

1948

Present : Windham J.

PELPOLA, Petitioner, and R. S. S. GUNAWARDENA,  
Respondent

IN THE MATTER OF THE TRIAL OF ELECTION PETITION NO. 11  
OF 1947 (GAMPOLA)

*Election Petition—Allegations of general intimidation and undue influence—  
Amendment of particulars—Parliamentary Elections Order in Council,  
1946, Section 56.*

In an election petition defects in the particulars relating to a charge may be amended if no prejudice has been caused to the respondent.

When undue influence is alleged, the electoral numbers, in the Register, of the persons who were unduly influenced should be given in the particulars.

Where, in the column setting out the persons said to have been unduly influenced, there was reference to persons whose names were set out in the corresponding particulars relating to general intimidation—

*Held*, that there was no objection to the names set out in those particulars relating to general intimidation being incorporated in the particulars of persons said to have been unduly influenced.

*Held, further*, that, so long as the individuals were mentioned by name, the petitioner was entitled to endeavour to prove that certain persons being agents of the respondent committed certain acts of undue influence against other persons named. Nor should the particulars be struck out by reason of the nature of the acts having been given in such terms as "threatening, kicking and striking, restraint, obstruction", and not having been given so as to attribute a particular act of undue influence to each particular person said to have committed undue influence.

**O**RDER made pending the hearing of Election Petition, Gampola Electoral District.

*E. F. N. Gratiaen, K.C.*, with *C. S. Barr-Kumarakulasinghe, B. H. Aluwihare*, and *A. I. Rajasingham*, for the petitioner.

*U. A. Jayasundere*, with *Stanley de Zoysa, S. P. C. Fernando, G. T. Samarawickreme, S. E. J. Fernando*, and *D. Wimalaratne*, for the respondent.

March 9, 1948. WINDHAM J.—

This is an application to strike out all the particulars relating to the charge of undue influence on this petition. A large number of defects or alleged defects in the particular have been argued to exist. Some of these I consider are not defects which would, in fact, prejudice the respondent. Others raise questions of more weight, and considerations of a legal nature. I will take the objections one by one.

Firstly, it is said rightly that the times of day, as distinct from the date, of each of the acts alleged have not been inserted in the first column of the particulars. The times as well as the dates were ordered to be given by the order of this Court, both in respect of the particulars of undue influence, and in respect of the particulars of general intimidation. I am

satisfied, however, with Mr. Gratiaen's explanation that the omission was due to a defect in the copy of the Court's order which was in his possession. I am also satisfied that it must have been clear to the respondent that the times omitted were the same times as were given in respect of the respective particulars of general intimidation to which each act of undue influence was related. Accordingly, I think, this is a case where no prejudice was caused to the respondent, and I will amend the particulars by the addition of those respective times, namely, the times given in the particulars of general intimidation respectively referred to in the particulars of undue influence.

Secondly, it is argued that the occupations of certain of the persons alleged to have committed undue influence are not given or are given as not known. I think this is a minor objection, and the petitioner cannot be expected to have discovered the occupation of each of these persons in every case. These particulars will accordingly stand.

Thirdly, it was objected that the electoral number in the Register of those persons alleged to have committed undue influence was not given in some cases. In view of the terms of this Court's order for particulars, this must be taken to imply that such persons had no electoral numbers. Since, however, it is not necessary that the persons unduly influencing should be on the electoral register, this omission will have no legal consequence.

Fourthly, a similar objection with regard to electoral numbers is taken in respect of one of the persons said to have been unduly influenced, namely, A. S. Karuppiah. This omission, similarly, will be taken as implying that that individual was not on the electoral register, with the legal consequence that the particulars in relation to him will be struck out as disclosing no offence, since it is necessary that a person said to be unduly influenced must have been a person capable of voting in the electorate.

Fifthly, it is objected that in the column setting out the persons said to have been unduly influenced, there is reference to persons whose names are set out in the corresponding particulars relating to general intimidation. That is true. I see no objection to the names set out in those particulars relating to general intimidation being incorporated in the particulars of persons said to have been unduly influenced. These names set out under the particulars of general intimidation, however, do not appear to be exclusive, since the latter mention that the names set out constitute only some of those persons said to have been the victims of general intimidation. As regards the persons said to have been unduly influenced, I think the names of all such persons must be specifically set out, and accordingly the particulars of those persons will be amended so as to make it clear that they include only the persons whose names appear under the column "persons unduly influenced" and also those persons whose names are specifically set out under the corresponding column of persons generally intimidated, including the names specifically set out in the respective annexures to that latter column, and including in all cases only those persons whose number on the electoral register is given.

The next point argued is that the particulars of persons unduly influenced and of persons committing the undue influence, inasmuch as they consist of a large number of names in each case, and inasmuch as these names clearly are the same names as are given under the particulars of general intimidation, show that the petitioner is seeking under the heading of undue influence to prove acts which in reality constitute acts committed in the course of general intimidation. And it is urged that such acts are not the proper subject-matter of Section 56 of the Ceylon (Parliamentary Elections) Order in Council, 1946. Various passages from Rogers, on Elections, have been cited to me by both parties in this connection. Upon a consideration of all the authorities, I do not think that I can at this stage, before hearing the evidence, hold that the particulars of undue influence should for that reason be struck out. So long as the individuals are mentioned by name the petitioner is entitled to endeavour to prove that certain persons being agents of the respondents committed certain acts of undue influence against other persons named. Nor do I think that these particulars should be struck out by reason of the nature of the acts having been given in such terms as "threatening, kicking and striking, restraint, obstruction", and not having been given so as to attribute a particular act of undue influence to each particular person said to have committed undue influence. This point again may be the subject of comment at the conclusion of the case.

I have had some hesitation with regard to the next point, namely, that under the column headed "persons who committed undue influence", in respect of one particular instance there are inserted the words, "a large number of Sinhalese villagers unknown to the persons intimidated", no individual names being given. I will, however, reserve my decision on this point until the conclusion of the evidence, should it then become necessary to decide it. There appears to be authority that particulars ordered to be given need only be given if this is possible. At the same time if any of the persons who might be shown to fall under that very general heading of "a large number of Sinhalese villagers" is proved to have committed the act alleged, and to have been an agent of the respondent, it may well be argued that he cannot be found guilty of corrupt practice by reason of his not having been named in the particulars. But I make no decision upon the point at the present moment.

One more minor point remains, namely, that in the third and fourth instances of undue influence, a blank space has been left under the column head "nature of the acts of undue influence". Here again, I accept Mr. Gratiaen's assurance that the omission is due to a clerical error and that it was intended to insert in those blank spaces the same particulars as are given under the corresponding column under the heading of particulars of general intimidation, in instances No. 3 and No. 4 respectively. I am quite sure that this must have been clear to the respondent, whose main platform in seeking to strike out these particulars of undue influence is that they are, in effect, the very particulars given of general intimidation, dressed in another guise. Those particulars of the nature of the acts will accordingly be inserted in the respective blank spaces.

*Objections as to particulars mostly overruled.*