

1931

Present: Drieberg J.

TILLEKEWARDENE v. OBEYESEKERE.

IN THE MATTER OF THE ELECTION FOR THE AVISSAWELLA ELECTORATE.

Election petition—Ordering of particulars—Nature of particulars—Period of time—Ceylon (State Council Elections) Order in Council, 1931.

Where an allegation in an election petition is wide enough to include a variety of charges, it is the practice to order at once particulars of the nature of the charges comprised in it. Particulars of the nature of an act do not mean particulars as to the person who committed it.

There is no inflexible rule with regard to the period within which particulars should be furnished under rule 6 of the Election (State Council) Petition Rules, 1931.

THIS was an election petition in which an application by the respondent for particulars was allowed. The petitioner thereupon moved that the time for supplying particulars be extended to a date ten days prior to the date of trial. The respondent opposed the motion.

B. F. de Silva (with him *Wickramanayake*), for the petitioner.

R. L. Pereira, K.C. (with him *H. V. Perera*), for the respondent.

August 7, 1931. DRIEBERG J.—

In this election petition the petitioner seeks to have the election of the successful candidate, the respondent, declared void on the ground of bribery, treating, and payment for conveyance of voters; these offences are said to have been done by himself "or with his knowledge or with his consent or by any agent of his". I take it that this means that the offences were in some cases committed by himself, in some by his agents and, in some cases, by others with his knowledge or consent.

An application was made by the respondent under rule 5 for full particulars of the offences. I dealt with this in Chambers and on July 23 last I ordered that the particulars should be supplied by the petitioner on or before the 6th instant; on the 4th the petitioner moved that the time for supplying particulars be extended to a date ten days prior to the trial of the petition. The respondent resists this motion and asks that in any case the petitioner be required forthwith to supply certain particulars. I shall deal with this later.

It is first necessary to consider the principles by which a Court should be guided in fixing the time for the petitioner to furnish particulars. It is clear on the authorities that a short time is fixed in view of the considerable temptation given to the suppression of awkward evidence—*Rushmere v. Isaacson*¹ where on appeal a period of seven days before trial allowed was extended to ten days; various corrupt and illegal practices on the part of the respondent and his agent were alleged.

¹ (1893) 1. Q. B. 118.

In *Lenham v. Barber*¹, in which there were charges of bribery, treating, undue influence, payment of canvassers, and conveyance of voters, fourteen days before trial was fixed for the furnishing of particulars and on appeal this was reduced to seven clear days. But there is no inflexible rule and from the cases noted in *Rogers' Volume II., page 193*, I find that the maximum period allowed was nineteen days in a case where there were 120 charges.

The principle of limiting the furnishing of particulars to a short time before the inquiry is recognized where the Order in Council provides a stated period in certain cases for the supplying of particulars. Where a petitioner claims the seat for an unsuccessful candidate on the ground that he had a majority of lawful votes and asks for a scrutiny, the list of votes objected to, with the heads of objection to each vote, has to be filed six days before the trial and it must be remembered that under Article 82 the objections might be on the ground that the votes are void by reason of bribery, treating, undue influence, personation, and for other reasons.

Mr. R. L. Pereira contended that, though the full particulars asked for might, if the Court thought fit, be allowed to be filed later, he was entitled to some particulars at once as the charges against the respondent were vague and unretain. He said that the respondent was entitled to know in the case of each of the offences whether they were committed by himself or by his agent or someone under his authority; in the case of bribery, for example, the nature of the bribe in each case, the time and place but not the names of the persons bribed. He said that he was entitled to prompt information of this nature but he could not extend that claim to detailed information, such as, *e.g.*, the names of the parties bribed or treated and the time and place of the several offences alleged.

This contention is based on a passage in *Rogers' Volume II., page 203*, where it is said that when an allegation in a petition is wide enough to include a variety of charges, it has always been the practice to order at once particulars of the nature of the charges comprised under it. This is a correct statement of the practice as appears from such of the authorities as are available to me. In *Lancaster*² a petition, which did not pray the seat, contained charges that the respondent and his agent had been guilty of bribery and treating "and other corrupt and illegal practices"; the order was made when the petition was presented that the petitioners should within seven days deliver to the respondent particulars in writing of the nature and character of the "other corrupt and illegal practices alleged". In *Beverley*³ the petitioner had alleged corrupt and illegal practices in general terms and was ordered to give within four days "particulars of the nature of the corrupt or illegal practices in the petition alleged in general terms"; the petition had mentioned certain corrupt and illegal practices specifically, *viz.*, bribery, intimidation, treating, and conveyance of voters and as regards these the petitioner was ordered to give full particulars within three days of the trial. The time allowed was then very short and at one time the particulars were

¹ (1883) 10 Q. B. D. 293.

² (1896) 5 O'M. & H. 39.

³ (1869) 1 O'M. & H. 143.

only given when the case was opened at the trial. Two cases referred to by Rogers as illustrating this practice were cited to me by Mr. Pereira, *Salford*¹ and *Londondery*². It is clear that in these cases as well charges were made generally of corrupt and illegal practices and the petitioners were directed to give within a few days particulars of the nature of these practices, i.e., whether they were bribery or treating or any of the other acts which amount to corrupt or illegal practice. Particulars of the nature of an act does not mean particulars as to who committed it. In the case of *Londondery (supra)*, where bribery was alleged, among other particulars which had been given by the petitioner three days before the trial was by whom the bribes were given; these authorities are against Mr. Pereira's contention that particulars such as this should be given at an early stage before the ordinary particulars to be given under rule 6.

It was said that the petition did not comply with the requirements of rule 4 (4); in the form there given it is stated that the petition should state the facts and grounds on which the petitioner relies and rule 5 states that evidence need not be stated in the petition. The provisions in England are the same, rules 5 and 6 of the election petition rules made under the Parliamentary Elections Act, 1868. It is settled practice in England that a petition such as this is sufficient. In *Westminster*³ the petition stated that the respondent William Henry Smith "was by himself and other persons on his behalf guilty of bribery, treating, and undue influence before, during, and after the said election whereby he was and is incapacitated for serving in Parliament for the said city of Westminster and the said election and return of the said William Henry Smith were and are wholly null and void"; the respondent moved that the petition be taken off the file as invalid by reason if its not containing sufficient details and in the alternative to obtain particulars of the names of his agents alleged to have committed bribery. Bovill C.J. considered the effect of rules 5 and 6; he held that the averments in the petition were adequate and that the particulars required by the respondent could be given in the particulars which the petitioner, in accordance with what was then the practice, would be ordered to furnish three days before the trial. The form of a petition alleging bribery is given in *Rogers' Volume II., Appendix 4*, and is correct according to the authorities cited in *Rogers Volume II., page 171*.

It was contended that the petition in Ceylon had to contain reference to each case of bribery or treating by reason of the provision, not contained in the English rules, that security has to be given under rule 12 (2) according to the number of charges in it. This assumes that each act is the subject of a charge under article 74. It is said against this that where the respondent has been guilty, e.g., of several acts of bribery or several acts of treating, he is for the purposes of the election petition charged with only two offences, viz., bribery and treating. In my opinion the latter view is right.

It remains to be considered how long before the trial the petitioner should supply the particulars ordered. In view of the size of the electoral division and of the greater difficulty in communicating with

¹ (1869) 19 L. T. 500.

² (1869) 19 L. T. 573.

³ (1869) 19 L. T. 565 & L. R. 4 P. C. 145.

witnesses I think a longer period to examine and deal with the particulars should be allowed here than would be allowed in England.

I set aside my order of July 23 and order that the petitioner should supply the particulars twenty-five clear days, inclusive of Sundays and public holidays, before the day fixed for trial.

In fixing the day for trial, time will be allowed for the petitioner to submit the particulars but, this cannot be long, for it must be presumed that the petitioner has all the material ready and the extension is given not for the reason that more time should be allowed him to prepare the particulars but to ensure that these are not disclosed too long a period before the trial. The petitioner's application is only for an extension of time and no objection has been taken to the petitioner's liability to supply the particulars asked for.

The costs of this motion will be dealt with by the Judge who tries the petition.

