

ADIKARI
v.
DISSANAYAKE AND OTHERS

COURT OF APPEAL
WEERASURIYA, J. (P/CA)
C.A. NO. 7/ 2000
JUNE 14TH 2001
JULY 16TH 2001

Election Petition - Parliamentary Elections Act No. 1 of 1981 - S. 92(1)(2), S. 96, S. 108 - Scope and grounds - Election Rule No. 14 - Constitution Article 81.

The Petitioner who was a candidate of the Peoples Alliance (P. A) for Parliamentary Elections held for the administrative district of Anuradhapura, sought relief on the ground that there was non compliance with the provisions of Act No. 1 of 1981, and sought a partial avoidance of the election in respect of the counting of preferential votes for the candidates of the P. A.

The Petitioner prayed for a scrutiny of the ballot papers and depending on this scrutiny the Petitioner sought a declaration in accordance with the result of such scrutiny. The 1st Respondent contended that -

- (1) The petitioner cannot have and maintain the Petition as the relief sought does not come within the ambit of S. 96.
- (2) There was failure to comply with Parliamentary Rule 14 - 4th schedule.
- (3) No adequate grounds are disclosed and
- (4) That the Petition is out of time.

Held :

- (i) It appears that, the grievance of the Petitioner was that some of the preferential votes cast in his favour had been added to the 1st and 5th Respondents during the process of counting.

If the Petitioner relies on S. 92(1)b the only relief he could obtain would be a declaration that the election in respect of the district is void - this is not the relief prayed for. As the Petitioner has sought to rely on grounds of avoidance spelt out in S. 92(2) the Petitioner is prima facie not entitled to the relief.

- (2) The Petitioner is seeking a review of the composition of the seats secured by the P. A.

S. 92(2) provides for a declaration that the election of a candidate be declared void. This relief could be granted only upon circumstances set out in S. 92(a)(b), (c) and (d). The petitioner has not pleaded any of the above grounds, he is not entitled to pray for a declaration that the return of the 5th Respondent was undue.

- (3) In terms of S. 96, the Petitioner is not entitled to a scrutiny of the ballot papers.

Election Petition in terms of the Parliamentary Elections Act No. 10 of 1981.

Cases referred to :

1. *Alexander v. Chandrananda de Silva* - 1996 2 SLR 301

Dr. Jayatissa de Costa with *D. P. P. Dassanayake* and *Asoka Fernando* for the Petitioner.

Wijedasa Rajapakse P. C., with *Kapila Liyanagamage* for 1st Respondent.

K. Thiranagama with *Amarasena Hettige* for 5th Respondent.

P. A. Ratnayake, D. S. G., with *M. R. Ameen S. C.*, for 176 and 177th Respondents.

Cur. adv. vult.

August 24, 2001.

WEERASURIYA, J. P/CA

This matter was taken up for inquiry on account of the following preliminary objection raised by the 1st respondent and 166th and 167th respondent

The preliminary objections raised by the 1st respondent read as follows:

- (a) The petitioner cannot have and maintain this petition for the reason that the relief sought does not come within the ambit of Section 96 of the Parliamentary Elections Act.

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- (b) The Petitioner has failed to comply with the parliamentary Elections Rule No. 14 set out in the 4th schedule.
 - (c) The Petitioner does not disclose adequate ground to obtain the relief sought for; and
 - (d) The petition is out of time.

The preliminary objection raised by the 176th and 177 respondents are as follows:

- (a) That the Election Petition had not been filed within 21 days from 13. 10. 2000 being the date of publication of the result of the election in the gazette as stipulated in Section 108 of the Parliamentary Elections Act No. 1 of 1981.
- (b) That the petitioner is not entitled to relief prayed for in the petition since in circumstances set out in the petition the only relief the petitioner can pray is a declaration that the election in respect of the entire administrative district of Anuradhapura be declared void in terms of Section 92(1) of the Parliamentary Elections Act No. 1 of 1981 read with Section 96 of the said Act and the petitioner has failed to pray for this relief.
- (c) That in any event the petitioner is not entitled to the relief prayed for in paragraph (b) to the prayer to the petition, since the petitioner has not pleaded any of the grounds set in Section 92 (2) of the Parliamentary Elections Act No. 1 of 1981; and
- (d) That in any event the petitioner is not entitled to the relief prayed for in paragraphs (a), (d) (e) and (f) to the prayer to the petition, since they are not among the reliefs that may be prayed for in terms of Section 96 of the Parliamentary Elections Act No. 1 of 1981.

Items (2) and (4) of the objections of the 1st respondent and item (A) of the objections of 166th and 167th respondents

are not sustainable for the reason that the petitioner has complied with the requirements of the periods relating to the institution of the petition and notice of presentation.

It is to be observed that items (1) and (3) in the objections of the 1st respondent correspond to items (A) and (D) of the objections of the 176th and 177th respondents. Those mainly relate to the question whether the petitioner has correctly invoked the provisions of the Parliamentary Elections Act for seeking relief.

In order to appreciate the nature and the content of the aforesaid objections it would be useful to examine Section 92 and 96 of the Parliamentary Elections Act No. 1 of 1981.

92 (1) - The election in respect of any electoral district 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 any reason of general bribery, general treating, or general intimidation or other misconduct or other circumstances whether similar to those enumerated before or not a section of electors was prevented from voting for the recognized political party or independent group which it preferred and thereby materially affected the result of the elections;
- (b) non-compliance with the provisions of this Act relating to elections if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non - compliance materially affected the result of the election.

(2) The election of 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 -

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- (a) that a corrupt or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate;
 - (b) that the candidate personally engaged a person as a canvasser or agent or speak on his behalf knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the law relating to the election of the President or the law relating to referendum or under the Ceylon (Parliamentary Elections) order in Council 1946 or under this Act by a Court of Competent jurisdiction or by the report of an Election Judge.
 - (c) that the candidate personally engaged a person as a canvasser or agent, or to speak on his behalf knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by the Parliament in terms of Article 81 of the Constitution and the periods of such civic disability specified on such resolution had not expired.
 - (d) that the candidate was at the time of his election a person disqualified for election as a member.

Section 96 of the Parliamentary Elections Act reads as follows:

"96 - All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition namely:

- (a) a declaration that the election in respect any electoral district is void;
- (b) a declaration that the return of any person elected was undue;
- (c) a declaration that any candidate was duly elected and ought to have been returned.

Learned D. S. G. for the 176th and 177th respondent contended -

- (a) that since the petitioner has relied upon noncompliance with the provisions of the Parliamentary Elections Act within the meaning of Section 92(1) (b) the only relief that can be prayed for is a declaration that the election in respect of the electoral district in question be declared void in terms of Section 92 (1).
- (b) that since the petitioner has prayed for relief for partial avoidance of the election for the said electoral district to the extent of counting of the preferences indicated by the voters for the candidates nominated by the People's Alliance, this petition is misconceived in law;
- (c) that inasmuch as the petitioner has prayed for a declaration that the return of the 5th respondent elected was undue which could be grounded in the circumstances set out in paragraphs (a), (b), (c) and (d) of Section 92(2) of the Act in the absence of any such grounds pleaded in the petition the petitioner is not entitled to grant of such relief.
- (d) that the petitioner is not entitled to pray for a scrutiny of ballot papers in terms of Section 96 of the Act.

The petitioner was a candidate of the People's Alliance for the Parliamentary Elections held on 10. 10. 2000. for the administrative district of Anuradhapura. The People's Alliance secured 5 seats and the United National party 3 Seats and 1st - 5th respondents were declared elected from People's Alliance. The petitioner states that the 5th respondent secured the lowest number of preferential votes namely 33, 738 and that he secured 28485 preferential votes.

The petitioner has sought relief on the ground that there was non-compliance with the provisions of the Parliamentary Elections Act No. 1 of 1981. He has enumerated the incidents in respect of acts of non - compliance in detail in paragraph 11

of his plaint. On a perusal of the petition, it would appear that the grievance of the petitioner was that some of the preferential votes cast in his favour had been added to the 1st and 5th respondents during the process of counting.

Section 92 (1) (a) and (b) of the Parliamentary Elections Act provides for an avoidance of an election in respect of any electoral district on proof of the following grounds to the satisfaction of the election Judge.

- (a) That by reason, general bribery, general treating or general intimidation or other misconduct or other circumstances a section of the voters were prevented from voting for the recognized political party or the independent group and thereby materially affected the election.
- (b) That non - compliance with the Provisions of the Act, if it appears that the election was not conducted in accordance with the principles laid in such provisions and that such non - compliance materially affected the result of the election.

If the petitioner relied upon the ground enumerated in Section 92(1) (b), the only relief he could obtain would be a declaration that election in respect of the district is void. But admittedly that is not the relief he has intended to seek as seen from his averments in the other paragraphs of his petition.

Inasmuch as the petitioner has sought to rely on grounds of avoidance spelt out in Section 92(2) of the Parliamentary Elections Act, the petitioner is *prima facie* not entitled to that relief.

The Petitioner has sought a partial avoidance of the election in respect of the counting of preferential votes for the candidates of the People's Alliance. Therefore, the petitioner is only seeking a review of the composition of these seats secured by the People's Alliance.

The relief sought by the Petitioner on this score appear to be two fold.

- (a) a declaration that the return of the 5th respondent elected was undue.
- (b) A declaration that the petitioner was duly elected or ought to have been returned as a member of Parliament for the Anuradhapura Electoral District.

Section 92 (2) of the Act provides for a declaration that the election of a candidate be declared void. It is to be observed that the relief could be granted only upon the circumstances set out in section 92 (a), (b) (c) and (d) of the Act. These are situations where allegations of having committed corrupt or illegal practices or where a candidate was disqualified for election or where he has engaged a person as a canvasser or agent who had been found guilty of a corrupt practice or had been deprived of civic rights. But the petitioner neither pleaded any of these ground in his petition nor sought to rely on them in his petition. In the circumstances, the petitioner is not entitled to pray for a declaration that the return of the 5th respondent was undue (*vide Alexander v. Chandrananda de Silva*⁽¹⁾)

The Petitioner in paragraph (f) of the prayer to the petition has prayed for a scrutiny of the ballot papers and depending on the outcome of this scrutiny the petitioner in paragraph (d) of the prayer to the petition has prayed for a declaration in accordance with the result of such scrutiny.

Section 96 of the Parliamentary Elections Act specifies the reliefs that may be prayed for in an election petition. In discussing this issue reference to section 80 of the Ceylon (Parliamentary Elections) Order in Council would be useful to understand the present provisions. Section 80 (d) of the Ceylon Parliamentary Elections) Order in Council provided for a scrutiny as one of the reliefs that can be prayed for in an election petition.

Section 80 of the Ceylon (Parliamentary Elections) Order in Council has been repealed by Section 96 of the Parliamentary Elections Act, but nevertheless as a whole, it correspond to repealed Section 80 of the earlier order in Council. But the significant factor is that there is a total omission of this relief in section 96 of the Parliamentary Elections Act. Therefore, it is manifestly clear that the petitioner is not entitled to a scrutiny of the ballot papers.

Therefore, the petitioner is not entitled prima facie to seek the reliefs he has sought in terms of prayers (A) to (F) in his petition.

I dismiss this petition with costs.

President of The Court of Appeal.