

1931

*Present: Drieberg J.*WIJEYSEKERE *v.* COREA

IN THE MATTER OF THE CHILAW ELECTION.

Election petition—Filing of petition—Time limit—Ceylon (State Council Elections) Order in Council, 1931, s. 80 (1).

In the computation of the time limit within which an election petition should be filed under section 80 (1) of the Order in Council (1931), Sundays and public holidays should not be excluded.

THIS was an election petition in which the respondent moved that the petition be dismissed on the ground that it was not presented within time. The result of the election was published on June 24, 1931, and the petition was filed on July 18, 1931.

The Petitioner, F. A. Wijesekere, in person.

H. V. Perera (with him M. T. de S. Amarasekera and C. V. Ranawake instructed by S. R. Amerasekera), for the objector, respondent.

August 7, 1931. DRIEBERG J.—

The respondent to this petition asks that the petition be dismissed on several grounds. One is that it was not presented within time. If this objection succeeds, it is unnecessary to consider the others. The election result was published on June 24 last, and the election petition was filed on July 18.

The respondent contends that the right method of computing time is to include Sundays and public holidays, and if this is done, the last day for filing the petition was July 15, 1931. But the petitioner says the

last date for filing the petition was July 18, the day on which he did in fact file it. And he says that he is within time for the reason that in computing time Sundays and public holidays should be excluded. There are no public holidays within this period, but there are three Sundays.

The mode of computing time for this purpose is laid down beyond all doubt. Article 3, sub-section (3), of the Order in Council enacts that in the construction of the Order the provisions of the Interpretation Ordinance of 1901 shall apply, and this brings in the definition of time as stated in that Ordinance. In England there is a special provision in the Parliamentary Elections Act of 1868; section 49 of it deals with the point. Section 7, sub-section (3), of the Interpretation Ordinance provides that where a limited time, not exceeding six days from any date, or from the happening of an event, is appointed by law for the doing of an act, every intervening Sunday or public holiday shall be excluded from the computation of such time. The position, therefore, is this: that where the period exceeds six days, public holidays and Sundays are included. This is in fact the usual rule of interpretation, for Sundays and public holidays are never excluded unless there is special mention of the fact.

The petitioner has referred me to some other matters which do not touch the question. He referred to the exclusion of Sundays in certain cases, but that is where the last day of the performance of an act is a Sunday. That is not the case here. The petitioner also contends that he is within time for the reason that his petition falls within Article 80, sub-section (2) (a), of the Order in Council. But this contention cannot possibly succeed. That is a provision that where an election petition questions the return or election on the ground of corrupt practice subsequent to the return and specifically alleges a payment of money or other act done after the return of the member, the period of 28 days should be reckoned from the date of such payment or act.

It is not specifically alleged in this petition that a payment of money was made after the election of the respondent, Mr. Corea. The section has got no application whatever to the petition presented.

Another reason advanced was that this petition may yet be within time for the reason,—so the petitioner says,—that the notice required by Article 68 as to election expenses has not yet been published in the *Government Gazette*. I cannot accept this statement as evidence that there is no such publication, but apart from this, that section provides for a special petition based on the ground of illegal practice which becomes apparent on the publication of the candidate's expenses.

It is not necessary, as I said before, to deal with the other matters of objection as the petitioner must fail on this one ground alone. I, therefore, dismiss the petition and direct that the petitioner pay the costs of respondent.

Dismissed.