

1947

*Present : Nagalingam J.*

KURUPPU, Petitioner, and HETTIARATCHY *et al.*, Respondents.

*Election Petition No. 6 of 1947, Nivitigala.*

*Election petition—Inspection of documents—Secrecy of ballot—Decision of Returning Officer—Ballot papers—Elections Order in Council —Rules 49(5) and 87.*

On an application for inspection of documents by the petitioner who claimed the seat on the ground that he had a majority of lawful votes—

*Held*—(i) that the journals of the Presiding Officer and the report of the Returning Officer were private documents which were not liable to be disclosed :

(ii.) that the petitioner was entitled to inspect the list of tendered ballot papers and the marked Register ;

(iii.) that disclosure of the tendered ballot papers would violate the secrecy of the ballot and could not be permitted ;

(iv.) that the decision of the Returning Officer rejecting a ballot paper was final and could not unlike in English law be questioned on an election petition and that inspection could not be allowed.

**A**PPPLICATION for inspection of documents in regard to Election Petition, Nivitigala.

*N. E. Weerasooria, K.C.* with *A. B. Perera*, for petitioner.

*S. E. J. Fernando*, for first respondent.

*T. S. Fernando, C.C.* with *M. Tiruchelvam*, for second respondent.

*Cur. adv. vult.*

December 16, 1947. NAGALINGAM J.—

This is an application for inspection of documents by the petitioner who in effect claims the seat on the ground that he had a majority of lawful votes. The documents he seeks inspection of are set out in his application dated December 3, 1947. The journals of the Presiding Officer and the report of the Returning Officer are not documents which are required to be kept under the Order in Council but are in the nature of private documents which in the interest of administrative efficiency have been prepared by the officers concerned on the directions of the Commissioner of Parliamentary Elections. These documents would fall within the category of documents known in civil proceedings as those relating solely to the case of a party and not liable to be disclosed. The contents of these documents may be elicited, if deemed necessary, at the trial by summoning the officers who may have kept them, and in view of the nature of the petition presented in this case, I cannot at the present moment see what relevancy those documents or their contents could have to the case of the petitioner. I am therefore not satisfied that the petitioner has made out a case for the inspection of these documents.

The list of tendered ballot papers and the marked Register are documents which I think the petitioner is entitled to inspect in view of the allegation that voters who would have cast their votes in favour of the petitioner have been personated at the election. The declarations made by the voters who voted on tendered ballot papers, to my mind, are not documents which would furnish information to the petitioner any greater than what the list of tendered ballot papers and the marked Register would show; but as Counsel for both respondents have consented to these documents being made available to the petitioner and as I can see no harm in granting the petitioner's request in regard to them, I would allow their inspection too.

Neither the tendered nor rejected ballot papers I think are documents which the petitioner can claim to have inspection of. The tendered ballot papers as required by section 45 of the Order in Council would contain the names of the voters and their numbers in the Register and the disclosure of these ballot papers would reveal how these voters voted and the secrecy of the ballot would thereby be violated. Under our law, differing as it does from the English law in this respect, the rejection of a ballot paper cannot be canvassed on an election petition, for by sections 49 (5) and 87 of the Order in Council the decision of the Returning Officer rejecting a ballot paper is declared to be final and not liable to be questioned on an election petition. While under English practice it is quite permissible to allow inspection of the rejected ballot papers with a view to question the decision of the Returning Officer in regard to orders

mady by him rejecting ballot papers, no such object can be achieved under our law and an inspection would not assist the petitioner to any extent but would merely provide him with material which would tempt him into labyrinths from which he cannot successfully emerge. Counsel for the petitioner was not able to adduce any reasons for his wanting an inspection of these documents. I therefore disallow the application with regard to the tendered and rejected ballot papers.

The unmarked ballot papers and the ballot papers not having the official mark which are listed in the application as forming a separate category must necessarily fall under either "rejected ballot papers" or "counted ballot papers". If they fall within the class of rejected ballot papers, the observations I have made in regard to rejected ballot papers would equally apply to them; but Counsel for the petitioner states that they in fact fall under the item of counted ballot papers. I shall therefore now deal with counted ballot papers as may remarks would cover them as well. The reason for desiring inspection of the counted ballot papers at this stage is stated by Counsel for the petitioner to be to ascertain whether the counting was correct and whether among the counted ballot papers there are any which should have been either rejected by the Returning Officer or in any event not counted owing to impersonation or any other circumstance. It was pointed out that the petitioner's application is restricted to an inspection of documents and does not extend to his being permitted to carry out a count on his own. Petitioner's Counsel then made an oral application that he be permitted to carry out a recount before trial in the presence of the respondents, but that will be the substantive matter for adjudication before the trial Judge, and any application for a recount before trial with a view to minimise the length of the trial should properly be made to the trial Judge and not to a Judge dealing with an interlocutory application. I therefore refuse an inspection of the counted ballot papers.

I would therefor direct that the petitioner be allowed an inspection of :

- (i) the list of tendered ballot papers,
- (ii) the declarations made by the voters who voted on tendered ballot papers, and
- (iii) the marked registers,

in Court in the immediate presence of the Returning Officer on a date to be mutually agreed upon by Counsel for the petitioner and for the second respondent in consultation with the Registrar of the Court. I have assumed for the purpose of this order that the documents the inspection of which I have allowed are not included in the bundles of :

- (i.) counted ballot papers,
- (ii.) rejected ballot papers,
- (iii.) tendered ballot papers,

and that the inspection of the documents allowed would not lead to breaking the seals of any of the aforesaid classes of ballot papers. Should the contrary, however, be the case, further directions will be applied for.

The costs of the application will be costs in the cause but the petitioner will in no event be entitled to his costs.

*Application partly allowed.*