

SUPREME COURT

Sarath Muttetuwegama

V

Lionel Gunasekera and Others

*S.C. Election Petition Appeal No. 4/81 — CA Election Petition No. 1/81**Section 58(1)(d), 77,(a)(c) Ceylon (Parliamentary Elections) Order in Council — Adequacy of Security — Rule 12(2) Election Petition Rules — Section 80B of Amending Act No. 9 of 1970 — Corrupt Practice — General intimidation.*

Sarath Muttetuwegama the Appellant was elected Member of Parliament on 12.1.81. Lionel Gunasekera the Respondent was one of the unsuccessful candidates at the election.

The Respondent challenged the election of the Appellant on grounds of corrupt practice and general intimidation. At the trial the Appellant raised a preliminary objection that the amount deposited as security was inadequate.

It was argued that each separate false statement or allegation was a separate charge and as such each such additional false statement necessitated a deposit of Rs. 2,500/-.

Held that after the Amending Act No. 9 of 1970 an election petition had to contain a concise statement of material facts and had to set forth full particulars of any corrupt or illegal practice that the petitioner alleged and thus if the several statements are in respect of the personal character or the personal conduct of a candidate there is only one charge of corrupt practice as all such statements constitute the particulars of the corrupt practice alleged.

(2) It is not possible to separate intimidation of voters from intimidation of persons other than voters for the purpose of determining the amount to be deposited as security. The term general intimidation covered both categories:

APPEAL from judgment of the Election Judge on preliminary objection.

Before: Samarakoon, Q.C., C.J.
Wanasundera, J.
Wimalaratne, J.
Ratwatte, J.
Victor Perera, J.

Counsel: H.L. de Silva Sr. A-AL with K. Shanmugalingam, Sidat Sri Nandalochana and S.H.M. Reeza for Respondent-Appellant.
George Candappa with S.C. Crossette Tambiah, Varuna Basnayake and Henry Jayamaha for the Petitioner-Respondent.
K. Shanmugalingam with D.S. Wijesinghe and S.H.M. Reeza for the 2nd & 3rd Respondents.

Argued on: 22nd March, 1982.

Decided on: 6.4.82

Cur. adv. vult.

WIMALARATNE, J:

The 1st respondent-appellant Sarathchandra Muttetuwegama was elected the Member of Parliament for Kalawana at a bye election held on 12.1.81. The petitioner Lionel de Silva Gunasekera, who is the 1st respondent to this appeal, and who was one of the unsuccessful candidates, challenged the election of the 1st respondent on two grounds, namely,

- (1) that the corrupt practice of making false statements of fact in relation to his personal character, within the meaning of section 58(1)(d) read with section 77(c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended, was committed by the 2nd and 3rd respondents, as agents of the 1st respondent-appellant, or with his knowledge and/or consent (which false statements are set out in paragraphs 4, 5 & 6 of the Petition);
- (2) that by reason of general intimidation committed by supporters of the 1st respondent-appellant the majority of electors were or may have been prevented from electing the candidate whom they preferred, within the meaning of section 77(a) (the material fact of such intimidation being set out in paragraph 7).

In para 4 the petitioner alleged that the 2nd respondent Mahinda Rajapakse, at a public meeting in support of the 1st respondent held on 31.12.80 made the following false statement of fact: (the English translation of the Sinhala statement is produced as there is no controversy about its accuracy).

“When I was a student in 1960, I lived in Sravasthi with my father. Lionel Gunasekera was also there in the upstairs. One morning I saw him bringing a woman to his room. I thought it was his wife. In the evening another woman was brought in. In the morning it was yet another woman who went out of the room. Then I knew what type of person he was. If he comes to your home you will have to protect your young woman. I wonder what will happen to your young girls and young mothers if this man goes to Parliament”

In para 5 the petitioner alleged that the 2nd respondent, at another public meeting held on 2.1.81 also in support of the 1st respondent made the following false statement of fact:-

“As though it were today I could remember the Sixties, when I was residing with my father at Sravasthi and attending School, Lionel Gunasekera lived upstairs. One morning I saw Lionel taking a woman into his room. I thought she was his wife. In the evening I saw him bring another woman into his room. In the morning it was a different woman that came out of the room. Then I knew who the man was and this happened to be his daily routine.

Is this the type of man you intend sending to the Parliament? The one advice I could give the Voters of Kalawana is, if ever this cad happens to come canvassing for votes to your home protect your innocent wife and daughters. It is even difficult for an elderly woman to escape him. If this cad is sent to the Parliament and your wife or daughter happens to go to him for a favour what will be the outcome? I am warning you in advance”.

In para 6 the petitioner alleged that the 3rd respondent Piyadasa Harischandra, at a public meeting held in support of the 1st respondent on 8.1.81 made a false statement imputing that the petitioner had on several occasions in the 1960's been convicted of offences, that he was a lunatic or madman, that he was a person of low moral character who used the toilets of Parliament for immoral purposes. (The entirety of the statement as alleged by the petitioner is not set out as there appeared to be no controversy about the number of charges contained in the statement in this paragraph).

In *Para 7* the petitioner alleged general intimidation, and set out in six subparagraphs the material facts on which he relied. In subpara (a) there is an allegation of intimidation of his supporters and of voters *and even polling agents*, exercised by supporters of the 1st respondent.

The 1st respondent-appellant raised a preliminary objection that the security of Rs.25,000/- deposited by the petitioner was inadequate. The Election Judge held that all that was required was a sum of Rs.15,000/- as security and overruled the preliminary objection. Hence this Appeal.

The provisions relating to security which a petitioner is required to furnish is contained in Rule 12(2) of the Parliamentary Election Petition Rules of 1946, as amended by Act No.9 of 1970. It reads as follows:-

“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 deposit of money.”

Learned Counsel for the 1st respondent-appellant contended before us that,

Para 4 contains a first charge constituting the distinct ground of the corrupt practice of uttering a false statement, attracting as security a sum of Rs. 5000/-; and that it also contains two additional charges on the same ground attracting Rs. 5000/-.

Para 5 also contains three additional charges on the same ground attracting Rs.7500/-.

Para 6 too contains four additional charges also on the same ground attracting Rs.10,000/-.

Para 7 contains one charge on the distinct ground of general intimidation attracting Rs.5000/-. According to his computation the total amount of security should be Rs.32,500/-.

Learned Counsel for the 2nd and 3rd respondents, whilst supporting the argument on behalf of the appellant in respect of the charges in paras 4, 5 & 6 went one step further in respect of the ground alleged in para 7 and contended that that paragraph contained not one, but two charges, one being intimidation of voters and the other being intimidation of polling agents, which second category of intimidation he categorised as "other misconduct" within the meaning of section 77(a). According to his computation the security should be in a sum of Rs. 35,000/-.

There is no controversy that the four paragraphs contain two "distinct grounds" of avoidance of an election, namely (i) the commission of corrupt practices within the meaning of section 77(c), and (ii) "the prevention of free voting", which is a convenient phrase adopted to mean that "the majority of the electors were or may have been prevented from electing the candidate whom they preferred", within the meaning of section 77(a). The controversy is as regards the number of "charges" contained within these two grounds.

Both Mr. H.L. de Silva for the appellant and Mr. Shanmugalingam for the 2nd and 3rd respondents argued that there were at least three statements of fact in relation to the personal character of the petitioner in each of paras 4 & 5; and they are:-

- (1) that the petitioner took a woman one morning to his room at Savasti, whom the 2nd respondent thought was his wife;
- (2) that in the evening another woman was brought in; and
- (3) that in the morning it was yet another woman who went out of the room.

These, they say, constitute three allegations, and therefore three charges, which the appellant has to meet. Once the petitioner proves that the 2nd respondent, as agent of the appellant made these three statements, then the burden shifts to the appellant to prove the truth of *all three statements*. The proof of the truth of one or two of these statements would not suffice. The only way out is for the appellant to prove the truth of all three. If he fails to discharge that burden, then he would be guilty of a corrupt practice of making a false statement relating to the character of the petitioner.

Mr. Candappa for the petitioner-respondent contended that, in paragraph 4, as well as in paragraph 5, there is only statement of fact relating to the character of the petitioner, and that is that the petitioner is a man of immoral character as far as women are concerned. The three statements of fact referred to only formed the basis for his conclusion regarding the petitioner's lack of morality.

In interpreting Rule 12(2) one has to have regard to certain other amendments to our Election Laws introduced by the amending Act No.9 of 1970. I refer in particular to the new section 80B, which is in these terms:-

"80B. An election petition-

- (a)
- (b)
- (c) shall contain a concise statement of the material facts on which the petitioner relies;
- (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 the 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)

There could be little doubt that as a result of these amendments of 1970 material changes in the scope of our law relating to elections and election petitions have been effected. The history of the changes in the election laws have been recorded in the judgments of the five Judges of the former Supreme Court in Election Petition Appeals Nos. 1 and 2 of 1977 and No.3 of 1978 (S.C. minutes of 7.8.78). It is unnecessary to repeat them, except to emphasise that no longer is it possible to allege general grounds of avoidance, or charges of a general nature. A concise statement of the material facts has to be given, *with full particulars of any corrupt or illegal practice alleged.*

under verification by affidavit. What has been achieved by these amendments is that immediately on a petition being filed, a respondent would know the particulars of the charges or allegations he is required to meet.

Let us examine section 58(1)(d) in the light of the new amendments. The subsection reads thus:-

“Every person who makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate; shall be guilty of a corrupt practice”

In the Divisional Bench Judgment referred to earlier, Samarawickrema J. was of the opinion that the words “in relation to the personal character or conduct of such candidate” are inserted merely to define the nature of the false statement of fact which is struck at by the provision. Accordingly, whether an allegation is made that a false statement of fact is in relation to the personal character or in relation to the conduct of the candidate, or in relation to both, there is only one corrupt practice alleged. Likewise, to make several false statements of fact on one occasion, the combined effect of which is to cast a reflection on one facet of a person’s character would, in my view, amount to the commission of but one corrupt practice of making a false statement relating to the personal character of that person. For example, to say of a man that he is a drunkard because he was seen consuming liquor in the morning, then again at lunch time and later in the evening, would be to make one statement of fact in relation to his personal character, namely that he is a drunkard. The statements that he was seen consuming liquor at three different times of the day only constitutes the reasons for drawing the conclusion that he is a drunkard. Supposing an election petition contains an averment that a speaker at an election meeting made a statement that a candidate was a drunkard because he was seen taking liquor at different times of the day and on all seven days of the week, it would be quite absurd to say that the number of false statements of fact, if they be false, contained in that speech, would be equivalent to the number of times per day the candidate was seen consuming liquor multiplied by seven. It is difficult to believe that the legislature

ever intended Rule 12(2) to be interpreted in manner so as to read into statements of this kind more than one charge. Likewise, there is only one charge in each of paragraphs 4 and 5 of the present petition. The allegation that women were seen either going into or coming out of the candidate's room on three different occasions constitute only the reasons for making the statement that the candidate is a man of immoral character. They constitute the particulars of the corrupt practice alleged, which petitioner is obliged to give by reasons of section 80B(d). Paragraph 6, however, contains three statements relating to three facets of the candidate's personal character, namely, that he is a convict, that he is a lunatic and that he is a man of low morals. Although the appellant sought to show a fourth statement of fact, we are unable to see more than three such statements.

The ground of avoidance contained in para 7 is the "prevention of free voting" within the meaning of section 77(a). The charge as alleged in the petition is "general intimidation". In giving the material facts on which he relied to establish this charge the petitioner alleged that even polling agents were threatened and intimidated. Learned Counsel for the 2nd and 3rd respondents invited us to treat "intimidation of polling agents" as distinct from "general intimidation of electors;" and as constituting a separate charge under the heading "other misconduct" in section 77(a). I am unable to agree. It is not possible to construe section 77(a) so as to separate intimidation of electors from intimidation of persons other than electors. The term "general intimidation" is wide enough to include both categories. I am therefore of the view that paragraph 7 contains only one charge constituting a distinct ground of avoidance.

On the above basis the security required is as follows:-

Para 4 contains one first charge on a distinct ground of avoidance attracting Rs. 5,000/-

Para 5 contains one additional charge on the same ground attracting Rs. 2,500/-

Para 6 contains three additional charges on the same ground attracting Rs. 7,500/-

Para 7 contains one charge on another distinct ground of avoidance attracting Rs. 5,000/-

The total amount of security that the Petitioner was obliged to deposit as security under Rule 12(2) was therefore Rs.20,000/-. He has deposited Rs.25,000/-. The Court of Appeal has rightly overruled the objection to security. This appeal is accordingly dismissed with costs payable by the 1st Respondent-Appellant to the Petitioner-Respondent.

SAMARAKOON C.J. — I agree.

WANASUNDERA J. — I agree.

RATWATTE J. — I agree.

VICTOR PERERA J. — I agree.

Appeal dismissed