allegations made by the petitioner in his petition for the avoidance of the election.

“3. And your Petitioner says that the election of the 1st respondent is void on the ground that –

(A) the corrupt practice of undue influence was committed by an agent of the 1st respondent – Sarathchandra Rajakaruna the 2nd respondent above-named.

- |               |                        |                       |            |   |
|---------------|------------------------|-----------------------|------------|---|
| (i) 18.5.83   | At about<br>8.30 a.m.  | Near<br>polling booth | Buthpitiya | By intimidating W. A. Chandrasena Weerasuriya an elector by threats of bodily injury to induce Chandrasena to refrain from voting and turned him away from the polling booth at Buthpitiya. Later he went back to vote but his vote had been cast by an impersonator. |
| (ii) 18.5.83  | At about<br>7.30 a.m.  | Near<br>polling booth | Buthpitiya | By intimidating U. B. Kumara Pathirana an elector by threatening to assault Kumara Pathirana with clubs and iron bars in order to compel him to refrain from voting and forcing him to go away without voting.  |
| (iii) 18.5.83 | At about<br>10.00 a.m. | Near<br>polling booth | Buthpitiya | By intimidating D. K. Priyasena a voter at Mahara Electorate by threatening to assault him with clubs and iron bars to compel him to refrain from voting and forcing him to go away without voting. He came back to the polling booth and voted later.                |

(B) The corrupt practice of undue influence was committed by an agent of the 1st respondent namely Ranil Wickremasinghe, the 3rd respondent above-named on –

(i)

18.5.83	At about 2.30 p.m.	At Weboda near the polling booth of Weboda North.	By exhorting about thirty persons who were with him to hit, kill, cut tyres and to catch the blue T-shirt fellow and not let him go (referring to Alahakoon Appuhamillage Somasiri who was the chief organiser for the Narangodapaluwa for SLFP). The aforesaid acts of the 3rd respondent were in order to prevent the free exercise of the franchise by several electors who witnessed the incident by placing them under duress.
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(ii)

18.5.83	At about 3.30 p.m.	Near the Kadawata Police Station on the Kandy Road	By unlawfully using force on Alahakoon Appuhamillage Somasiri who was the Chief SLFP organiser for the Narangodapaluwa (Mahara Electorate) and by grabbing Alahakoon's hand and dragging him saying "Ado Pariah, we intend to teach you politics." The aforesaid acts of the 3rd respondent were in order to prevent the free exercise of the franchise by several electors who witnessed the incident by placing them under duress. Alahakoon Appuhamillage Somasiri complained to the Kadawata Police who have deliberately falsified the entry and in fact deleted the words "Ado Pariah" and refused to take down the complaint referred to at 3 (B) (i) and ordered Alahakoon Appuhamillage Somasiri to quit the Mahara Electorate promptly.
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4. (A) And your petitioner says that the election of Kamalawarna Kumarasinghe Jayakody is void on the ground that by reason of general intimidation or other misconduct or other circumstances the majority of electors may have been prevented from electing the candidate whom they preferred. The petitioner says that general intimidation resulted from :

<i>Impersonation of the following voters</i>	<i>At the polling booth of</i>	<i>Voters No.</i>
(i) Assaults and threats of several supporters of the 1st respondent	18.5.83 at about 2.30 p.m. At Weboda North in close proximity to the Weboda North Polling.	Assault on several electors who were with Alahakoon Appuhamillage Somasiri, who was an organiser of SLFP and who was with several electors, using hands and clubs and threatening to give the same treatment to those who were known to be SLFP supporters.
(ii) Ranil Wickremasinghe above named by himself.	18.5.83 at about 3.30 p.m. At Kadawata on the Kandy Road near the Kadawata Police Station.	Grabbing the SLFP organiser Alahakoon Appuhamillage Somasiri by the hand and dragging him when he was in the company of several electors.
(iii) Ranil Wickremasinghe and other persons	18.5.83 at about 2.30 p.m. At Weboda near the polling booth of Weboda North.	In an organised gang exhorting people in his gang to hit kill and cut tyres and grab the T-shirt fellow to instil fear into the minds of several electors present and to place them under duress.
(iv) Suranimala Rajapakse	18.5.83 at about 2.30 p.m. At Weboda near the polling booth of Weboda North.	Assaulting Alahakoon Appuhamillage Somasiri who was an organiser of the SLFP in the presence of several electors who were present and to place them under duress.

<i>Impersonation of the following voters</i>		<i>At the polling booth of</i>	<i>Voters No.</i>
(v) Saratchandra Rajakaruna the 2nd Respondent above-named and other persons on his behalf and at his instigation.	18.5.83	At Buthpitiya polling booth	By intimidating W. A. Chandrasena Weerasuriya and several other electors approaching the polling booth with threats and preventing those electors from voting by threatening to assault with clubs and iron bars and forcing them to go away without voting.
(vi) Sarachandra Rajakaruna the 2nd respondent above-named and other persons on his behalf and at his instigation	18.5.83	At Buthpitiya polling booth	By intimidating U. G. Kumara Pathirana an elector and several other electors preventing with threats of bodily injury and preventing them from voting by threatening to assault with clubs and iron bars and forcing him to go away without voting.
(vii) Sarachandra Rajakaruna the 2nd respondent above-named and other persons on his behalf and at his instigation.	18.5.83	At Buthpitiya polling booth.	By intimidating D. K. Piyasena an elector and several other electors present with threats of bodily injury by threatening to assault them with clubs and iron bars and forcing him to go away without voting. In consequence of the aforesaid threats several other electors went away without voting.
(viii) S D Tenison Wimalaratne UNP supporter and another UNP supporter.	18.5.83	At Enderamulla	Using force on one Ratnasena a supporter of the SLFP : the attack on the said Ratnasena was directed to intimidate and to induce electors favourable to the SLFP to refrain from voting.

<i>Impersonation of the following voters</i>		<i>At the polling booth of</i>	<i>Voters No.</i>
(ix) Jayantha Rajapakse & several other supporters of the 1st respondent.	18.5.83	At Buthpitiya Malwatu Hiripitiya Public Road.	Jayantha Rajapakse fired two shots killing one Nimal Premasiri a SLFP supporter standing very close to Wijaya Kumaranatunge the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting. The other supporters of the 1st respondent who came with Jayantha Rajapakse threatened to assault with clubs and swords the supporters of the SLFP candidate in order to instil fear into the minds of several electors present and to place them under duress and to prevent them from voting.
(x) Supporters of the 1st Respondent.	18.5.83	At Kandaliyadda Paluwa East. Jayakody Maha Vidyalaya.	About 150 supporters of the 1st respondent entered forcibly into the polling booth of the Kandaliyadda Paluwa East Jayakody Maha Vidyalaya polling booth shouting loudly and behaving in an aggressive manner thereby placing electors under duress.

<i>Impersonation of the following voters</i>	<i>At the polling booth of</i>	<i>Voters No.</i>	
(xi) 1st respondent and his supporters.	18.5.83	About 1/4 mile from Mahara Nugegoda polling booth.	The 1st respondent and his supporters assaulted K. A. Sirisena a SLFP supporter. The 1st respondent and his supporters dragged him into the jeep of the 1st respondent and forcibly took K. A. Sirisena to the 1st respondent's residence ; having assaulted him again he was chased away after removing his clothes. The aforesaid act of the 1st respondent and his supporters were in order to prevent the free exercise of franchise by several electors who witnessed the incident by placing them under duress.
(xii) 1st respondent and his supporters.	18.5.83	About 1/4 mile from Kandaliyadda polling booth.	The 1st respondent and his supporters assaulted Sunil Wettawa a SLFP supporter and dragged him into the 1st respondent's jeep ; the jeep drove towards the 1st respondent's residence and the people in the jeep continued to assault Mr. Wettawa. The aforesaid act of the 1st respondent and his supporters were in order to prevent the free exercise of franchise by several electors who witnessed the incident by placing them under duress.
(xiii) 1st respondent and his supporters.	18.5.83	At the Main SLFP Election Office Kalawatta Ragama Road.	1st Respondent and his supporters assaulted Lalith Wanigaratne a SLFP supporter and attempted to drag him to the jeep of the 1st respondent. The aforesaid act of the 1st respondent and his supporters were in order to prevent the free exercise of franchise of several electors who witnessed the incident by placing them under duress.

<i>Impersonation of the following voters</i>	<i>At the polling booth of</i>	<i>Voters No.</i>
(xiv)		
1st Respondent and his supporters	18.5.83 At the Main S.L.F.P Election Office Kalawatte Ragama Road	1st Respondent and his supporters assaulted Jerimies Fernandopulle a SLFP supporter and attempted to drag him to the jeep of the 1st Respondent. The aforesaid act of the 1st Respondent and his supporters were in order to prevent the free exercise of franchise of several electors who witnessed the incident by placing them under duress.

4. (B) The Petitioner states that the following acts constituted other misconduct.

<i>Impersonation of the following voters</i>	<i>At the polling booth of</i>	<i>Voters No.</i>
1. Danden Hewage Wieman	Pasgemanna	165
2. Nilwala Pathirana Unnehelage Sediris	Mahara-Nugegoda	688
3. ....	.....	.....
4. ....	.....	.....
41. Hettiarachchige Suneetha Mallika Silva	Sooriyapaluwa	363
42. Weerasinghe Kamalawathie	Arachchige Kandalyadda Paluwa	1,520

The aforesaid acts of impersonation along with numerous other impersonation of electors was organised by the 1st Respondent's supporters and facilitated by several Police Officers and members of the official staff at Polling Stations.



(4) (C) The petitioner states that the following matters constitute other circumstances referred to above :

- (i) The following polling agents of the SLFP candidates were arrested by officers from Veyangoda and Nittambuwa Police Stations on 18th May 1983 at about 4.00 a.m. and held in custody for several hours after polling had commenced, thereby not being able to perform their functions till the time shown below :

Name of the Polling Agent	Polling Booth	Time of Arrival at the Booth
1. P. L. Weerasinghe	Ambagaspitiya	11.00 a.m.
2. E. A. Piyasena	do.	11.00 a.m.
3. -	-	-
4. -	-	-
30. W. Jayakody	Henegama-Katukurunda	11.30 a.m.
31. W. Dharmawardena	do.	11.30 a.m.

The detention of the polling agents resulted in :

- (a) The facilitation of impersonation.  
 (b) The demoralisation of sympathisers of the SLFP candidates.  
 (c) Creating the impression that Government machinery could be used against persons sympathetic to or espousing the SLFP cause.
- (ii) Loudspeaker permits for holding of public meetings of the Sri Lanka Freedom Party were refused by Police Officers anxious to support the Government Party namely the United National Party. The details are set out below.

Application on	To Police Station	For Meeting at	Refused on
(a) 29.04.83	Weerangala	Malwatu-Hiripitiya	07.05.83
(b) 03.05.83	Kadawatte	Enderamulla	07.05.83
(c) 03.05.83	Kadawatte	Kadawatte	07.05.83

(iii) Police Officers throughout the electorate -

- (a) harassed and threatened the Sri Lanka Freedom Party Organisers and supporters throughout the election campaign and on election day ;

- (b) permitted unauthorised persons to enter polling booths and to intimidate electors in the polling queues ;
- (c) unlawfully arrested Reggie Ranatunga on 5th May, 1983 and held him in unlawful custody in order to prevent him from carrying out of his functions of a Chief Organiser for the S.L.F.P. in Uruval Peruwa area and to dissuade the other organisers and supporters of the S.L.F.P.

5. The petitioner states that the election of the 1st respondent aforesaid is void on the ground of non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946 relating to elections and the failure to conduct the election in accordance with the principles of such provisions which non compliance affected the results of the election.

The petitioner states :

- (a) that ballot box from Natbuduwa polling booth contained 49 ballot papers more than the number issued according to the return sent by the Senior Presiding Officer of that booth and announced by him at the polling booth ;
- (b) that a ballot box from Ihalakaragahamune polling booth contained one ballot paper less than the total issued at the polling station according to the announcement of the Senior Presiding Officer and the returns made by him.
- (c) that a ballot box from Rahatara polling booth contained one ballot paper less than the total issued at that polling station according to the announcement of the Senior Presiding Officer and the returns made by him.

The Election Judge has after a careful analysis of the several submissions made by Counsel for the appellant-petitioner and respondents computed the total amount of security that should have been furnished by the petitioner to be Rs. 52,500. The amount of security in fact deposited by the petitioner is Rs. 50,000. The Election Judge has held that the amount deposited is short by Rs. 2,500 and as Rule 12(3) states that no further proceedings should be heard on the petition, if the security as stipulated is not deposited, he dismissed the petition on that ground.

The learned Election Judge's computation is as follows :-

	Rs. c.
Para 3 (a) (i) - 1st charge of undue influence against the 2nd Respondent - Attracts ..	5,000.00
Para 3 (a) (ii) and (iii) - 2 additional charges of undue influence against the 2nd Respondent - Attracts ..	5,000.00
Para 3 B (i) and (ii) - 2 charges of undue influence against the 3rd Respondent - Attracts ..	5,000.00
Para 4A - 1st charge of general intimidation on the distinct ground of likely prevention of free voting - Attracts ..	5,000.00
Para 4A (v)-(vii) - 3 additional charges of undue influence against the 2nd Respondent - Attracts ..	7,500.00
Para 4A (xi)-(xiv) - 4 charges of undue influence against the 1st Respondent - Attracts ..	10,000.00
Para 4B - Misconduct - the 2nd charge on the distinct ground of likely prevention of free voting - Attracts ..	2,500.00
Para 4C(i) - 1st distinct type of "other circumstances" - Attracts ..	2,500.00
Para 4C(ii) & (iii)(a) and (c) - 2nd distinct type of "other circumstances" - Attracts ..	2,500.00
Para 4C (iii) (b) - 3rd distinct type of "other circumstances" - Attracts ..	2,500.00
Para 5 - 1st charge on the distinct ground of "non compliance" ..	5,000.00
<b>Total</b> ..	<b>52,500.00</b>

There was no controversy as regards paragraphs 3A(i) to (iii), 3B(ii) to (ii) of the petition. There was also no controversy in regard to paragraph 5 of the petition. Mr. Senanayake referred to Rule 12(2):

"Security shall be an amount. . . in respect of the 1st charge constituting a distinct ground on which the petitioner relies, and a further amount . . . in respect of each additional charge constituting any such ground"

and submitted that the security is payable in respect of a charge which the petitioner relies to sustain his prayer. He stated that in paragraph 4A the petitioner has set out the ground of general intimidation and in connection therewith he has set out several items, some of which, might amount to acts of undue influence. His explanation is that the petitioner is relying on the cumulative affect of the several incidents pleaded in paragraph 4(A) to establish the ground of prevention or

likely prevention of free voting. He said that the corrupt practices of undue influence relied upon by the petitioner for the avoidance of the election have been set out in paragraphs 3A and 3B of the petition. He contended that it was not open to the counsel for respondents to extract items pleaded under general intimidation and say that they are tantamount to corrupt practice of undue influence and therefore attract security, for the reason that the petitioner is not relying on those items to support his charge of corrupt practice.

The Election Judge did not agree with this submission of Mr. Senanayake. In my view, he is correct in rejecting this submission.

In appeal, Counsel for the petitioner submitted that Rule 12(2) confines the amount of security to charges on which the petitioner relies. According to him, section 77(a) sets out one ground viz : prevention of free vote, and one of the means by which this could be effected is by intimidation of a generalised nature. He said that though in paragraph 4(a) (v) to (vii) the 2nd respondent is alleged to have committed four separate acts of undue influence and in paragraph 4(a) (xi) to (xiv) the 1st respondent (the returned candidate) to have committed four separate acts of undue influence, the petitioner was not seeking to avoid the election on the basis of the allegations in 4(a), (v) to (vii) and 4(a) (xi) to (xiv). He stated that since the petitioner was not relying on those charges to avoid the election, the petitioner was not obliged by Rule 12(2) to furnish security in respect of those charges. It is to be noted that each of these allegations contains all the ingredients of the charge of corrupt practice of undue influence committed in connection with the election by the candidate or by an agent of the candidate sufficient, in terms of section 77B, to avoid the election. The question arises whether the Election Judge is bound by the charges preferred by the petitioner on the material facts furnished by him in the petition and is inhibited from identifying the charges which the averments reveal. Section 81 requires the Election Judge to determine at the conclusion of the trial of an election petition whether the election was void. In terms of this section, if at the conclusion of the present election petition the Election Judge finds that any one of the allegations set out in 4(a), (v) to (vii) or 4(a) (xi) to (xiv) is proved to have been committed he will have to hold that a corrupt practice has been committed in connection with the election by the returned candidate (1st respondent) or by the 2nd respondent, an agent of the 1st respondent (vide paragraph 3 of the petition) and consequently determine that the impugned election is void.

Mr. Senanayake's reply was that section 81 does not give jurisdiction to the Election Judge to declare the election void on any ground or charge which had not been specifically relied on by the petitioner in his petition for the avoidance of the election. I cannot accept this limitation placed on the jurisdiction vested in the Election Judge by section 81. This section provides that "at the conclusion of the trial of an election petition the Election Judge shall determine . . . whether the election was void, and shall certify the determination in writing under his hand." There is no warrant for reading into this section the words "whether the petitioner has proved the charge relied on by him and if so whether the election is void". The section does not place any limitation on the Election Judge to declare void the election if the evidence on record led under any head establishes any one of the grounds set out in section 77. The Election Judge's jurisdiction to determine an election void is not confined to the charges preferred by the petitioner. Section 81 read with section 77 obligates the Election Judge to declare void the election of the 1st respondent when a corrupt practice in connection with the election, whether relied on by the petitioner or not has been proved to his satisfaction to have been committed by the 1st respondent or by his agents, the 2nd or 3rd respondent.

It is true the petitioner has pleaded in paragraph 4(a) the aforesaid acts of undue influence committed by the 2nd respondent and the 1st respondent, in support of the ground of general intimidation and not in connection with the charge of corrupt practice and has studiously abstained from labelling them as corrupt practice by the candidate or his agent. But they could have, without any further averment appropriately been included in paragraph 3 of the petition where the petition sets out items of the corrupt practice of undue influence committed by the agents of the 1st respondent and been proper subject-matter of charges under section 77(c).

If Mr. Senanayake's submission is accepted it would enable the petitioner to avoid furnishing security in respect of allegations of corrupt practice by the candidate or his agent by categorising them as instances of general bribery, intimidation etc., while putting the candidate and/or his agent in hazard of punitive consequences under section 81 or 82. The candidate or his agent will then be put in a situation of having to defend themselves against the charges of such corrupt practice without the petitioner furnishing necessary security for such charges. In my view this cannot be permitted. Under Rule

12(2) to determine the grounds or charges on which the petitioner is asking relief court is not restricted to what he specifically alleges for his ground or charge in the petition but what are the grounds or charges which the petition discloses. If the material facts on which the petitioner relies exhibits a ground or charge for avoidance of an election under section 77, irrespective of the fact whether the petitioner has chosen to prefer a charge based on them, the petitioner will have to give security for such charge. The petitioner relies on the facts set out in his petition for the avoidance of the election and if the facts so set out disclose a charge or ground for the avoidance of the election, it is immaterial whether the petitioner has framed such a charge or ground for the avoidance of the election. The petitioner is relying on facts which constitute a charge or ground and hence has to give security in respect of such charge or ground. The security is for the benefit of the respondents and it is from their perspective as to the hazard they are put to that the amount of security has to be calculated.

The instances of undue influence given in 4A (ii) and (iii) are the same as instances given in 3B (i) and (ii) and therefore do not constitute new charges of undue influence.

I agree with the Election Judge that in respect of the matters pleaded in paragraph 4A of the petition the petitioner should have deposited a total sum of Rs. 22,500.

The acts of impersonation pleaded in paragraph 4B of the petition constitute other grounds of 'misconduct' and attract Rs. 2500 as security.

The arrest of the agents of the S.L.F.P. by the Police on 18.5.1983 (the election day) and keeping them in custody as set out in paragraph 4C(i) constitute one distinct type of 'other circumstances' and attract Rs. 2500 as security.

I agree with the Election Judge that the refusal by the Police of loudspeaker permits for holding public meetings and acts of misconduct by the Police, set out in paragraph 4C (iii) (a) and (c) committed during the election campaign constitute a distinct type of 'other circumstances' and attracts Rs. 2500.

The acts of the Police in permitting unauthorised persons to enter polling booths and to intimidate electors in the polling queues on the election day referred to in paragraph 4C (iii) (b) constitute a third distinct type of 'other circumstances' and attracts Rs. 2500 as security.

The allegation of non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order in Council, 1946, relating to elections, constitutes a distinct ground and attracts Rs. 5000 as security.

I therefore agree with the Election Judge on the computation of the security required to be furnished by the petitioner in respect of the allegations contained in the petition.

The Election Judge has held that the petitioner has set out as best as he can full particulars of the several corrupt practices alleged by the petitioner and that the Election Judge could in the exercise of his power under section 80C (i) direct amendment or amplification of the particulars, if he thinks necessary. No argument was urged, faulting this conclusion.

The Election Judge has upheld the objection that the affidavit filed by the petitioner is inadequate.

Paragraph 2 of the affidavit of the petitioner, accompanying the petition states "that the averment of facts set out in my petition and the particulars of commission of corrupt practice set out therein are made from my own personal knowledge and observation or from personal inquiries conducted by me in order to ascertain the details of the incident referred to in the petition." The Election Judge states that the petitioner does not say in his affidavit which facts in the petition are based on personal knowledge and which of them are based on information. He however holds that the affidavit can be one based on personal knowledge or on information and belief provided that if the latter, the deponent must disclose the source of information and the grounds of his belief. He also held that the function of an affidavit is to certify and support the allegation of corrupt practice made in the petition and an affidavit that fails to perform the function is not an affidavit in the eye of the law. The Election Judge has held that the affidavit is defective in that the deponent has not disclosed the source of information and the ground of his belief. He concludes—

"I reject the affidavit filed by the petitioner on the ground that the petitioner has not verified and confirmed the facts stated in the petition. I uphold the objection that there was no proper affidavit supporting the allegation of corrupt practice pleaded in the petition, and therefore the petition was defective.

Section 80 of the Ceylon (Parliamentary Elections) Order-in-Council provides that –

“The petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice.”

Admittedly no form has been prescribed for the affidavit to conform to.

I agree with the Election Judge that where some of the statements in the paragraph of the affidavit accompanying the election petition are based on the knowledge of the deponent and some on information received from others, the affidavit is defective. But I do not agree with the Election Judge that the petition should be dismissed on that ground of defect in the verification. The allegation of corrupt practice cannot be ignored merely on the ground that the source of information, is not disclosed, when the allegation is based on information, as it is not a requirement of law that the source of information or the ground of the deponent's belief should be set out, since the form of the mandatory affidavit has not been prescribed. In my view the Election Judge was in error in upholding this objection regarding affidavit.

I agree with Samarawickrama, J., that an election petition should not be dismissed on the ground of defective affidavit, where no form has been prescribed by law.

Though I do not agree with the Election Judge in his conclusion respecting the objection regarding the persons to be joined as respondents to the petition and in respect of the adequacy of the petitioner's affidavit. I agree with the Election Judge that the security furnished by the petitioner is not sufficient in terms of Rule 12 (2). I therefore dismiss the appeal, but I do not make any order regarding costs.

COLIN-THOMÉ, J. – I agree.

ATUKORALE, J. – I agree.

Ā. H. DE ALWIS, J. – I agree.



**WANASUNDERA, J.**

The two appeals, S.C. 4/84 and 5/84, were consolidated and heard together although the petitioners and the respondents in the respective appeals are different. They deal with the same election and the same electoral seat, and some of the legal issues argued before us are common to both appeals.

In these election petitions the petitioners have asked for a declaration that the election of the 1st respondent as a member of Parliament for Mahara (Electoral District No. 17) is void. The petitioner in the second petition and the 1st respondent were two of the five candidates who contested the election.

The election was held on 18th May, 1983, pursuant to Article 168 (1) (d) (iii) of the Constitution, as amended by the Fifth Constitutional Amendment, and was conducted in terms of the provisions of the Ceylon (Parliamentary Elections) Order-in-Council 1946.

The petitioner in the first petition (No. 4/84) is a voter. The four respondents are : the successful candidate (the 1st respondent), Sarathchandra Rajakaruna (the 2nd respondent), who is incidentally a member of Parliament and a Deputy Minister, Ranil Wickremasinghe (the 3rd respondent), also a member of Parliament and a Cabinet Minister, and the Returning Officer for the electoral district (the 4th respondent).

Paragraph 3 A of the petition alleges three charges of corrupt practice of undue influence against the 1st respondent, committed by his agent the 2nd respondent.

Paragraph 3 B of the petition contains two charges of corrupt practice of undue influence against the 1st respondent, committed by his agent the 3rd respondent.

In paragraph 4, the petitioner has stated that by reason of general intimidation or other misconduct or other circumstances, the majority of electors may have been prevented from electing the candidate whom they preferred. Paragraph 4 A lists 14 such instances. This intimidation has been done by the 1st respondent himself and by the supporters of the 1st respondent, and includes two instances by the

3rd respondent and three instances by the 2nd respondent as agents of the 1st respondent. These allegations are of a very grave nature and one transaction involved the shooting and the death of a S.L.F.P. supporter standing by the side of or very close to the unsuccessful candidate Vijaya Kumaranatunga, the petitioner in the second petition. The other cases disclose assault, thuggery and intimidation of numerous supporters of the S.L.F.P. at various times and at various places by individuals and gangs, and in one case by a group of about 150 persons.

Paragraph 4 B of the petition lists 42 cases of impersonation as constituting other misconduct.

Paragraph 4 C states certain other circumstances that prevented a true vote. It contains a list of 31 names of polling agents of the S.L.F.P. candidate who had been unlawfully arrested and held in custody for several hours after the polling commenced and were therefore unable to perform their functions. Paragraph 4 C. (ii) lists three cases where loud speaker permits had been wrongly refused to the S.L.F.P. Paragraph 4 C (iii) alleges a number of wrongful acts on the part of the Police including the arrest of a chief organiser of the S.L.F.P. in Uruval Peruwa area.

In the second petition (No. 5/84) Mr. Vijaya Kumaranatunga, the unsuccessful candidate, has sought a declaration that the election is void on the ground that the 2nd respondent Mr. J. R. Jayewardene (the President of the Republic) as agent of the 1st respondent, committed the corrupt practice of making false statements of fact in relation to the personal character and conduct of the petitioner. That petition would be dealt with in the latter part of this judgment.

The election had been hotly contested and the result was very close. The 1st respondent polled 24,944 votes as against 24,899 polled by Mr. Kumaranatunga, the petitioner in the second petition. The majority was a mere 45 votes. There is reason for anxiety in this case when we consider the serious nature of the allegations in the petition in the context of the slender majority.

When the election petitions came for hearing before the Election Judge, the respondents at the outset raised certain preliminary objections and prayed for the dismissal of the petitions. The Election Judge has upheld those objections and dismissed the petitions. The

present appeals are from that order. The dismissals of the petitions in limine by the Election Judge did not permit the court to go to trial and inquire into the several allegations made in the petitions.

The preliminary objections raised in the first petition (No. 4/84) are the following :-

- (a) that sufficient security has not been given by the petitioner in respect of his petition.
- (b) that persons who are required to be joined as respondents to the petition have not been so joined.
- (c) that the petition has failed to set out full particulars of the several corrupt practices alleged by the petitioner as required by the law.
- (d) that the affidavits filed by the petitioner are inadequate and do not comply with the legal provisions.

At this stage it would be convenient to set out in extenso the legal provisions that are relevant for a consideration of this matter. The applicable legal provisions are contained in the Ceylon (Parliamentary Elections) Order-in-Council 1946, as amended by Act No. 9 of 1970. They are as follows :-

"80 A. (1) A petitioner shall join as respondent to his election petition -

- (a) where the petition, in addition to claiming that the election of all or any of the returned candidates is void or was undue, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates, other than the petitioner, and where no such further declaration is claimed, all the returned candidates ; and
  - (b) any other candidate or person against whom allegations of any corrupt or illegal practice are made in the petition.
- (2) Any candidate not already a respondent to an election petition shall, upon application in that behalf made by him to the Election Judge, be entitled to be joined as a respondent to such petition :

Provided that no candidate shall be entitled to be joined of his own motion as a respondent to such petition under the preceding provisions of this section unless he has given such security for costs as the Election Judge may determine.

80 B. An election petition –

- (a) shall state the right of the petitioner to petition within section 79 of this Order ;
- (b) shall state the holding and result of the election ;
- (c) shall contain a concise statement of the material facts on which the petitioner relied ;
- (d) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice, and shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice ;
- (e) shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or as the case may be, and shall be signed by all the petitioners ;

Provided, however, that nothing in the preceding provisions of this section shall be deemed or construed to require evidence to be stated in the petition.

80C. (1) The Election Judge may, upon such terms as to costs or otherwise as he may deem fit, allow the particulars of any corrupt or illegal practice specified in an election petition to be amended or amplified in such manner as may in his opinion be necessary for ensuring a fair or effective trial of the petition so, however, that he shall not allow such amendment or amplification if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

(2) Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of the presentation of such petition. The Election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition.

81. At the conclusion of the trial of an election petition the Election Judge shall determine whether the Member whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination in writing under his hand.

Such certificate shall be kept in the custody of the Registrar of the Supreme Court to be dealt with as hereinafter provided."

These provisions have to be considered in conjunction with Rule 12 of the Rules. Rule 12 contained in the Third Schedule is as follows :-

"12. (1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be an amount of not less than five thousand rupees in respect of the first charge constituting a distinct ground on which the petitioner relies, and a further amount of not less than two thousand five hundred rupees in respect of each additional charge constituting any such ground. The security required by this rule shall be given by a deposit of money.

(3) If security as in this rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition."

For the purpose of their submissions, counsel for the respondents have drawn the attention of the court to certain grounds and charges in the election petition. According to paragraph 3 of the petition the grounds and charges are as follows :-

3A. Corrupt practices of undue influence committed by the 2nd respondent as agent of the 1st respondent. Three charges.

3B. Corrupt practices of undue influence committed by the 3rd respondent as agent of the 1st respondent. Two charges.

In paragraph 4, the petitioner has alleged the ground of "general intimidation or other misconduct or other circumstances" whereby the majority of the electors may have been prevented from electing the candidate whom they preferred. As stated earlier, this ground contains three instances of intimidation by the 2nd respondent and two such instances by the 3rd respondent.

The parties were at issue on the question as to what is a ground and what is a charge of undue intimidation and how many such charges are contained in the petition. It was the respondents' contention that each of the charges referred to above is a charge of corrupt practice and carries with it the need to give security, the need for a covering affidavit and the joinder as a respondent of the person against whom such an allegation is made. This relates specifically to the charges under paragraph 4 of the petition which has been a bone of contention between the parties and all the issues before us arise from implications flowing from its contents.

I shall first deal with the question of security. The petition has been drafted on the basis that paragraph 3A (i), (ii) and (iii) contains three charges with the first charge carrying a security of Rs. 5,000. The total security due according to the petitioner therefore is Rs. 10,000. Paragraph 3B contains two charges of undue influence against the 3rd respondent. The security according to the petitioner is Rs. 5,000. Paragraph 4A contains one charge of general intimidation on the ground of the prevention of free voting. This the petitioner states carries a security of Rs. 5,000. Paragraph 4B is a charge of misconduct on the same ground as 4A and, according to the petitioner, attracts a security of Rs. 2,500. Paragraph 4C is another charge on the same ground and again according to the petitioner attracts a security of Rs. 2,500. Paragraph 5 dealing with

non-compliance is a first charge on a distinct ground and attracts a security of Rs. 5,000. The total security in respect of all charges, according to the petitioner, is Rs. 30,000. The petitioner has however deposited a sum of Rs. 50,000 leaving a large margin for error.

Both counsel for the respondents disputed this computation. Mr. Candappa had contended before the Election Judge that the proper amount of security is Rs. 72,500; but according to Mr. Mark Fernando it was Rs. 60,000. In the appeal before us it was submitted by both the respondents that the proper security is a sum of Rs. 60,000.

Since the difference between the sum deposited and what is contended to be the correct amount is only Rs. 10,000, I agree with Mr. Senanayake that it is not necessary for me to go into a detailed computation of the security in respect of all and every ground and charge. It was sufficient for us, as Mr. Senanayake submitted, that we confine ourselves to only paragraphs 4A (v), (vi) and (vii) and paragraphs 4A (xi), (xii), (xiii) and (xiv) of the petition on the objection to the adequacy of security. According to the respondents, these charges carry a security of Rs. 17,500. Mr. Senanayake has contended that paragraph 4A contains only one ground and charge and that this will carry a security of Rs. 5,000 and if this submission is correct, this preliminary objection would fail.

Paragraph 4A purports to have been formulated under section 77 (a). This provision requires some comment. Although there has been a divergence of views expressed by the Judges (including myself) in S.C. Election Petition Nos. 1, 2 and 3 of 1977 regarding section 77 (a), all counsel before us agreed that this provision contains only one ground of avoidance, namely that the majority of electors were or may have been prevented from electing the candidate whom they preferred. They also agreed that each circumstance enumerated in section 77 (a) would constitute a charge, e.g the first charge of general intimidation would attract a security of Rs. 5,000 and charges of general treating or general bribery etc., would be regarded as additional charges respectively and would attract a security of Rs. 2,500 each.

Now the respondents have contended that paragraphs 4A (v) to (vii) and (xi) to (xiv) constitute in fact charges of corrupt practice, although they have been formulated as charges under section 77(a). It was the respondent's contention that the court was not necessarily bound by

the formulation found in the petition and it was the duty of the court, having regard to the legal provisions relating to elections, to inquire into the circumstances set out in the petition and find out whether or not they disclose any allegations of corrupt practice against any person.

The respondent's objections on this matter were upheld by the Election Judge. The reasoning of the Election Judge in regard to this part of the case is as follows :

" . . . . The security that is payable does not depend on what a petitioner has chosen to label as corrupt practices, for, if this were so, it will leave the door wide open to the petitioner to tuck away in some part of the petition, an item of general intimidation, which if proved would result in avoiding the election. Take, for example, items (xi), (xii), (xiii) and (xiv) of paragraph 4A of the petition. They all contain allegations of assault by the 1st respondent, who is the successful candidate, or named persons who are SLFP supporters and it is stated that these acts were done in order to prevent the free exercise of the franchise by several electors who witnessed the incident by placing them under duress. The pleadings in these sub-paragraphs are exactly the same as those in paragraphs 3B (i) and (ii) against the 3rd respondent. This allegation, if proved at the trial, will not only avoid the 1st respondent's election, but he becomes also liable to be reported under s. 82 (a) of the Election Order-in-Council with two dire consequences – forfeiture of his civic rights and a criminal prosecution. I agree with Mr. Candappa that there are four charges of undue influence against the 1st respondent."

In regard to charges 4A (v), (vi) and (vii), the Election Judge said—

"In paragraphs 3A (i), (ii) and (iii), definite allegations of undue influence have been made against the 2nd respondent only, who is described as an agent of the 1st respondent. The persons whose votes were affected have also been named. All three incidents occurred near the Buthpitiya polling booth and the exact times when these incidents took place have also been specified. In each of the paragraphs 4A (v), (vi) and (vii) the allegations are against the 2nd respondent and other persons who acted on his behalf and at his instigation. The acts of the other persons have been brought home to the agent of the 1st respondent. All incidents occurred at Buthpitiya polling booth; the times are not specified. The acts



complained of are directed against the same persons named in paragraphs 3A (i), (ii) and (iii), and also against several other electors and in consequence they also did not vote. The incidents set out in these sub-paragraphs (v) – (vii) of paragraph 4A cannot be the same as those set out in paragraph 3A (i) to (iii). Each of the allegations stated in sub-paragraphs (v) – (vii) of paragraph 4A, if proved at the trial, will avoid the 1st respondent's election. The petitioner may fail to prove the allegations in paragraphs 3A (i) to (iii), and yet succeed in proving the allegations in paragraphs 4A (v) to (vii). I agree with Mr. George Candappa that there are three additional charges of undue influence against the 2nd respondent in paragraph 4A (v), (vi) and (vii)."

Section 82 (b) of the Order-in-Council requires the Election Judge at the conclusion of the trial of the election petition to make a report setting out—

- "(a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any ; and
- (b) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice :

Provided, however, that before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge under this section, the Election Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported."

This is the peg on which the respondents hang their arguments. To reiterate their arguments, they submit that there is a duty on the Election Judge to inquire into any allegation of a corrupt or illegal practice contained in the petition and to make a report specifying any person found guilty of any such practice. This they submit is to ensure the purity of the electoral process. They state that this duty extends beyond the case where a specific charge of a corrupt or illegal practice is made under section 77 (c), but would apply even where a corrupt or illegal practice is merely alleged in the petition. It is their submission that the jurisdiction of the court would be activated even when there is

a reference to a corrupt or illegal practice under any other ground as in section 77 (a). They have sought additional support for this in the difference in wording of paragraphs (c) and (d) of section 80B, where the terms "alleges" and "relies on" are, they submit, used in different senses.

On the basis of these provisions they submit that there is a duty on the Election Judge to identify and furnish a report of all persons proved to have been guilty of any corrupt or illegal practice. This of course would be additional to the main duty of court in determining the issue of the avoidance of the election. Mr. Candappa placed his case as high as to state that an election court in this country has the same powers exercised by an election court in the U.K. and would have quasi-inquisitorial powers to investigate and report on all allegations relating to corrupt and illegal practices. He cited the following passage from Halsbury's Laws of England (4th Edition), Volume 15, paragraph 834, in support of his submission :

"Subject to the provisions of that Act and the rules made under it, the principles, practice and rules on which committees of the House of Commons used to act in dealing with election petitions are to be observed, so far as may be, by the High Court and Election Court in the case of a parliamentary election petition. Where the petition alleges the commission of corrupt or illegal practices, the election court has quasi-inquisitorial as well as judicial duties, as the court must investigate and report whether any corrupt or illegal practices have been committed by, or with the consent of, the candidate, or by any other person, or whether they have extensively prevailed. It follows, therefore, that the election court has jurisdiction to inquire into any facts which throw light on the possibility of these offences having been committed even though these facts are not relevant to the issue raised between the petitioner and the respondent to the petition."

While there may not be a difference in the basic principles that govern an Election Court in the U.K. and in our country, yet our courts have been constrained to give effect to certain statutory provisions enacted here to meet the local requirements in the development of election laws in this country. Our courts would not have the wide ranging jurisdiction claimed by Mr. Candappa, but it would be nearer the position advocated by Mr. Choksy, who was not prepared to go all the way with Mr. Candappa.

An analysis of the relevant provisions which is supported by judicial decision leaves no room for doubting the respondents' submission that an election court is vested with dual functions. The dual functions connote in this context the conducting of two separate proceedings notionally, each involving a different set of issues and each leading to different consequences and yielding different results. Even the very quotation from Halsbury cited by Mr. Candappa in its concluding sentence makes this clear :

"... that the election court has jurisdiction to inquire into any facts which throw light on the possibility of these offences having been committed even though those facts are not relevant to the issue raised between the petitioner and the respondent to the petition."

The main event or proceeding in an election petition proceeding is the inquiry into the avoidance of the election. Its result can affect the whole electorate and the country. The other function, which is subsidiary, operates at an individual level, both in terms of inquiry and result. Where the main proceeding is based on the ground of a corrupt or illegal practice, the law by virtue of our amendment now requires the person against whom such allegations have been made should be made a respondent. It also requires such guarantees as security for the charges and the backing of an affidavit.

The main proceeding is also intimately linked with both the grounds for the avoidance of the election and the charges arising therefrom. These would be the issues in those proceedings. In the subsidiary proceedings the grounds for avoidance of the election are irrelevant and even a charge *qua* charge is not a matter in issue. The inquiry is directed, if Justice Nagalingam is right, not even to the conduct and culpability of the person against whom the allegation is made, but whether the material merely indicates the commission of a corrupt or illegal practice. In *In re Fred E. de Silva*, (1) Nagalingam J. said :-

"... A reading of sub-section (a) of section 82 reveals only two classes or persons who could be reported at best. I say "at best" for the primary concern of the sub-section is not so much with persons as with offences. It requires that a report should be made whether a corrupt or illegal practice has or has not been proved to have been committed, not that a person or persons should be reported ; ..."

For the purpose of resolving the issues before us, it is equally important that we have a clear understanding of what is a "ground" and what is a "charge". A fundamental distinction exists between these two expressions. It is now settled law that a "ground" and a

"charge" are different concepts and do not mean the same thing. The grounds for the avoidance of an election are set out in section 77. Clauses (b), (d) and (e) of section 77 contain one ground each, clause (c) contains two grounds, and clause (a) contains one ground. All these grounds are separate from one another and different. A charge would be an allegation coming under any particular ground referred to in section 77, which, if proved, would be sufficient to avoid an election. A charge under one ground is strictly confined to that ground and cannot be mixed with a separate ground and considered under a different head in section 77. The entire foundation of the respondents' submission is that a charge under one ground should also be considered as falling under a different ground. This is certainly not the legal position as I understand it.

The next mistake on the part of the respondents is to ignore the differences in nature and content between ground 77 (a) and ground 77 (c). I now turn to these two provisions contrasting ground 77 (a) with ground 77 (c) with reference to an allegation of a corrupt or illegal practice. Under ground (a), namely general intimidation, it is possible for a petitioner to give one or more instances of a corrupt practice. Now, could such an instance be considered as a charge of a corrupt practice under section 77 (c) for the purpose of the avoidance of the election? I do not think so.

First, it should be understood that ground 77 (a) deals with general bribery, general treating and general intimidation, and the gravamen of the complaint is that the majority of the electors were or may have been prevented from electing the candidate they preferred. On the other hand, ground 77 (c) deals with a corrupt or illegal practice simpliciter. Second ground 77 (c) is confined to a corrupt or illegal practice committed by the candidate or with his knowledge and consent or by his agent. There is no such limitation in regard to a reference to a corrupt practice made under ground 77 (a). This shows that the charge under (c) is a direct charge of corrupt practice made against the successful candidate, while under (a) the so-called "charge" against the successful candidate is not of a corrupt practice, but one of general intimidation. The reference to an instance of a corrupt practice under section 77 (a) is an allegation against the individual concerned and not against the successful candidate, and such an allegation can lead to certain other proceedings being set in motion against such person. There is another significant difference between these provisions which Mr. Choksy sought to bridge by giving us an illustration.

This difference is that ground (a) contemplates a generality, namely, a number of individual cases of intimidation or one act of intimidation involving several persons. Ground (c) deals with an act of intimidation operating at the individual level. This is borne out by the definition of "corrupt practice" in section 56, which shows that undue influence has to be exercised "upon or against any person". Mr. Choksy however strove valiantly to equate these two grounds. He gave as the example of an agent of the successful candidate intimidating a whole village containing 50 voters. This Mr. Choksy submitted was an example that could fall under both grounds (a) and (c).

While I agree with Mr. Choksy that this example can form a charge of general intimidation, I am however unable to agree that this can constitute a single charge under ground (c). This example is misconceived, for when it is closely examined it would be seen that this transaction constitutes both in law and fact a multiplicity of corrupt practices in terms of ground (c). There would be in this case as many corrupt practices as the number of voters who had been intimidated for the purpose of section 77 (a).

It would be clear from the above analysis that the so called "charge" of a corrupt practice under ground (a) has not the same meaning and legal effect as one under ground (c).

The disputed charges are 4A (v) to (vii) and 4A (xii) to (xiv). Charges 4A (v) to (vii) states that the intimidation was done by the 2nd respondent simpliciter, while charge 3A is formulated on the basis that the 2nd respondent acted as the agent of the 1st respondent. On the other hand, charges 4A (xii) to (xiv) on which Mr. Choksy relied refer to the acts of the candidate himself. He submitted that these charges could have been brought as a charge under section 77 (c).

When we look at charges 4A (ii) and (iii) and 4A (v), (vi) and (vii) of the petition, we find that these are not based on agency or on the direct responsibility of the candidate himself. As the pleadings stand, such evidence would not be admissible, so that for the reasons given earlier, these charges can in no way be equated to a ground under section 77 (c).

Mr. Choksy however, as to be expected, picked on the strongest case the respondents could present on this issue and pressed the charges 4A (xii) to (xiv), where the allegation is against the successful candidate himself. Incidentally if this submission fails a fortiori, the submission in respect of paragraphs 4A (v) to (vii) must necessarily fail.

Mr. Choksy submitted that such an allegation involving the successful candidate has to be considered differently from the other cases because, on the pleadings and as regards the available evidence, there would be no difference in his case between a charge under section 77 (c) and an allegation of a corrupt practice under section 77 (a). While admittedly some difference does exist between the two types of cases this is a difference brought about by the very nature of his situation as the main respondent defending the Election, but it can have no other significance. This fact does not go to alter the basic principles outlined earlier and such an inquiry even against the successful candidate would still partake of the nature of a subsidiary proceeding since the distinction I have drawn in this regard is a fundamental one and it cannot be blurred by accidental factors.

No doubt, unlike in the case of an alleged agent, there is a possibility of an elected candidate while succeeding in the trial still finding himself being liable to be reported under section 82 with the consequence that he may find himself disqualified from continuing to hold that seat. This has the appearance of an anomaly. Though that ultimate result may seem paradoxical, this is because in such an event the applicable legal provisions operate by way of two different channels. This provides the clearest proof that an election petition proceeding is dual in its nature and functions. In this example the election of the successful candidate would be sustained by virtue of the certificate issued under section 81. The disqualification on the other hand operates by virtue of the provisions of section 82 read with 82D and section 58. Even Mr. Choksy conceded that this position is the outcome of the operation of the legal provisions and that there would be nothing anomalous about it.

The above analysis helps also to dispose of another submission relating to section 82 made by the respondents. They state that if the proviso to section 82 were to be applied only to persons against whom allegations of a corrupt practice had been made outside section 77 (c), then an invidious distinction is being drawn among persons belonging to the same category.

I have already shown that a case falling under section 77 (c) is different from the category falling under section 77 (a), and accordingly these two are different categories constituted by the law for different sets of circumstances. The need to join some persons as respondents have been brought about by the amending law of 1970.

which has improved the procedural rules so as to give fuller expression to section 77 (c). A difference in the circumstances has resulted in this slight difference of procedure, but both procedures contain the same safeguards and cannot in my view amount to a case of discrimination. Incidentally it may be mentioned that the proviso to section 82 has been retained not only for cases such as this, but also for other types of cases, some contemplated by the legislature, others probably not, that may fall within the ambit of the proviso.

Although the respondents' cases have been presented on somewhat broader lines and touches on a number of charges, I have dealt with the strongest case the respondents could muster. My rulings here will necessarily cover all the other charges in respect of which the submissions of counsel carry much less conviction and weight. This finding against the respondents then, that the preliminary objections are based on a misconception, is adequate to dispose of the preliminary objections relating to all the charges in petition No. 4/84, save one. That is the question of the adequacy of the affidavit in the general context of the whole petition over and above its requirement under the impugned charges of corrupt or illegal practices.

Regarding the general adequacy of the affidavit, I find that the judgment of my brothers contain a useful discussion of this matter. It is not necessary to add anything more. I agree with them, contrary to what Mr. Senanayake submitted, that an affidavit is a necessary requirement and must be filed with the petition in a case such as this. A document purporting to be an affidavit, however, has been filed with the petition. It has been contended that this does not constitute a proper affidavit or an adequate one. Although the legislature undertook to prescribe the required form, it has omitted to do so. In the result, the petitioner has been left guessing as to what form he should follow. In this situation the drastic step of dismissing the petition for this lapse, if lapse it be, seems excessive. I would consider this lapse as an irregularity that does not affect the validity of the petition before court.

In the result I overrule all the preliminary objections. I would therefore allow the appeal with costs and direct the Election Judge to proceed with the hearing and trial of this petition.

*Appeal dismissed.*