

**RAJAPAKSE
V.
KULARATNE AND OTHERS**

SUPREME COURT
SHARVANANDA, C.J.
WANASUNDERA, J.
COLIN-THOMÉ, J.
RANASINGHE, J.
ATUKORALE, J.
TAMBIAH, J.
L. H. DE ALWIS, J.
SENEVIRATNE, J. &
H. A. G. DE SILVA, J.

ELECTION PETITION NO. 1/1986 (Election Petition No. 1/1985— Electoral District No 75 — Mulkirigala)
JULY 20, 21, 22, & 23, 1987 & SEPTEMBER 28 & 29, 1987.

Election Petition — Parliamentary Election for Mulkirigala — Disqualification for election in consequence of Report of Election Judge in earlier election that a corrupt practice had been committed by agent of 1st Respondent — Ceylon (Parliamentary Elections) Order in Council S. 82 D (2) (b) (ii) — Striking out of 1st Respondent's name from Electoral Register by Returning Officer under S.82 D(3) — Certiorari to quash action of Returning Officer—Mandamus to restore name to Register — Reference to the Supreme Court.

The 1st Respondent's election to the Mulkirigala Parliamentary seat was set aside as void on the ground that a corrupt practice of making false statements about the character and conduct of the SLFP candidate (i) terms of S.58(i) (d)

read with S.77(c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 had been committed by the Agent of the 1st Respondent with his knowledge and consent. The Report of the Election Judge to this effect was published in the gazette extraordinary of 1.1.85 and petitioner contended that by reason of this Report 1st Respondent was disqualified from election as a Member of Parliament. Following on this Report the Returning Officer, Hambantota purporting to act under S. 82D(3) of the Ceylon (Parliamentary Elections) Order-in-Council struck out the name of the 1st Respondent from the Electoral Register. The 1st Respondent sought a Writ of Certiorari quashing the action of the Returning Officer, from the Court of Appeal. The Court of Appeal referred three questions arising from this to the Supreme Court for its determination:

- (a) In view of the provisions of Article 88 and 89D (e) (iii) and 90 of the Constitution does section 82D(2) (a) (ii) of the Ceylon (Parliamentary Elections) Order-in-Council read with the 5th Amendment to the Constitution now operate to impose on such a candidate as is referred to in S 82D (a) (ii) of the said Order-in-Council the disqualification of being an elector at an election of Parliament or of being elected as Member of Parliament?
- (b) When the Report of an Election Judge finds that the corrupt practice of making a false statement of fact under S.59(1) (d) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, has been committed by a person acting as Agent with the knowledge and consent of a candidate at such election is such candidate subject to the disqualification contained in Article 89(e) (iii) of the Constitution?
- (c) Do the words "... a report made by a Judge finding him guilty of any corrupt practice ..." in Article 89(e) (iii) of the Constitution apply only to such person who is set out in the Report to have been proved himself to have been guilty (as provided in Section 82(6) of the Order-in-Council) of the corrupt practice of making a false statement of fact, or apply also to a candidate (though not set out in such report of having proved himself to have committed such corrupt practice) whose Agent is set out in such Report as having committed such practice with the candidate's knowledge and consent?

By its determination dated 2.7.85 the Supreme Court answered the questions as follows:—

- (a) No.
- (b) No.
- (c) The words "... a report made by a Judge finding him guilty of any corrupt practice ..." in Article 89(e) (iii) of the Constitution apply only to such a person who is set out in such report as having been proved

himself to have been guilty (as provided in S.82(6) of the said Order-in-Council) of a corrupt practice of making such false statement of fact and does not apply to the candidate . . . (though not himself set out in such report as having been proved himself to have committed such corrupt practice) whose Agent is set out in such Report as having committed such practice with the candidate's knowledge and consent.

The Court of Appeal ordered the restoration of the 1st Respondent's name to the Electoral Register by a Writ of Mandamus.

In view of the Supreme Court ruling the Returning Officer overruled the objection to the nomination of the 1st Respondent at the fresh election that was held. In the Election Petition that followed the petitioner pressed the issue of disqualification but the Judge held that he was bound by the decision of the Supreme Court and dismissed the Election Petition. An appeal to the Supreme Court on two questions were raised at the threshold of the argument on behalf of the 1st Respondent

- (a) The Supreme Court was bound by the determination.
- (b) The Court is bound by its decision of 2.7.85 since it was made in the exercise of its constitutional jurisdiction in the interpretation of the Constitution, under Article 125 of the Constitution.

Apart from this the main contention of the petitioner was that S. 82(D) (b) (2) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 read with the 5th Amendment to the Constitution applies and operates to disqualify the 1st Respondent from standing for election or being elected a Member of Parliament.

HELD

(WANASUNDERA J — Dissenting)

- (1) The Supreme Court in the exercise of any of its several jurisdictions under Article 118, subject to the doctrine of stare decisis is not bound by the determination of 2.7.85.
- (2) The qualifications to be an elector and to be a Member of Parliament are provided for specifically by Articles 89 and 90 of the Constitution and it is to these Articles that one must look to find out whether the 1st Respondent is qualified to be an elector or to be a Member of Parliament in an election held in terms of the 5th Amendment. Under these provisions only the person found guilty of a corrupt practice is disqualified from being an elector or Member of Parliament. These provisions do not disqualify the 1st Respondent.

Cases referred to:—

1. *Back v. London Provident Building Society* (1883) 23 Ch. Div. 103, 108.
2. *Shanmugam v. Commissioner of Registration of Indian and Pakistani Residents* — 64 NLR 29.

Appeal from Judgment of Election Judge.

Nimal Senanayake P.C. with Miss Suriya Wickremasinghe, Sanath Jayatilleke, Nimal Siripala de Silva, Miss S. N. Senaratne, Mrs. Lalitha Senaratne, Mrs. A. B. Dissanayake, L. M. Samarasinghe and Miss Shiranthi de Saram for Petitioner.

K. N. Choksy P.C. with Daya Pelpola, D. H. N. Jayamaha, Laxman Perera and A. L. Brito Muthunayagam for 1st Respondent.

S. W. B. Wadugodapitiya, Addl. Solicitor-General with Tony Fernando, S C for 8th and 9th Respondents.

Cur. adv. vult

November 26, 1987

SHARVANANDA, C.J.

The Petitioner-Appellant filed Election Petition No. 1 of 1985 challenging the election of the 1st Respondent as Member of Parliament for the Electoral District No. 75, Mulkirigala, at the by-election held on 12th September, 1985. The said petition was filed on the ground that the 1st Respondent was disqualified for election as Member of Parliament at the said by-election, in consequence of a Report of an Election Judge in terms of section 82D(2) (b) (ii) of the Ceylon (Parliamentary Elections) Order in Council. This Report was made on an earlier Election Petition 3/83 in which the election of the 1st Respondent was set aside as void on the ground that a corrupt practice of making false statements about the character and conduct of the S.L.F.P. candidate, in terms of section 58(1) (d) read with Section 77(c) of the Ceylon (Parliamentary Elections) Order in Council 1946, had been committed by the Agent of the 1st Respondent and with the knowledge and consent of the 1st Respondent. This Report of the Election Judge was published in the Gazette Extraordinary dated 1.1.85. It was contended by the Petitioner that by reason of the said Report the 1st Respondent was disqualified from election as a Member of Parliament for the Electoral District No. 75, Mulkirigala at the by-election held on 12th September 1985.

Following on the Report of the Election Judge, the Returning Officer, Hambantota purporting to act under section 82(D) (3) of the Ceylon (Parliamentary Elections) Order in Council struck out

the name of the 1st Respondent from the Electoral Register. Thereupon the 1st Respondent challenged this action of the Returning Officer by application No. 112/85 for the issue of a Writ of Certiorari made to the Court of Appeal. When the application C.A. 112/85 came up for hearing before the Court of Appeal that court acting under Article 125 (ii) of the Constitution referred the following questions to the Supreme Court for determination:

- (a) In view of the provisions of Articles 88 and 89(e) (iii) and 90 of the Constitution, does section 82D(2) (a) (ii) of the Ceylon (Parliamentary Elections) Order in Council read with the 5th Amendment to the Constitution now operate to impose on such a candidate as is referred to in section 82D(a) (ii) of the said Order in Council the disqualification of being an elector at an election of Parliament or of being elected as Member of Parliament?
- (b) When the Report of an Election Judge finds that the corrupt practice of making a false statement of fact under section 59(1)(d) of the Ceylon (Parliamentary Election) Order in Council 1946, has been committed by a person acting as Agent and with the knowledge and consent of a candidate at such elections is such candidate subject to the disqualification contained in Article 89 (e) (iii) of the Constitution?
- (c) Do the words "... a report made by a Judge finding him guilty of any corrupt practice ..." in Article 89(e) (iii) of the Constitution apply only to such person who is set out in the Report to have been proved himself to have been guilty (as provided in Section 82(6) of the said Order in Council) of the corrupt practice of making a false statement of fact, or apply also to a candidate (though not set out in such report of having proved himself to have committed such corrupt practice) whose Agent is set out in such Report as having committed such practice with the candidate's knowledge and consent?

By its determination dated 2.7.85 the Supreme Court answered the aforesaid questions as follows:

- (a) No.
- (b) No.
- (c) the words "... a report made by a Judge finding him guilty of any corrupt practice ..." in Article No. 89(e) (iii) of the Constitution apply only to such a person who is set out in such report as having been proved himself to have been guilty (as provided in Section 82(6) of the said Order in Council) of a corrupt practice of making such false statement of fact and does not apply to the candidate (though not set out in such report as having been proved himself to have committed such corrupt practice) whose Agent is set out in such Report as having committed such practice with the candidate's knowledge and consent.

The Court of Appeal accordingly made Order for the restoration of the 1st Respondent/Respondent's name to the Electoral Register and issued a writ of Mandamus for this purpose. Subsequently, the by-election to the Electoral District No. 75, Mulkirigala was held. In the light of the aforesaid determination of the Supreme Court in Application No. 112/85 the Returning Officer overruled the objection to the nomination to the said election of the 1st Respondent/Respondent that he was disqualified on the ground that he had been reported by an Election Judge and seven years had not elapsed since the said Report."

At the hearing of the present Election Petition the Petitioner-Appellant pressed again the issue of the 1st Respondent's disqualification on the aforesaid ground.

After hearing both parties in the present Election Petition No. 1/85, the Election Judge by his decision dated 26.3.86 held that he was bound by the decision of the Supreme Court in writ Application No. C.A. 112/85, that therefore the ground of avoidance pleaded by the Election Petition failed and dismissed

the Election Petition with costs. The Petitioner Appellant has preferred this appeal from the said judgment of the Election Judge.

As important questions of law were involved in the appeal the Chief Justice made order under section 132(3) of the Constitution that the Appeal be heard by a Full Bench.

At the threshold of the hearing of the appeal it was submitted by Counsel for the 1st Respondent that this court—

- (a) was bound by the determination,
- (b) that this court is bound by the determination dated 2.7.85 made by Supreme Court in C.A. 112/85, since it was made in the exercise of the Supreme Courts constitutional jurisdiction in the interpretation of the Constitution, under Article 125 of the Constitution.

After hearing Counsel on both sides on the preliminary question this court unanimously held that—

“ every court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi judicial functions other than the Supreme Court will be bound by determination relating to the interpretation of the Constitution made by Supreme Court on a reference under Article 125(1) of the Constitution. But the Supreme Court in the exercise of any of its several jurisdictions under Article 118, subject to the doctrine of stare decisis is not bound by the said determination” and proceeded to hear the appeal.

The main contention of the Counsel for the Petitioner-Appellant was that Section 82(D) (b) (2) of the Ceylon (Parliamentary Elections) Order in Council 1946 read with 5th Amendment to the Constitution applies to the facts of this case and operated to disqualify the Petitioner Respondent from standing for election or being elected as a Member of Parliament.

Counsel submitted that the 5th Amendment to the Constitution revived Chapters iv to vi of the Elections Order in Council of

1946 and stated that section 82D(2) (b) (ii) of the Order in Council had thereby been given a new lease of life and was made part of the Constitution, by the 5th Amendment. He urged that these parts of the Election Order in Council have been incorporated by reference into the Constitution.

In my Judgment dated 2.7.85 determining the question relating to the relevant provisions of the Constitution in S.C.Ref: 1/85 on the aforesaid C.A. Application No. 112/85, I have dealt fully with the questions involved in this appeal. Counsel for the Petitioner-Appellant has not persuaded me that my reasoning and conclusions set out in the said judgment are wrong or required qualification. I re-affirm the said reasoning and conclusions and adopt same as part of my judgment in this appeal. I quote in extense the following from the said judgment —

“ Section 82D(2) (b) (i) reads —

“ . . . where the report referred to in paragraph (a) is to the effect that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice.”

The crucial question which arises is whether the disqualification created by section 82D (2) (b) (ii) of the said Order in Council is countenanced by Article 89(e) (iii) of the (1978) Constitution.

Section 82D (2) (b) (ii) of the Election Order in Council reads as follows:

“Where the report referred to in paragraph (a) is to the effect that such corrupt . . . practice was committed with the knowledge and consent of the person, who, was a candidate at an election or by his agent, that person shall be subject to the same incapacities as aforesaid.”

Section 58(2) spells the incapacities to which a person convicted of corrupt practice is subject to, it states—

“Every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under this Order or of being elected as a Member of Parliament.”

Section 4(1) (f) of the Order in Council provides that —

“No person shall be qualified to have his name entered or retained in any register of electors in any year if such person is incapacitated of being registered as an elector by reason of his conviction of a corrupt or illegal practice or by reason of the report of an Election Judge in accordance with the said Order.”

Section 13(2) (h) of the Ceylon (Constitution) Order in Council 1946, Chap. 379 provides that a person shall be disqualified from being elected as a Member of the House of Representatives—

“If by reason of his conviction for a corrupt practice or **by reason of the report of the Election Judge** in accordance with the law for the time being in force relating to the election of Members of Parliament, he is incapable of being registered as an elector or of being elected as a Member of Parliament.”

Thus in terms of the 1946 Constitution, read with the (Parliamentary Elections) Order in Council, where a Report of an Election Judge states that a candidate himself committed a corrupt practice or such corrupt practice was committed by another person with the candidate's knowledge and consent or such corrupt practice was committed by an agent of the candidate, the candidate, in all the three circumstances, stood disqualified for a period of seven years from being registered as a elector or being elected to Parliament.

The Ceylon (Constitution) Order in Council, 1946 was superseded by the Constitution of Sri Lanka, 1972. Section 12(1) of the Constitution provides —

"Unless the National State Assembly otherwise provides, all laws, written and unwritten, in force immediately before the commencement of the Constitution, except such as are specified in Schedule 'A' shall, mutatis mutandis, **and except as otherwise expressly provided in the Constitution**, continue in force."

(Schedule 'A' referred to in this section includes the "Ceylon (Constitution and Independence) Order in Council, 1947 and 1947).

Section 66 of the 1972 Constitution provides—

"Every citizen . . . unless disqualified as hereinafter provided, is qualified to be an elector at elections to the National State Assembly."

Section 68 of the Constitution enumerates the disqualifications to be an elector. Section 68(d) (iii) states that no person shall be qualified to be an elector at an election of members of the National State Assembly if a period of seven years has not elapsed since

" the last of the dates, if any, being a date after the commencement of the Constitution, of **a report made by an Election Judge finding him guilty of any corrupt practice** under the Ceylon (Parliamentary Elections) Order in Council — 1946"

Section 69 provides that every person who is qualified to be an elector is qualified to be elected as a Member of the National State Assembly unless he is disqualified under the provisions of Section 70.

Section 70 of the Constitution provides that —

" No person shall be qualified to be elected as a Member of the National State Assembly, inter alia (a) if he becomes subject to any of the disqualifications in section 68.

From and after the promulgation of the Constitution viz: 22.5.1972, it is clear that the question whether a person is disqualified to be an elector or to be elected as a Member of

Parliament has to be determined exclusively by reference to the provisions of section 66 to 70 of the 1972 Constitution and not by reference to the (Parliamentary Elections) Order in Council, 1946.

It is significant that section 68(d) (iii) of the 1972 Constitution employs words different to the phrase used in section 4(1) (f) of the 1946 Elections-Order-in-Council and section 13(3) (h) of the Ceylon (Constitution) Order in Council. Prior to the enactment of the 1972 Constitution a person was disqualified to be an elector or to be elected as a Member of Parliament, inter alia, if he was incapable of being registered as an elector or being elected as a Member of the House of Representatives, **by reason of the Report of an Election Judge** in accordance with the Ceylon (Parliamentary Elections) Order in Council. However the 1972 Constitution altered it to provide that he will be so incapable only if **a report of an Election Judge finds him guilty of any corrupt practice under the (Parliamentary Elections) Order in Council 1946.**

Section 82 of the Elections Order in Council (1946) mandates the Election Judge to report the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice.

Section 82D(2) (b) (i) and (ii) of the Elections Order in Council spells out the penal consequences of being reported to be guilty of any corrupt practice by the Election Judge — not only the offender shall suffer incapacity but also the candidate himself if the Report was to the effect such corrupt practice was committed with his knowledge and consent or by his agent. The candidate suffers this punishment not because he had been found guilty of corrupt practice but consequential to his agent or his supporter, with his knowledge and consent, having been found guilty of committing the corrupt practice. The candidate has by an express provision of the law, been made to suffer the incapacity for the fault of his agent or such supporter. Thus by reason of the report of the Election Judge not only the person reported to be guilty of any corrupt practice by the Election Judge but also the candidate whose agent he is, or with whose

knowledge and consent he committed it, is rendered incapable for a period of seven years from being registered as an elector or of being elected as a Member of Parliament. Section 68(d) (iii) of the 1972 Constitution replaced section 82D(e) (b) (i) and (ii) and provided that only the person found guilty of a corrupt practice is disqualified from being an elector. There is a material difference in the language employed in the relevant section of the Elections-Order-in-Council and of the Constitution. The framers of the Constitution must have had some purpose in departing from the language of the Elections-Order-in-Council. When the legislature, legislating "in pari materia" and substituting a new provision for those which existed in an earlier statute, changes the language of the enactment, it must be taken to have done so with some intention and motive. When the words in the later statute differ from those of the earlier statute, it must be presumed that the legislature intended to alter the law and that the legislature had a specific purpose in doing so. As Jessel M.R., said in *Hack v. London Provident Building Society*⁽¹⁾.

"It is the duty of the court first of all to find out what the Act of Parliament under consideration means and not to embarrass itself with previous decisions on former Acts, when considering the construction of a plain statute framed in different words from the former Act."

If the later Act can clearly have only one meaning we ought to give effect to it accordingly.

By virtue of Section 12 of the 1972 Constitution that part of the 1946 Elections-Order-in-Council which is in conflict or is inconsistent with the express provision of section 68 of that Constitution cannot survive the Constitution and cannot be part of the 'existing law.'

The Constitution of Sri Lanka, 1972, was succeeded by the Constitution of the Democratic Socialist Republic of Sri Lanka 1978. Article 88 of the later Constitution provides that "every person shall, unless disqualified as hereinafter provided be qualified to be an elector at the election of the President and of the Members of Parliament and to vote at any Referendum."

Article 89 of the 1978 Constitution sets out the disqualification to be an elector—

“No person shall be qualified to be an elector at an election of the President, or of the Members of Parliament or to vote at any Referendum, if he is subject to the disqualifications, inter alia, if a period of seven years has not elapsed from the last of the dates, if any, being a date after the commencement of the Constitution, **of a report made by a Judge finding him guilty of any corrupt practice under the Ceylon (Parliamentary Elections) Order in Council, 1946 or under any law for the time being relating to the Referendum or to the election of the President or of Members of Parliament (Art. 89(e) (iii).**”

Article 101 of the Constitution provides that—

“Parliament may by law make provision, inter alia for (a) the registration of electors; Provided that no such law shall add to the disqualification specified in Articles 89 and 91.”

Article 91 recites the disqualification for election as a Member of Parliament.

Article 101(2) provides that until Parliament by law makes provision for such matters, the Ceylon (Parliamentary Elections) Order in Council, 1946 as amended from time to time, shall, subject to the provisions of the Constitution, mutatis mutandis, apply.”

Article 89 is the governing provision reciting the disqualification to be an elector. Article 91, is the governing provision specifying the disqualification for election as a Member of Parliament.

The Parliamentary Elections Act No. 1 of 1981, which came into operation on 16th February 1981, repealed parts I and IV to VI (both inclusive) of the Ceylon (Parliamentary Elections) Order in Council, 1946. Section 4 of the Order-in-Council thus stood repealed. It was pointed out that section 107 of the (Parliamentary Elections) Act No. 1 of 1981 re-enacted word to

word sections 82 and 82D(2) (b) (ii) of the Ceylon (Parliamentary Elections) Order in Council 1946 and that in terms of this provision, where an Election Judge reports that a corrupt practice was committed by any person with the knowledge and consent of the candidate or by his agent, the candidate himself and that person will become incapable for a period of seven years from being registered as an elector or of being elected as a Member of Parliament. Certainly this provision in the Parliamentary Elections Act No. 1 of 1981, to the extent that it adds to the disqualifications specified in Article 89 of the 1978 Constitution, is violative of Article 101 of that Constitution. It is not necessary in this case to decide on the validity of this provision viz-a-viz, the Constitution of 1978, as it is common ground that the Parliamentary Elections Act No. 1 of 1981, does not govern the facts of this case.

It is not disputed that the eligibility of the Petitioner to be an elector at an election of the Members of Parliament or to be elected as a Member of Parliament has to be determined according to provisions of Articles 88, 89(e) (iii) and 90 of the Constitution read with the Fifth Amendment to the Constitution which provides that Parts I, IV to VI (both inclusive) of the Ceylon (Parliamentary Elections) Order in Council 1946, shall for the purpose of the election and notwithstanding the repeal of such Order in Council, be deemed to be in force, and shall mutatis mutandis and except as otherwise expressly provided in the Constitution apply to such election." Hence in so far as section 82(e) (2) (b) (ii) is inconsistent with Article 89(e) (iii) of the 1978 Constitution, it will have to yield to that Article and any disqualification prescribed by that section, in so far as it is in conflict with Article 89 of the Constitution, will cease to be operative and cannot impose a disqualification to being an elector at the election of a Member of Parliament or to being elected as a Member of Parliament.

On the facts in the case the issue whether the Petitioner is disqualified from being an elector or from being elected as a Member of Parliament has to be determined solely by reference to Articles 89, 91 of the Constitution. Hence the relevant question is whether in terms of Article 89(e) (iii) the Petitioner

has been reported by a Judge to have been found guilty of a corrupt practice under the (Parliamentary Elections) Order in Council, 1946; if not, the Petitioner is qualified to be an elector and to be elected as a Member of Parliament.

Admittedly the relevant report of the Election Judge (P3) does not find the Petitioner guilty of any corrupt practice. The Report only finds that Basil Rajapakse acting as an agent and with the knowledge and consent of the Petitioner was proved to have committed a corrupt practice.

The Deputy Solicitor General submitted that in the English concept of election law a person can be guilty personally or by his agent and that accordingly when the Petitioner's agent was found guilty of corrupt practice by the Report of the Election Judge not only was the agent so guilty but the candidate himself was deemed to be guilty. He submitted that "guilty of" should be construed to mean "Culpably responsible for." He urged that the candidate should be held culpably responsible for the corrupt practice committed by his agent or with his knowledge and consent.

According to him, it was not sufficient that election law made the candidate answerable, in that, his election is declared void for the commission of the corrupt practice; he should also suffer the same incapacity as the offender. I cannot agree. Such punishment is a matter for the legislature. Unless the statute law specifically so provides as by the aforesaid section 82D(2) (b) (ii), vicarious liability in common law does not extend to the deprivation of one's franchise to which the Constitution attaches the attribute or stamp of inalienability.

The corresponding English Law is set out in sections 138 and 139 of the Representation of the Peoples Act 1949. Section 138(1) provides that—

"the report of an election court shall state whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election and the nature of the corrupt practice."

"Section 138(ii) states "for the purpose of the next two following sections, if it is reported that a corrupt practice was committed with the knowledge and consent of a candidate he shall be treated as having been reported personally guilty of that corrupt practice."

Section 138(iii) provides that the Report shall also state "whether any of the candidates has been guilty by his agent of any corrupt practice in reference to the election"

Section 139(i) enacts that "If a candidate who has been elected is reported by an Election court personally guilty or guilty by his agent of any corrupt practice his election shall be void."

Section 139(2) states that "a candidate at a parliamentary election shall also be incapable from the date of the report from being elected to and sitting in the House of Commons"

(a) if reported personally guilty of a corrupt practice, for ten years;

(b) if reported guilty by his agent of a corrupt practice, for seven years."

It will be seen that for the purpose of the provision which imposes civil incapacity on a candidate personally guilty of a corrupt practice, if it is reported that a corrupt practice was committed with the candidate's knowledge and consent, he is to be treated as having been reported personally guilty of the corrupt practice. A candidate may also suffer civil incapacity if the Report states that the candidate has been guilty by his agent of any corrupt practice in reference to the election.

According to English laws, a candidate can be guilty personally not only for some corrupt practice actually committed by him, but also if it is reported that a corrupt practice was committed with the candidate's knowledge and consent. The candidate will also be guilty by his agents of a corrupt practice, if the Report finds that his agent had committed corrupt practice.

The aforesaid provisions do not lend support to Deputy Solicitor General's submission that a Report of an Election Judge finding that a corrupt practice had been committed by the candidate's agent or with his knowledge and consent, necessarily imports the idea that the candidate has been found guilty of a corrupt practice. It was expressly enacted that the guilt of the agent or of the person who committed the corrupt practice with the knowledge and consent of the candidate should be attributed to the candidate. The English draftsman has been careful to draw the distinction between "personally guilty" and "guilty by his agent" and when he makes provision for the case of a corrupt practice committed with the knowledge and consent of a candidate, he specifically invokes the aid of a deeming-section by stating that "he (the candidate) shall be treated as having been reported personally guilty of corrupt practice," for the purpose of the avoidance of election and of imposing incapacity on the candidate. There is no justification for superimposing the English statutory concept of "a candidate being" guilty personally or by his agent of any corrupt practice" on the plain language of Article 89(e) (iii) which speaks only of a "report made by a Judge finding him guilty of any corrupt practice."

Article 89 of the 1978 Constitution provides for the disqualification of a person arising from a finding of an Election Judge that he is guilty of any corrupt practice under the Ceylon (Parliamentary Elections) Order in Council. This will cover only the case of the person found guilty of himself having committed a corrupt practice. If as in English Law this disqualification is to attach to any person found guilty by his agent of any corrupt practice or by any person committing with his knowledge and consent of any corrupt practice, the draftsman could have adopted the parallel provisions of the English Representation of Peoples Act 1949 and specifically stated so. In the absence of such specific provision as section 138 and 139 of the English Representation of Peoples Act 1949, it is not open for this court to read into Article 89(a) (iii) of the Constitution words which are not there, words which would enlarge the ambit of the disqualification. There is no warrant for attributing to the words 'finding him guilty of any corrupt practice' in Article 89(e) (iii) the sense of 'finding him guilty by his agent or by any person with his knowledge and consent of any corrupt practice.'

On the basis of the aforesaid reasoning this court determines the questions referred to it as follows:

- (a)
- (b)
- (c) The words ". . . . a report made by a Judge finding him guilty of any corrupt practice" in Article 89(e) (iii) of the Constitution apply only to such a person who is set out in such report as having been proved himself to have been guilty (as provided in section 82(b) of the said Order in Council) of the corrupt practice of making such false statement of fact and does not apply also to the candidate (though not set out in such Report as having been proved himself to have committed such corrupt practice) whose agent is set out in such Report as having committed such practice with such candidate's knowledge and consent.

The provisions of section 82(2) (b) (ii) and 83(3) of the Elections Order in Council ceased to be law with the coming into existence of the Constitution of 1972 and hence were not 'existing law' when the Constitution of 1978 came into operation. Being inconsistent with Article 89(e) (iii) of the 1978 Constitution they were not revived by the 5th Amendment. The question of Petitioner's disqualification to be an elector has to be decided solely by reference to Article 89(e) (iii) of the 1978 Constitution. For the reasons set out above this Article does not disqualify the Petitioner from being an elector in terms of Articles 88 and 89 of the Constitution."

Article 161(a) (iii) of the Constitution as amended by the Fifth Amendment reads as follows:

"Notwithstanding anything to the contrary in any other provision of the Constitution the Commissioner of Elections shall thereupon hold an election in accordance with Part I, IV to VI both inclusive of the Ceylon (Parliamentary Elections) Order in Council, 1946 for such electoral district as existed immediately preceding the

Constitution and on the basis of such part of the register prepared under the Registration of Electors No. 44/80 and in operation as corresponds to such electoral district. The aforesaid parts of the Ceylon (Parliamentary Elections) Order in Council 1946 shall for the purpose of such election and notwithstanding the repeal of such Order in Council being deemed to be in force and shall mutatis mutandis, and except as otherwise expressly provided in the Constitution apply to such election.

The law applicable to such election petitions in relation to such electoral district shall be the aforesaid parts of such Order in Council as applied aforesaid."

Section 2 of the Registration of Electors Act No. 44/80 provides—

"That no person shall be qualified to have his name entered or retained in any Register of Electors for any Electoral District in any year, if such person is subject to any of the disqualifications specified in Article 89 of the Constitution.

Article 89 of the Constitution specifies the disqualifications to be an elector.

Article 90 provides that every person who qualifies to be an elector shall be qualified to be elected as a Member of Parliament unless he is disqualified under the provisions of Article 91, which sets out the disqualification for election as a Member of Parliament.

Article 101 which empowers Parliament to make by-law specifically provides that no such law shall add to the disqualifications in Articles 89 and 91.

Acceptance of the submissions of the Counsel for the Appellant will result in adding to the disqualification specified in Articles 89 and 91 which is forbidden by Article 101.

Counsel for the Appellant stressed that Article 161 which is a transitional provision prefaced its provisions by stating

"Notwithstanding anything to the contrary in any other provision of the Constitution and contended that as a result of this non-obstinate clause Articles 89, 90 and 91 are not applicable to by-elections held in terms of the Fifth Amendment.

The Fifth Amendment does not revive part (1) and part (iv) to (vi) (both inclusive) of the Ceylon (Parliamentary Elections) Order in Council in their full integrity. They only apply **"except as otherwise expressly provided for in the Constitution"** to an election held in terms of the amendment. These provisions of those parts of the Election-Order-in-Council will have to be held to be superseded wherever the provisions of the Constitution have dealt with the same subject-matter in which case, such provisions will govern the subject-matter.

Counsel referred to *Shanmugam vs. Commissioner of Registration of Indian & Pakistani Residents* (2) where Lord Radcliffe giving the judgment of the Privy Council, said—

"to be express provision" with regard to something it is not necessary that that thing should be specially mentioned. It is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not be inference therefrom."

The question of qualifications to be an elector and to be Member of Parliament are provided for specifically by Articles 89 and 90 of the Constitution. Therefore it is to these Articles of the Constitution viz: 89 and 90 that one should look to find whether the 1st Respondent is qualified to be an elector or to be a Member of Parliament in an election held in terms of the 5th Amendment. In my view, these provisions do not disqualify the 1st Respondent.

The appeal is dismissed with costs.

COLIN—THOME, J.— I agree.

RANASINGHE, J.— I agree.

ATUKORALE, J.— I agree.

TAMBIAH, J.— I agree.

L. H. DE ALWIS, J.— I agree.

SENEVIRATNE, J.— I agree.

H. A. G. DE SILVA, J.— I agree.

WANASUNDERA, J.

This is an appeal from a decision of the Election Judge in Election Petition No. 1/1985 in respect of the election held on 12th September 1985 for Electoral District No. 75 MulKirigala. The main ground on which the petitioner came into court was that Ananda Kularatne, the 1st respondent (hereinafter referred to as the 1st respondent) was disqualified for election as a Member of Parliament by reason of a report made by an Election Judge in Election Petition Case No. 3/83 at a previous election for this same seat.

At the hearing of the election petition no oral evidence was led, but counsel marked certain documents and the matter was disposed of on the preliminary objection raised by counsel for the 1st respondent. The preliminary objection was that the 1st respondent's constitutional qualification had already been determined by a ruling of the Supreme Court in Reference No. 1/85, and that such ruling was binding on the Election Judge. The Election Judge upheld the preliminary objection and dismissed the petition.

The Election Judge has applied the ruling of the Supreme Court in S.C. No. 1/85. This was a reference by the Court of Appeal to the Supreme Court in terms of Article 125(1) of the Constitution in the course of dealing with an application for a writ of certiorari and mandamus filed in that court — C. A. Application No. 112/85. The questions that were referred in that Reference were the following:—

- “(a) In view of the provisions of Articles 88, 89(e) (iii) and 90 of the Constitution does section 82D(2) (b) (ii) of the Ceylon (Parliamentary Elections) Order in Council 1946 read with the Fifth Amendment to the Constitution now operate to impose on such a candidate as is referred to in section 82D(2) (b) (ii) of the said Order in Council the disqualifications of being an elector at an election of Members of Parliament or of being elected as a Member of Parliament ?

- (b) Where the report made by an Election Judge finds that the corrupt practice of making a false statement of fact under section 58(1) (d) of the Ceylon (Parliamentary Elections) Order in Council 1946 had been committed by a person acting as agent and with the knowledge and consent of a candidate at such election is such candidate subject to the disqualification contained in Article 89(e) (iii) of the Constitution?
- (c) Do the words "... a report made by a Judge finding him guilty of any corrupt practice ..." in Article 89(e) (iii) of the Constitution — apply only to such a person who is set out in such report as having been proved himself to have been guilty (as provided in section 82(b) of the said Order in Council) of the corrupt practice of making such false statement of fact?

OR

Apply also to the candidate (though not set out in such report as having been proved himself to have committed such corrupt practice) whose agent is set out in such report as having committed such practice with such candidate's knowledge and consent?"

A brief statement of the sequence of events given in chronological order would explain how the writ application came to be filed. The seat for the Mulkirigala Electoral District was originally held by one Franciscu, a member of the U.N.P. He resigned his seat in March 1983. Upon his resignation, and no nomination being made by the Secretary of the party to fill the vacancy, a by-election was held in terms of the provisions of the Fifth Amendment to the Constitution. At this by-election the 1st respondent was declared elected to the seat.

- But an election petition (No. 8 of 1983) was filed against the 1st respondent to have the election set aside on the ground that a corrupt practice of making a false statement about the character and conduct of the opposing candidate had been committed by the agent of the 1st respondent or by a person

with the knowledge and consent of the 1st respondent. At the conclusion of the election petition, the Election Judge held that the charge was established. On appeal by the 1st respondent the Supreme Court confirmed the determination of the Election Judge and dismissed the appeal. This necessitated a fresh by-election.

The Election Judge had, in terms of section 82 of the Ceylon (Parliamentary Elections) Order in Council (Cap. 381), made a report of the above corrupt practice, which upon being transmitted to His Excellency the President was published in Gazette No. 330/8 of 1st January 1985 as required by the provisions of section 82D (2) of the said Order in Council.

The requirement for such application and the effect of the publication are provided in section 82D. The relevant provisions are as follows:—

"82D (2) (a) The Governor-General shall, upon receipt of the report of the Election Judge or of the Supreme Court transmitted to him under section 82C, cause a copy of the report to be published in the Gazette.

(b)(i) Where the report referred to in paragraph (a) is to the effect that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice.

(ii) Where the report referred to in paragraph (a) is to the effect that such corrupt or illegal practice was committed with the knowledge and consent of a person who was a candidate at an election or by his agent, that person shall be subject to the same incapacities.

(3) It shall be the duty of every registering officer forthwith to peruse every such report which is published in the Gazette as provided in subsection (2), and forthwith to delete from the register of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election."

His Excellency the President therefore ordered the holding of an election in this electoral district. On 10th January 1985 the Returning Officer called for nominations of candidates for election. On or about 25th January 1985 the Returning Officer acting in terms of the provisions of subsection 3 of section 83D deleted the name of the 1st respondent from the register and informed the 1st respondent of such action. On the 28th January 1985 the 1st respondent wrote to the Returning Officer requesting that his name be restored to the register. On 30th January 1985 the 1st respondent filed the application for a writ of Certiorari and Mandamus. No. CA 112/85, challenging the deletion of his name. On the 30th January the Court of Appeal granted the 1st respondent an order staying the nominations and notices were simultaneously issued on the Commissioner of Elections and the Returning Officer. In February 1985 objections were filed by the respondents and on 28th March 1985 the Court of Appeal made the Constitutional Reference No. 1/85, because it appeared that the main issue in the case involved an interpretation of the Constitution.

The Supreme Court in S.C. Reference No. 1/85 held—

- (a) that the issue of the 1st respondent's qualification or disqualification from being an elector or from being elected as a Member of Parliament has to be determined solely by reference to Articles 89 and 91 of the present Constitution, and
- (b) that the report by an Election Judge that the 1st respondent's agent Basil Rajapakse had committed the corrupt practice with the knowledge and consent of the 1st respondent did not bring the 1st respondent within the ambit of the disqualifying provisions contained in Article 89 (e) (iii), since that provision covers only the case of a person who is found guilty of himself having committed a corrupt practice.

The Election Judge upheld the preliminary objection taken by Mr. Choksy for the 1st respondent that the 1st respondent's constitutional qualification had already been determined by the

above ruling, which it said was conclusive and proceeded to apply it. In consequence the election petition was dismissed with costs.

The present proceedings constitute an appeal from that decision and this full bench has been constituted to consider whether it could review the legal questions that have been earlier decided by this court. By our interim order we decided that it is open to this bench to review an earlier determination made by a bench of this court which is numerically less than the present bench.

Mr. Senanayake canvassed the determination in Reference No. 1/85 on two grounds. First, he submitted that the wording of the disqualification contained in Article 89 (e) (iii) of the present Constitution (which is identical with Article 68 (d) (iii) of the 1972 Constitution) is adequate to cover the case of the 1st respondent and it neither indicates any variation from the law that existed previously, nor is there evidence of the intention of the Constituent assemblies or the Parliament to depart from the previous law. In fact there is every indication that both Parliament, the Government and the legal authorities had understood that provision in that way.

Secondly, Mr. Senanayake submitted that this being an election of a member to the first Parliament, the issue is governed by the provisions of Article 161 of the present Constitution read with the Fifth Amendment, more particularly the proviso to Article 161 (d) (iii). In terms of these provisions the matter is governed by the provisions of the Ceylon (Parliamentary Elections) Order in Council. It was his contention that, having regard to the provisions of sections 82D (2) (b) (i) and (ii), section 82D (3), and section 31 (1) (e) of the Ceylon (Parliamentary Elections) Order in Council which have to be given effect to in this case, Article 89 of the Constitution can have no applicability. Hence the 1st respondent's disqualification must be determined in terms of the above provisions of the Elections Order in Council alone and according to which the 1st respondent is disqualified.

Mr. Choksy on the other hand submitted that the language of Article 68 (d) (iii) of the 1972 Constitution (which is followed in Article 89 (e) (iii) of the 1978 Constitution) shows a marked difference from the language in section 82D (2) (b) of the Ceylon (Parliamentary Elections) Order in Council. While conceding that under the old law a candidate whose agent or supporter had committed a corrupt practice with the candidate's knowledge and consent would involve the candidate himself in liability and with a disqualification, Mr. Choksy submitted that after 1972 the law for good reason had done away with this vicarious liability. It had now chosen that the candidate should not be visited with such a disqualification but that the disqualification should be confined only to the actual offender.

Mr. Choksy submitted that the law contemplated three categories of violators of the law. First, the case of a person (candidate or any other person) who himself commits a corrupt practice. Second, the case of an agent of the candidate who commits a corrupt practice. Third, the position of the candidate where the corrupt practice is committed with the knowledge and consent of the candidate. Mr. Choksy stated that section 82 (b) of the (Parliamentary Elections) Order in Council uses the word "guilty", whereas section 82 (a) and section 82D do not use this word. The use of the word "guilty" in Article 68 (d) (iii) of the 1972 Constitution (which is the equivalent of Article 89 (e) (iii) of the 1978 Constitution) is referable to the provisions of section 82 (b) which contemplates only the first category above. Accordingly, it is only the person who is actually found guilty and so stated in the report to be guilty who will be subject to the disqualification. Drawing an analogy with other branches of the law, he stated that the principle of vicarious liability cannot and should not apply in a case such as this, which is of a penal nature.

Elaborating on this, Mr. Choksy submitted further that the word "guilty" must be given its clear and intended meaning, since it has been used with reference to the report of the Election Judge under the (Parliamentary Elections) Order in Council which provides for that report, namely to section 82 alone and not to any other section which may define the consequences of

such offence. Article 89 (e) (iii) requires reference only to the report for the purpose of determining whether a person is subject to the disqualification in that Article. The applicability of Article 89 (e)(iii) does not depend on any other facts or any other legislative provisions. Therefore, a reference to the provisions of section 82D (2) is not permissible to determine whether or not a person is disqualified. Section 82 (b) expressly requires an Election Judge, when he has found a person guilty of a corrupt practice to set out such finding. Such a statement is conclusive for the purpose of applying Article 89 (e) (iii).

Mr. Choksy also relied on certain rules of interpretation in favour of his contention. He cited Benion on Statutory Interpretation for the proposition that a court should strive to avoid adopting a construction, which penalises a person where the legislator's intentions to do so is doubtful or penalises him in a way which was not made clear. For this purpose he said that a law that inflicts hardship or deprivation of any kind is in essence penal and more specifically that a strict construction should be given to an enactment curtailing voting rights and the franchise:

I am afraid I am unable to agree with the submissions made by Mr. Choksy which to my mind appear to be based on distinctions that are unwarranted and unsupported on a true reading of the relevant legal provisions. Although the original provision contained in section 13(3) (h) of the Ceylon (Constitution) Order in Council, 1946 (Cap. 379) is worded differently from the subsequent provision, I can see no difference in them in substance. What appears in section 13(3) (h) is a compendious provision providing for the disqualification of being a voter or a member of Parliament in consequence of the Election Judge's report. This is achieved in the 1972 Constitution by a drafting device that involves sections 66, 67, 68, 69 and 70. In fact it would be observed that section 68 which is relevant for our purpose deals only with the qualification of an elector. The disqualification relating to a member is contained in section 70. All these provisions have to be read as a composite whole since they determine the qualification and disqualification of being an elector or a member of the National State Assembly. Section 68 (d) (iii) makes the report of the Election Judge operative as a

disqualification both in the case of an elector and also for membership in the National State Assembly. The different arrangement of the sections necessitated the variation in the drafting, but this variation does not constitute a departure from the earlier legal position.

Next, when we examine the provisions of section 82 of the (Parliamentary Elections) Order in Council, we find that in the analysis he made, Mr. Choksy has chosen to ignore the effect of paragraph (a) and sought to highlight the provisions of paragraph (b) as if it were an independent provision capable of standing by itself. This is clearly erroneous. The primary provision is paragraph (a) and it is wholly directed to an inquiry and finding the culpability of the candidate himself directly or through his agent or through someone else with his knowledge and consent.

Where the answer is in the affirmative, all the necessary information has to be furnished and this is provided for in paragraph (b). Paragraph (b) is clearly consequential to paragraph (a). In the nature of things it is not possible for the candidate's name to appear in paragraph (b) as an actual offender when we are dealing with the case of a corrupt practice being done by someone else and not by the candidate himself. The candidate is involved because he has had knowledge or had given his consent. What Mr. Choksy has sought to do is to place this section as it were upside down and construe it starting from the bottom.

Mr. Choksy's other submission that this is a case of vicarious liability is not justified by the language of the enactment or by the general principles of vicarious liability. A candidate who is made liable for an act done with the knowledge and consent of the candidate could in certain circumstances be in the position of an accessory to the act and even a principal in the first or second degree if we were to use the parlance in criminal law. For he can be an instigator or an abettor. This is a far cry from the examples given by Mr. Choksy of cases of civil liability where a master is made liable for the delict of a servant for acts committed in the course of employment.

Again, I think, Mr. Senanayake dealt effectively with Mr. Choksy's argument based on principles of interpretation which was termed "the principle against doubtful penalisation". I agree with Mr. Senanayake that these provisions are intended in essence to define the qualifications and disqualifications for voting and for being a member of the legislature and also to ensure the purity of elections and the electoral process. Where a corrupt or illegal practice is committed with the knowledge and consent of the candidate — and as I have said earlier, the candidate can be an abettor or instigator — the old law very wisely regarded the candidate himself as being tainted and was made to suffer the same consequences and disqualification as the person who had actually committed the act. This is in consonance with the ordinary principles of criminal liability where an abettor is made liable for the same punishment as the principal in the first degree. I can see no good reason why this should be otherwise. Mr. Senanayake stated somewhat picturesquely that it is absolutely necessary that such a person infected with the virtues of corruption should be quarantined and kept out of the electoral scene if we are concerned with maintaining the purity of the electoral process. Far from acceding to Mr. Choksy's submission on what he thought was the proper rule of interpretation, I should think that on this background there should have been a clear intention on the part of the draftsman expressed in unambiguous language indicating a change in the law if such an important and significant departure had been intended by the law. In this regard we had only some speculative submissions made by Mr. Choksy which are highly questionable and not supported by an iota of material.

Mr. Choksy also suggested that the variation he attributed to the provisions after 1972 may have been due to our draftsman being influenced by the corresponding provisions on the Indian law. He referred us to the Indian Representation of the Peoples Act 1951. The Indian provisions are differently worded from our law, and from the excerpts submitted to us it is difficult to say what is the precise legal position under that law. However, even assuming that the Indian law is different and that it draws a distinction for the purpose of disqualification between the person who actually committed the corrupt practice and the candidate

with whose knowledge and consent it was done. I do not think that the Indian law could have influenced our draftsman or that it could in any event provide a model for us. While the Indian law may be adequate for India, I find that the Indian law does not provide as a matter of course for the disqualification of even the person who actually commits the corrupt practice, but leaves it to the discretion of the President whether or not to disqualify him and for what period—section 8A. This has never been our law or been at any time in the contemplation of our draftsman and is wholly unacceptable to our concept of elections.

Mr. Choksy also referred to the corresponding provisions in the U.K., namely, the Representations of Peoples Act 1983. In this connection I may first mention that in the U.K. legislation, unlike the Indian law, both the actual person who commits the corrupt or illegal practice and the candidate, if it is done with his knowledge and consent, are both disqualified from voting or being elected and this has been done in the clearest terms. This admittedly has been our own position until 1972. Mr. Choksy sought to contrast the explicitness of the U.K. legislation with our post 1972 provisions. Undoubtedly different techniques of drafting have been adopted in the two cases, but I think that the identical result is achieved in both cases. In the U.K. the language used is as follows:—

“158 (2) (a) If it is reported that a corrupt practice other than treating or undue influence was committed with the knowledge and consent of a candidate, he shall be treated as having been reported personally guilty of that corrupt practice.”

The technique of our draftsman is different. Under our law when a person is convicted by a criminal court of a corrupt practice he is declared to be disqualified from being a voter or member of Parliament — vide section 58B (3). Then section 82D (2) (b) (i) states that where there is no conviction by a criminal court but an Election Judge in his report makes a finding of the commission of a corrupt practice by any person, “that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice.”

Here we find a second category of persons not formally found guilty by a criminal court equated to the first category. Next we have a third category. Section 82D (2) (b) (ii) states:

"Where the report referred to in paragraph (a) is to the effect that such corrupt or illegal practice was committed with the knowledge and consent of a person who was a candidate at an election or by his agent, that person shall be subject to the same incapacities as aforesaid."

Here it would be observed that the drafting technique is to equate the third category to the second category and the second category to the first category and bring about an equalising of the three unequal categories so as to visit all three with the same consequences and disability. While the U.K. drafting may be more explicit, it is less elegant than ours and as I said earlier, those examples reveal different techniques of the draftsman skills in seeking to achieve the same object.

Incidentally Mr. Aziz, Deputy Solicitor-General, who appeared before this court in the Reference contended strongly for the view that our law is identical with the U.K. law, but we saw the Addl. Solicitor-General now appearing before us, for reasons which we cannot fathom, seeking to put forward a diametrically opposite view and disowning the earlier submissions. In this connection Mr. Senanayaka rightly drew our attention to the provisions of section 107 of Parliamentary Elections Act, No. 1 of 1981, where the identical language used in Ceylon (Constitution) Order in Council is used. If there had been a variation of the position after 1972, such a provision could not have been constitutionally enacted in the manner it was done and it may be noted that Act No. 1 of 1981 had had the sanction of both Parliament and the law officers of the Government. An indication such as this gives the clearest proof that the law had remained unchanged and supports the reasoning set out in this judgment.

Accordingly I am of the view that even assuming that the matter is governed by the provisions of the 1972 or 1978 Constitution, the relevant provisions disqualify the 1st

respondent from being either an elector or member of the Legislature, I am also of the view that the view expressed in this matter in Reference No. 1/85 cannot be sustained and it is our decision in this case that that should govern the Election Judge.

In view of this ruling the appeal must succeed and it is unnecessary to consider the alternative ground argued by Mr. Senanayake.

Appeal dismissed.
