

1947

Present : Soertsz, S.P.J.

WILLIAM, Petitioner, and PREMACHANDRA, Respondent

*Election petition No. 10 of 1947, Kadugannawa**Election petition—Withdrawal by Petitioner—Payment of expenses of public servants—power of Court—Rule 21—Parliamentary Elections Order in Council, 1946.*

Where a petitioner seeks to withdraw an election petition the Court has power under rule 21 of the Parliamentary Elections Order in Council to order the petitioner to pay, in addition to the costs of the respondent, a sum of money on account of the time of public servants who had been occupied in dealing with the petition.

APPPLICATION to withdraw an election petition.

Christie Seneviratne, for the petitioner.

G. T. Samarawickrame, for the intervening petitioner.

S. R. Wijayatilake, for the respondent.

Cur. adv. vult.

December 19, 1947. SOERTSZ, S. P. J.—

On the face of it, this application by the petitioner to withdraw his petition challenging the election of the respondent looks simple and good-natured but, then it may not be as good as it looks, and it behoves

one to take measures to prevent, as far as possible, petitioners from coming forward with petitions without proper consideration, and perhaps with ulterior motives, and then moving to withdraw them too readily when some purpose has been served regardless of the public time that has been wasted.

In this case, the grounds on which the petitioner moves to withdraw the petition may well be genuine, but I cannot say that they are convincing because the matters adduced as grounds for the withdrawal of the petition are matters which should have engaged the attention of the petitioner before he filed his petition. Some notice, I think, must be taken of this. I would, therefore, direct that the petitioner do pay, in addition to the costs of the respondent, a sum of Rs. 500 on account of the time of the several public servants who have been occupied in dealing with this petition at different stages. Rule 21 provides that "leave to withdraw may be given upon such terms as to the payment of costs and otherwise as judge may think fit". I interpret the word "otherwise" in the context as vesting the judge before whom an application to withdraw an election petition comes with the discretion to make such an order in an appropriate case.

Let the matter now be submitted to the Chief Justice for his directions under rule 33, sub-section (2) in regard to the respondent's costs and under rule 14, sub-section (2) in regard to the second part of my order, and also for his directions under rule 14 (3). His attention should be invited to the application made by Dunuwille Herbert Jayawickreme.

Application allowed.
