

NANAYAKKARA
v.
KIRIELLA (DECEASED) AND OTHERS

SUPREME COURT.

COLIN-THOMÉ, J., RANASINGHE, J. AND TAMBIAH, J.

S. C. ELECTION PETITION APPEAL No. 6/84.

ELECTION PETITION No. 1/83.

SEPTEMBER 11, 1985.

Election petition – Notice of presentation of election petition – Rule 15 Parliamentary Election Petition Rules 1946 set out in Third Schedule of the Ceylon (Parliamentary Elections) Order-in-Council amended by Act No. -11 of 1959.

On preliminary objection regarding validity of notice of presentation of an election petition –

Held – (Ranasinghe, J. dissenting) :

The ten day time limit prescribed by Rule 15 (1) of the Parliamentary Election Petition Rules for service of notice of the presentation of an election petition on the respondents is mandatory and applies to every mode of service of notice set out under sub-paragraphs (a) and (b). Even where the petitioner delivers to the Registrar the notices and copies of the petition under rule 15 (1) (b) the actual service must be effected within ten days.

Cases referred to :

(1) *P. A. Cooray v. H. J. G. Fernando* (1953) 54 NLR 400.

(2) *Nair v. Teik* [1967] 2 All E. R. 34, 40.

(3) *Ramalingam v. Kumaraswamy* (1953) 54 NLR 494.

APPEAL from judgment of Election Judge.

K. Shanmugalingam with Udeni Gunasekera, N. G. Punchihewa and Mrs. Nimalka Fernando for petitioner-appellant.

K. N. Choksy, P. C. with Daya Pelpola and Lakshman Perera for intervenient-respondent.

S. W. B. Wadugodapitiya, Additional Solicitor General with Miss Indra Siriwardene for 7th respondent.

October 8, 1985.

COLIN-THOMÉ, J.

The petitioner-appellant filed an election petition challenging the election of Dr. L. P. Kiriella as Member of Parliament for Eheliyagoda at a by-election held on the 18th May 1983. Dr. Kiriella died after the filing of the petition and the intervenient respondent was substituted in his place.

At the hearing of the Election Petition certain preliminary objections were raised on behalf of the intervenient respondent. After hearing oral submissions and considering written submissions by both parties the learned Election Judge by his order dated 22nd October 1984 dismissed all the preliminary objections except one, and on the basis of that objection dismissed the petition with costs. The objection which was upheld was that notice of presentation of the Election Petition accompanied by a copy thereof had not been served by the petitioner on the 1st, 3rd and 8th respondents within the time limit stipulated in Rule 15 in the Third Schedule of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended by section 29 of Act No. 11 of 1959. The petitioner-appellant states that the learned Election Judge has misinterpreted Rule 15 and prays that his order be set aside and he be directed to proceed with the trial of the Election Petition and for costs and other relief.

Rule 15 states:—

“15. (1) Notice of the presentation of a petition, accompanied by a copy thereof shall, within ten days of the presentation of the petition—

- (a) be served by the petitioner on the respondent ; or
- (b) be delivered at the office of the Registrar for service on the respondent, and the Registrar or the officer of his department to whom such notice and copy is delivered shall, if required, give a receipt in such form as may be approved by the Chief Justice.

(2) The service under paragraph (1) of notice of the presentation of a petition and a copy thereof by the petitioner on the respondent may be effected either by delivering such notice and copy to the agent appointed by the respondent under rule 10 or by posting them in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or by a notice published in the Gazette stating that such petition has been presented and that a copy of it may be obtained by the respondent on application at the office of the Registrar.

- (3) Where notice of the presentation of a petition, accompanied by a copy thereof, is delivered under paragraph (1) at the office of the Registrar for service on the respondent, such service may be effected in the same manner as the service of a notice issued by a court is effected under the Civil Procedure Code."

The Election Petition was filed on the 7th June, 1983. On the 10th June the petitioner's agent tendered to the Registrar notices together with sufficient number of copies of the petition and affidavit for service on the respondents. On the same day the Registrar forwarded these notices together with the precept to the Fiscal of the High Court of Ratnapura to be served on the 1st to the 4th and the 6th to the 9th respondents. On the same day he also forwarded a notice together with the precept to the Fiscal of the High Court of Avissawella for service on the 5th respondent.

On the 7th July 1983 the Registrar reported to the Election Judge that the notices on the 1st, 3rd and 8th respondents could not be served as the 1st respondent was not residing at the given address and was residing in Colombo. The 3rd respondent could not be found and the 8th respondent was no longer residing at the given address. On the 11th July notices were reissued for service on the 1st, 3rd and 8th respondents. It is clear from the journal entries that notices on the 1st, 3rd and 8th respondents were not served within ten days of the presentation of the petition. This was the only mode of service resorted to by the petitioner. The petitioner-appellant has submitted that :

- (a) Rule 15(1) (b) requires that notice of the presentation of the petition accompanied by a copy thereof shall within 10 days of the presentation of the petition be delivered at the office of the Registrar for service on the respondents.
- (b) Rule 15(3) provides that where a notice and a copy of the petition is delivered to the Registrar under Rule 15(1) (b) for service on the respondents, such service may be effected in the same manner as service of a notice issued by Court is effected under the Civil Procedure Code.
- (c) The above provisions in Rule 15 make it clear that the Rule is complied with if within 10 days the petitioner delivers to the Registrar the notices and copies of the petition for service on the respondents. It is not necessary that the actual serving is done within 10 days.

- (d) Rule 15 (1) (b) was introduced by an amendment in 1959 because it was found that service under Rule 15(1) (a) was working hardship and respondents were able to avoid personal service within 10 days. That is why the Legislature by its amendment provided that tendering of the notice within 10 days with copies of the petition to the Registrar for service in due course on the respondents was sufficient compliance with Rule 15.
- (e) Rule 15(1) (b) is so clear and unambiguous in simple English language that there is no need to look for any aids for interpretation or to any canons or rules of interpretation or to any other authorities.

The original Rule 15 prior to the amendment by section 29 of Act No. 11 of 1959 was restricted to certain modes of service. It stated :

15. Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the agent appointed by the respondent under rule 10 or by posting the same in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time abovementioned, or if no agent has been appointed, nor such address given, by a notice published in the Gazette stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar.

In *P. A. Cooray v. H. J. G. Fernando* (1) the respondent on 16.6.52 filed an election petition praying for a declaration that the applicant was not duly elected or returned and that the election was void. On 26.6.52 the respondent applied to the Court to have notice of presentation of the petition served on the applicant through the Fiscal. The motion was allowed and on the same day the Registrar forwarded the notice to the Deputy Fiscal, Kalutara, for service and immediate report. On 26.6.52 the Deputy Fiscal reported that his officer made attempts on the 21st, 23rd and 25th June to serve the notice on the applicant but that he was not to be found.

On 26.6.52 the respondent also left with the Registrar a copy of the notice of the presentation of the petition.

On 26.6.52 the respondent also posted under two separate covers two copies of the petition he had filed and two copies of notice of the presentation of the petition. They were sent by registered post and the registered letter receipts were filed. The evidence established that the registered packets were delivered to the applicant on 30.6.52, after the prescribed time.

On 25.6.52 the notice for publication in the Gazette was handed to the Government Printer. This notice appeared in the Gazette on 27.6.52 i.e. beyond the period of 10 days.

It was held that when an election petition is presented the petitioner should serve notice of it on the respondent within the prescribed time. When notices are sent by registered post the date of delivery is the crucial factor. In this case they were delivered outside the prescribed time of ten days. This was a fatal defect. Similarly, the date of publication of the notice in the Gazette is the required date, not the date on which it was handed in for publication. As the publication was beyond the period of ten days this was a fatal defect.

It was further held that leaving copies of the notice and petition with the Registrar was not a sufficient mode of service. Rule 10 of the Third Schedule does not apply to the service of notice of presentation of the petition. Rule 15 applied exclusively to the service of notice. Rule 15 did not prescribe delivery of copies to the Registrar as a mode of service.

In *Nair v. Teik* (2) an election case from Malaysia it was evident that Rule 15 under the Election Offence Ordinance, 1954 of Malaysia was similar to Rule 15 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, before the amendment in 1959. The Privy Council reached the conclusion that the provision of Rule 15 was mandatory, and the respondent's failure to observe the time for service thereby prescribed rendered the proceedings a nullity. The circumstances which weighed heavily with their lordships in favour of a mandatory construction were :

- (i) The need in an election petition for a speedy determination of the controversy. It is very much in the interests of the public that the matter should be speedily determined.

- (ii) The rules vest no general power in the election judge to extend the time on the ground of irregularity. Their lordships think that this omission was a matter of deliberate design. In cases where it was intended that the judge should have power to amend proceedings or postpone the inquiry it was expressly conferred on him.
- (iii) If there is more than one election petition relating to the same election or return, they are to be dealt with as one. It would be manifestly inconvenient and against the public interest if by late service in one case and subsequent delay in those proceedings the hearing of other petitions could be held up.
- (iv) Respondents may deliver recriminatory cases and speedy service, in order that the respondent may know the case against him, is obviously desirable so that he may collect his evidence as soon as possible.

It is common ground that the judgment in *Cooray v. Fernando (supra)* led to the amendment of Rule 15 by section 29 of Act No. 11 of 1959. This amendment introduced for the first time a new mode of service in the provisions of Rule 15 (1) (b).

The new Rule 15 (2) retained the modes of service enacted in the old Rule 15 deleting the restrictive words "or if no agent has been appointed, nor such address given" in connection with a notice of presentation of a petition published in the Gazette. This amendment no doubt was influenced by the decision in *Ramalingam v. Kumaraswamy* (3) which held that a notice published in the Government Gazette can be availed of by the petitioner as notice of the presentation of his election petition only if before the publication no appointment of an agent or address had been given to the Registrar of the Supreme Court by the respondent in terms of Rule 10.

According to learned Counsel for the petitioner-appellant what is required of the petitioner under the new Rule 15 (1) (b) is that he must deliver notice and a copy of the petition within 10 days of filing of the petition to the Registrar. Thereafter the service of the said notice is the responsibility of the Registrar who is an officer of the Court. It is not required that the Registrar must serve the said notice within 10 days of filing the petition.

The question for decision is whether service of notice of the petition and copy of the petition on the respondent is governed by a mandatory ten day rule in all the modes of service, except one.

One of the objects of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended, is the speedy determination of an election petition after a trial. Under section 83 an election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette. By Rule 12 (1) security for the payment of all costs, charges and expenses shall be given on behalf of the petitioner within three days of the presentation of the petition. Section 80 C (2) requires that every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of presentation of the petition. The Election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition. Under section 82 A (2) an appeal must be preferred before the expiry of the period of one month next succeeding the date of determination or decision against which the appeal is preferred. Rule 15 has been formulated with the same object in view. The reason for a speedy determination of an election petition is not only because it is in the public interest but also to enable a respondent to know the case against him so that he may collect his evidence as soon as possible.

The arrangement of Rule 15 (1) is significant. The expression "within ten days of the presentation of the petition" in Rule 15 (1) governs both sub-paragraphs (a) and (b). There is no basis for the submission by learned Counsel for the petitioner-appellant that the ten day limit is applicable only to sub-paragraph (a) and not to sub-paragraph (b). If Rule 15 (1) (b) was intended to be an exception to the ten day rule of communication of the notice to the respondent, and that delivery of the notice at the office of the Registrar within ten days was sufficient compliance with Rule 15, then sub-paragraph (b) would have been drafted in a separate section stating in express words that there was no time limit on the service of the notice or that service was to be effected as expeditiously as possible.

I hold that the governing words "within ten days of the presentation of the petition" in Rule 15 (1) apply to all and every mode of service set out in Rule 15. It is mandatory for all modes of service. The petitioner is given a choice of several modes of service so as to ensure

service within the specified time limit. Under Rule 15 (1) (b) where the notices are tendered to the Registrar for service, both the delivery and the service must be effected within ten days. I hold that the failure to serve notices on the 1st, 3rd and 8th respondents within the mandatory ten days is a fatal defect.

For the reasons stated the appeal is dismissed but without costs.

RANASINGHE, J.

I have perused, in draft, the judgment of my brother Colin-Thome, J. As I find myself unable to agree with the view expressed therein, I now proceed to set down my approach to the question which was argued before this Court.

The question, which was presented for consideration, is : whether the copy of the notice of the presentation of an election petition, accompanied by a copy thereof, which are delivered at the office of the Registrar, in terms of Rule 15 (1) (b) of the Parliamentary Election Petition Rules 1946 set out in the Third Schedule of the Ceylon (Parliamentary Elections) Order-in-Council (Chap. 381) as amended by Act No. 11 of 1959, and which the Registrar is required, by sub-rule (3) of the said Rule 15, amended as aforesaid, to serve on the respondent, in the manner set out therein, should also be so served on the respondent within the period of ten days specified in the said Rule 15 (1).

Rule 15 of the Third Schedule of the said Ceylon (Parliamentary Elections) Order-in-Council (Chap. 381) provided that :

"Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the agent appointed by the respondent under rule 10 or by posting the same in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above-mentioned, or if no agent has been appointed, nor such address given, by a notice published in the Gazette stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar".

Sec. 29 of the amending Act No. 11 of 1959 substituted the following new rule in place of Rule 15 – set out above – of the 3rd Schedule of 1946 Order-in-Council (Chap. 381) :

*Service of notice of petition and copy of petition on the respondent.

15. (1) Notice of the presentation of a petition, accompanied by a copy thereof shall, within ten days of the presentation of the petition—

(a) be served by the petitioners on the respondent ; or

(b) be delivered at the office of the Registrar for service on the respondent and the Registrar or the officer of his department to whom such notice and copy is delivered shall, if required, give a receipt in such form as may be approved by the Chief Justice.

(2) The service under paragraph (1) of the notice of the presentation of a petition and a copy thereof by the petitioner on the respondent may be effected either by delivering such notice and copy to the agent appointed by the respondent under rule 10 or by posting them in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned or by a notice published in the Government Gazette stating that such petition has been presented and that a copy of it may be obtained by the respondent on application at the office of the Registrar.

(3) Where notice of the presentation of a petition, accompanied by a copy thereof, is delivered under paragraph (1) at the office of the Registrar for service on the respondent, such service may be effected in the same manner as the service of a notice issued by a Court is effected under the Civil Procedure Code".

Rule 10, which is referred to in paragraph (2) of Rule 15 set out above, is :

"Any person returned as a Member may at any time, after he is returned, send or leave at the office of the Registrar a writing, signed by him on his behalf, appointing a person entitled to practise as a proctor of the Supreme Court to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within the city of Colombo, at which notices addressed to him may be left, and if no such writing be left or address given, all notices and proceedings may be given or served by leaving the same at the office of the Registrar. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force".

A careful examination of Rule 15, as it stood before the amending Act No. 11 of 1959, makes it clear that : the petitioner (who presents an election petition in terms of the provisions of sec. 83(1) of the said Order-in-Council of 1946 (Chap. 381) must, within a period of ten days from the date on which he presents such petition, serve on the respondent, named in such petition, a notice of the presentation of such petition together with a copy of such petition : the petitioner may carry out the service, which he is so obliged to effect, on the petitioner in one of three ways :-

- (i) by delivering the said notice and the copy to the respondent's agent appointed under rule 10 ; or
- (ii) by so posting the said notice and copy, under registered cover, to the respondent's address given under the said rule 10, that, in the ordinary course of post, they would be delivered to the respondent within the said period of ten days ; or
- (iii) if, no agent has been so appointed, nor an address so registered, then by publishing - which, said publication, as will be set out later, must itself be done before the expiration of the aforesaid period of 10 days - a notice, as set out therein, in the Gazette.

Rule 15, as it originally stood, whilst making the service of the said notice, and the copy which was to accompany it, by the petitioner on the respondent imperative, also proceeded to spell out three different methods by which the petitioner could carry out the duty so cast upon him. Of them the first two, namely, (i) and (ii) set out above, are in the

alternative ; the third, namely (iii) above, could be resorted to only if neither an agent had been appointed nor an address registered. The third mode was thus conditional upon a non-compliance by the petitioner with certain requirements of the aforesaid rule 10. Rule 15, prior to its amendment, directed the petitioner to serve the notice and the copy, set out therein, upon the respondent within the period also specified therein ; and it also proceeded to set out a maximum of two and a minimum of one method by which such service could be effected by the respondent. These were not the only methods which the petitioner could employ. Such description was not meant to be exhaustive. It was open to the petitioner to effect such service by any other method, which is ordinarily used to make a person aware of something which needs must be brought to his notice by another, and satisfy the court that the said notice and the copy were in truth and in fact physically delivered to the petitioner himself.

The new rule 15, brought in by the amendment of 1959, must now be examined. The new rule comprises three paragraphs. Paragraph (1) is further divided into two sub-paragraphs (a) and (b). Paragraph (1) (a), which requires service of notice of presentation of the petition, together with a copy of such petition, within a period of 10 days is a verbatim reproduction of the first sentence of the earlier rule 15. Paragraph 1 (b) is an altogether new provision. It is an alternative to (1) (a) ; and, as an alternative to that which is set out in (1) (a) it directs the delivery of the said notice, along with the copy, at the office of the Registrar for service on the respondent. All that 1 (b) requires the petitioner to do is to deliver the said documents at the office of the Registrar who is directed to issue a receipt to the petitioner in respect of such documents. The object of so delivering the said documents is set out in sub-paragraph (b). It is "for service on the respondent". How such service is to be effected, and who should effect such service are not spelt out in the said sub-paragraph. They are, however, provided for, as will be set out later, in paragraph (3) of the said new rule 15. The period of 10 days provided for in paragraph (1) itself would apply to all acts which both sub-paragraphs (a) and (b) of the said paragraph require to be done. Such acts are : service under (a) by the petitioner ; delivery under (b) by the petitioner. Service, either by the petitioner or the Registrar, of the documents delivered at the Registrar's office is not an act provided for by sub-paragraph (b). Paragraphs (1) (a) and (b) require the petitioner to do one of two things : to effect the service of such documents by himself upon the respondent ; or, to deliver

such documents at the office of the Registrar for service on the respondent. Whichever course of action the petitioner chooses, it has to be carried out by him within the space of ten days from the date of the presentation of the election petition.

Paragraph (2) sets out three methods which may be utilised by the petitioner when he decides that he himself should effect the service upon the respondent. The three methods so specified are the self same methods as were set out in the original rule 15, subject, however, to one significant difference. Each one of the three methods now specified is an independent method, which is not made dependent upon any other factor, and can be utilised in the first instance. Service by publication in the Gazette is no longer made contingent upon a failure on the part of the petitioner to do something – appoint an agent and or register an address – which the respondent could have done under rule 10.

Paragraph (3) provides for the service of the notice and copy which the petitioner may, under paragraph 1 (b), leave at the office of the Registrar. In regard to notices and copies to be so left at the Registrar's office it has to be noted that : there was no such provision at all in the original rule 15 : the receipt which is now required to be issued by the Registrar is one that has to be in a form approved by the Chief Justice himself : these documents are now required to be served, and are to be served in a manner which ensures that it will be done according to law, by officers of court under the supervision of court.

It has been contended : that the documents deposited with the Registrar, in terms of sub-paragraph (b) of paragraph (1) of the said new rule 15, for service, must also be served within the period of 10 days referred to in paragraph (1) of the said rule : that the intention of the Legislature was that such service, in the manner prescribed should also be effected within the said period of ten days, by the Registrar.

It is a well known principle relating to the interpretation of statutes that the question of the interpretation or construction of any statutory provision arises only where such provision admits of two meanings. Where the meaning of any such provision is plain and clear, then there is no need to resort to interpretation ; and there arises no occasion for the application of principles relating to the interpretation of statutory provisions. Even if the need arises for the invocation of such principles : the Golden Rule then is "to adhere to the ordinary meaning of the words used and to the grammatical construction unless that is

at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance in which case the language may be varied or modified as to avoid such inconvenience but no further". The primary duty of a court of law is to find the natural meaning of the words used in the context in which they occur, such context being taken to include any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute. Where the language of an Act is clear and precise, effect must be given to it whatever be the consequence, as the words of the statute are taken to speak out the intention of the Legislature. Where the statutory provision which requires interpretation is an enactment which seeks to amend an existing statutory provision, then it is also permissible to consider : the state of the law which it proposes or purports to alter : the mischief which is intended to be remedied : the nature of the remedy which is sought to be provided – *Craies : Statute Law (7th Ed) pp. 64, 66, 84-85, 87, 88*. In seeking to interpret a statutory provision on the basis of the "intention of the legislature" a court should be careful to gather such intention from within the enactment itself ; for, what the legislature intended to be done or not to be done can only be legitimately ascertained from what the legislature has chosen to enact either in express words or by reasonable and necessary implication – *Craies (supra) p. 66*. It is not right and proper to consider the provisions in need of construction with any pre-conceived notions of what the legislature intended to accomplish and then place such a construction upon them as would, as far as possible, achieve such object.

It was, as has been stated by my brother Colin-Thome, J., common ground that the amending Act No. 11 of 1959 was introduced as a result of the judgment of the Supreme Court in the case of *Cooray v. Fernando (supra)* which had been decided six years earlier in February 1953. In that case : the election petition was filed on 16.6.52 : On 20.6.52 the Petitioner applied to Court to have notice of the presentation of the petition served on the respondent through the Fiscal : the application was allowed : but the efforts made by the Fiscal to serve such notice within the prescribed period of 10 days were not successful : On 20.6.52 the Petitioner also left with the Registrar a copy of the notice of the presentation of the petition. On 20.6.52 the Petitioner also posted under two separate covers, by registered post, two copies of the petition he had filed and two copies of the notice of presentation of the petition ; but these letters were

delivered to the respondent only on 30.6.52, which too was after the prescribed date : On 24.6.52 the petitioner had a notice published in the Ceylon Daily News giving notice to the respondent of the presentation of the petition on 16.6.52 and that copies had been left with the Registrar : On 25.6.52 the petitioner handed over to the Government Printer a notice which, however, was published only on 27.6.52, after the lapse of the period of ten days. After the petition had been fixed for trial on 15.12.52, the respondent moved, on 21.11.52, that no further proceedings be had on the Election Petition as no due and proper notice of the presentation of the petition had been served on the respondent as required by law. After inquiry into the said application, the Court held that the leaving of the notice, and a copy, with the Registrar on 20.6.52 was not sufficient as rule 10 does not apply to the service of notice of presentation of an election petition : that the petitioner has not served or caused to be served the notice and copy by delivering them or having them delivered into the hands of the applicant within the prescribed time, the registered letters not having reached the respondent within the specified time, and efforts made by the Fiscal having failed : that even the publication which appeared in the Gazette only on 27.6.62 did not comply with the requirements of rule 15, as what is material is not the date on which such notice is handed in for publication, but the actual date on which it is published. This decision highlighted the difficulties which confronted a petitioner in complying with rule 15 of the Third Schedule of the 1946 Order-in-Council. If, therefore, the amending Act of 1959 was, as is accepted by the parties, enacted in consequence of the decision in *Cooray's case (supra)*, then the mischief, which the amending Act was directed against and was sought to be remedied, would have been the rigours imposed upon a petitioner in the giving of notice, to a respondent, of the presentation of a petition. The judgment in *Cooray's case (supra)* also revealed that service of notice even by the Fiscal would not guarantee that such notices and copies, as were dealt with by the earlier rule 15, would actually reach the hands of a respondent within the space of ten days set out in such rule.

The amending Act, by paragraph (2) of the new rule 15, made it possible for a petitioner to resort to publication in the Gazette as a mode of service in the first instance, independent of any failure on the part of a respondent to do what he a respondent, could have done. Invoking the medium of the Registrar was provided for in

sub-paragraph (b) of paragraph (1) read with paragraph (3) of the new rule 15. Such service through the Registrar is not included in paragraph (2) of the said new rule 15, in which said paragraph are set out the various methods, which may be resorted to by the petitioner in effecting the service which he takes upon himself to effect and which said service must, irrespective of the particular method chosen, always be effected within the said period of ten days. Instead it is regulated by a separate sub-paragraph, viz sub-paragraph (b) – which provides for a distinct and separate step which can be taken without resorting to that which is set out in sub-paragraph (a) – read with paragraph (3). This provision met the deficiency highlighted in *Cooray's case (supra)* in regard to the non-availability of the medium of the Registrar under the old rule 15. If the service through the Registrar must also be done within the said period of 10 days and the medium of the Registrar is also just another method of effecting the service the petitioner undertakes to do in terms of sub-paragraph (a) of paragraph (1) of the new rule 15, then the simplest, the easiest and the most practical way of stating so would have been to include it also within paragraph (2).

The concept of service (of a document addressed to and meant for the respondent) on the Registrar being sufficient compliance with a requirement of service on the respondent is one that was already embodied in rule 10 referred to above. The notices contemplated in the said rule 10 are notices connected with and relating to an election petition filed against a respondent. A compliance by a respondent with what he has been authorised to do under this rule will ensure the safe and swift receipt by him of all such notices and other communications as come within the said rule and are meant for him.

Although the provisions of sub-paragraph (a) of paragraph (1) of the new rule 15 (and the opening sentence of the old rule 15) require personal service on the respondent, yet, the provisions of paragraph (2) of the said new rule (and the latter part of the old rule 15) show that methods of service, which do not guarantee the actual delivery of the said documents into the hands of the respondents within the said period of ten days, are considered as satisfying the requirement of personal service set out in the said sub-paragraph (a). Even though service through the Registrar may not assure – as was made evident by the decision in *Cooray's case (supra)*, and, in construing Acts of the legislature, a court ought to assume that the legislature knows the existing state of the law (*Craies : page 97*) – that personal service

could always be effected within the said period of ten days, yet, it is a channel which assures action by an extremely responsible person, who has to act not only in terms of an established procedure, but also under the direct supervision of the court itself.

An analysis of the provisions of the new rule 15 enacted by the amending Act of 1959, in my opinion, shows : that they are both clear and straight forward, and admit of no ambiguity : that they give the petitioner a choice in regard to the giving of the notice of the presentation of the election petition, and a copy of such petition which is to accompany such notice, viz : either to serve the said documents himself upon the respondents, or to deliver such documents at the office of the Registrar for service upon the respondents : that the alternative mode available by paragraph (1) (b) is not just another method by which the service, which the petitioner seeks to effect in terms of paragraph (1) (a), could be effected : that several methods by which the service directed in paragraph 1 (a) could be carried out are set out in paragraph (2) : that paragraph (2) also makes a method, which was only contingent earlier, now directly available to the petitioner : that paragraph 1(b) constitutes a distinct and separate step, as an alternative to that which is set out in paragraph (1) (a), in regard to what the petitioner should do within the said period of ten days in respect of the notice, and the copy, referred to in the body of paragraph (1) itself : that the period of ten days, set out in the body of the said paragraph (1), does not apply to the service of the documents deposited with the Registrar under sub-paragraph (b) of paragraph (1) : that such documents should be served by the Registrar, in accordance with the procedure set out in paragraph (3), as expeditiously as possible.

The view I take of the provisions of the said new rule 15 does not, in my opinion, detract from the view, which has been expressed, that limits relating to time, within which any act should be done, set out in the said Order-in-Council of 1946 are mandatory. It is neither repugnant to, nor inconsistent with the view that an electorate must know without delay who its elected representative is, and that proceedings in an election petition must be brought to a conclusion as expeditiously as possible.

For these reasons : the appeal of the petitioner-appellant should be allowed ; the Order of the Election Judge, dated 22.10.84, upholding the preliminary objection based upon the said rule 15, should be set

aside ; the Election Judge be directed to proceed with the hearing of the Election Petition ; the petitioner-appellant be entitled to the costs of the Appeal to this Court, as against the intervenient-respondent.

TAMBIAH, J.

I have had the benefit of reading the draft judgments prepared by Colin-Thomé, J. and Ranasinghe, J. I am inclined to agree with the view taken by Colin-Thomé, J.

The question that arises in this appeal is whether or not the notice of the presentation of the petition has been given by the petitioner-appellant to the 1st, 3rd and 8th respondents as required by law.

It is necessary to reproduce Rule 15 of the Parliamentary Election Petition Rules, 1946 :—

- “Rule 15 (1) Notice of the presentation of a petition, accompanied by a copy thereof shall, within ten days of the presentation of the petition —
- (a) be served by the petitioner on the respondent ; or
 - (b) be delivered at the office of the Registrar for service on the respondent ; and the Registrar or the officer of his department to whom such notice and copy is delivered shall, if required, give a receipt in such form as may be approved by the Chief Justice.
- (2) The service under paragraph (1) of notice of the presentation of a petition and a copy thereof by the petitioner on the respondent may be effected either by delivering such notice and copy to the agent appointed by the respondent under rule 10 or by posting them in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or by a notice published in the Gazette stating that such petition has been presented and that a copy of it may be obtained by the respondent on application at the office of the Registrar.

- (3) Where notice of the presentation of a petition, accompanied by a copy thereof, is delivered under paragraph (1) at the office of the Registrar for service on the respondent, such service may be effected in the same manner as the service of a notice issued by a court is effected under the Civil Procedure Code."

The Election Petition was filed by the petitioner-appellant on 7.6.83 challenging the election of the 1st respondent. On 10.6.83 the Agent for the petitioner handed over to the Registrar, Court of Appeal, notices of the presentation of petition and copies of the petition for service on the respondents. The notices together with the Precept to Fiscal were despatched by the Registrar to the Fiscal of the High Court of Ratnapura for service on the 1st to the 4th and 6th to the 9th respondents. The Fiscal reported that the notices could not be served on the 1st respondent on 18.6.83 as he was not residing at the given address and that he is now residing in Colombo, on the 3rd respondent as he could not be found, and on the 8th respondent as the inmates of the house informed him that he was not at the house. Notices were served on the 1st and 8th respondents on 18.7.83. No notice has been served on the 3rd respondent. The only mode of service adopted by the petitioner is the one prescribed in Rule 15 (1) (b).

Whilst the petition was pending, the 1st respondent died and the intervenient-respondent was substituted in his place. The intervenient-respondent filed objections in limine and moved for the rejection of the Election Petition. All objections were answered against him save and except one, namely, that the petitioner had failed to comply with Rule 15 in that the notice of presentation of the Election Petition was not served on the 1st, 3rd and 8th respondents within the period specified in the Rule.

The learned Election Judge having heard arguments made order on 22.10.84, and held that under Rule 15 (1) (b), service by the Registrar of the notice of the presentation of the petition with a copy thereof on the respondent has to be effected within the prescribed period of 10 days and this was a mandatory requirement. The petitioner has failed to comply with this mandatory requirement and this is a fatal defect and he dismissed the petition.

Mr. Shanmugalingam submitted that the words in Rule 15 are clear and capable of one interpretation only, viz., that the petitioner's only duty is to *deliver* to the Registrar for service the notice of the presentation of the petition and a copy thereof *within 10 days of the presentation of the petition*. The service thereafter is by the Registrar through the Fiscal over both of whom the petitioner has no control. The service by the Fiscal can be effected even after the expiry of 10 days of the presentation of the petition. The other modes of service prescribed in Rule 15 are intended for the petitioner's use, where service is effected by the petitioner himself. Where service is effected by the petitioner, the service must be within 10 days of the presentation of the petition.

Mr. Choksy submitted that Rule 15 (1) (b) was brought in by an amendment by Act No. 11 of 1959. The amending Act only introduced an additional mode of service, but, all modes of service were subject to the time limit of 10 days. The legislature brought paragraph (b) of sub-section (1) into Rule 15 and if its intention was to exempt the mode of service prescribed in Rule 15 (1) (b) from the time limit of 10 days, it would have expressly said so or drafted it as a separate rule.

On a reading of the entirety of Rule 15, *ex facie*, both constructions are possible.

Where two constructions are possible, in order to gather the intention of the legislature, it is permissible to look at the scheme of the Act and the Court must lean in favour of a construction which is more consistent with the scheme of the Act and which harmonises with the other provisions of the Act. The factors which can be taken into account in ascertaining the intention of the legislature are the history of the Act and the reasons which led to the passing of the Act (*Bindra on Interpretation of Statutes, 6th Edn., pp. 395, 459*).

Rule 18 of the Election (State Council) Petition Rules, 1931, required notice of the presentation of a petition and a copy of the petition to be served within 10 days of the presentation of the petition either on the respondent or his agent by personal delivery or by registered post to the address given under Rule 10, and if no agent has been appointed or address given, by a notice published in the Government Gazette.

Rule 18 was re-enacted in identical terms in the Parliamentary Elections Order-in-Council, 1946 (Rule 15).

In *Cooray v. Fernando (supra)* the election petition was filed on 16.6.'52. On 20.6.'52, the petitioner applied to Court to have the notice of presentation of the petition served on the successful candidate through the Fiscal. This was allowed and on the same day, the Registrar forwarded the notice to the Deputy Fiscal, Kalutara, for service. On 26.6.'52 the Deputy Fiscal reported that attempts were made to serve the notice on the 21st, 23rd and 25th June, but the successful candidate could not be found.

On 20.6.1952 the petitioner also left with the Registrar a copy of the notice of the presentation of the petition. On the same day, he also posted by registered post copies of the notice and petition, but they were delivered to the successful candidate on 30.6.1952, after the prescribed time of 10 days.

The petitioner also published in the Ceylon Daily News of 24.6.1952 a notice informing the successful candidate that he had filed an Election Petition and that on 16.6.1952 he had left two copies of the petition with the Registrar. Swan, J. held that the law does not recognize such a publication and that it was only a waste of money.

The petitioner also published a notice in the Government Gazette which appeared in the Gazette of 27.6.1952, which was beyond the period of 10 days.

Rule 10 provides for the successful candidate leaving with the Registrar a writing appointing an agent to act for him or stating that he intends to act for himself, in case a petition is filed against him, and in either case giving a Colombo City address at which notices addressed to him may be left. The Rule proceeds to state that "if no such writing be left or address given, all notices and proceedings may be given or served by leaving the same at the office of the Registrar".

It was sought to argue for the petitioner that notice had been duly given or served by reason of the fact that the necessary documents were left at the office of the Registrar in terms of Rule 10. Swan, J. observed :

"To my mind it is clear that Rule 10 was not meant to apply to, and does not in fact apply to the service of notice of presentation of the petition."

Act No. 11 of 1959 amended Rule 15 and introduced an additional mode of service which is contained in para (b) of sub-section 1 of Rule 15. There can be no doubt that it is *Cooray's case (supra)* which prompted the amendment. The petitioner there adopted several modes of service, authorised and unauthorised, all of which failed. He then sought to clutch at a straw. He relied on the fact that the documents were left with the Registrar and argued that this was service within time. Swan, J. held that this was not a recognized mode of service in law. The legislature, therefore, brought in delivery of documents at the Registrar's office as an extra mode of service. Provision had to be made for effecting such service. The legislature, therefore, enacted Rule 15 (3) as well.

The legislature did not amend Rule 10 to read "all notices may be given by leaving the same at the office of the Registrar for service on the respondent, and such service may be effected in the same manner as the service of a notice issued by a Court is effected under the Civil Procedure Code." Instead, the legislature brought this new mode of service into Rule 15. The words "within 10 days" govern both paragraphs (a) and (b) of Rule 15 (1). All modes of service were thus brought within the umbrella requirement of service within 10 days.

The mandatory requirement of service within 10 days stood for 28 years. If, as contended for by learned attorney for the petitioner in 1959 the legislature intended to exempt this new mode of service from the time limit of 10 days, I should think, the legislature would have expressly said so in Rule 15 or drafted it as a separate rule.

Election Petition proceedings are purely statutory proceedings unknown to the common law and, therefore, considerations of equity which guide Courts in dealing with matters of civil rights and their remedies will have no place in dealing with election petitions. The statutory requirements of election law must be strictly observed.

The Parliamentary Elections Order-in-Council, 1946, has provisions relating to presentation, trial and decision of an Election Petition. One significant feature that runs through election petition proceedings is the prescription of time limits. Thus, an Election Petition has to be presented within 21 days of the date of publication of the result of the election (s. 83 (1)). The petition has to be amended within a specified time (s. 83 (2)). Security has to be deposited within three days of the filing of the petition (Rule 12(1)). An election petition shall be tried as expeditiously as possible and every endeavour made to conclude the trial within a period of six months after the date of filing of the petition.

The decision of the Election Judge should be made without delay after conclusion of trial (s. 80C (2)). An appeal from the determination or decision of the Election Judge has to be preferred within one month of the determination or decision and notice of the filing of the petition of appeal and a copy thereof have to be served within 10 days of the filing of the appeal (s. 82A (2) & (3)). The appeal is to be given priority over other business of the Supreme Court (s. 82A (5)). If the petitioner claims the seat for an unsuccessful candidate, each side must, six days before the trial, deliver to the Registrar a list of votes intended to be objected to (Rule 7). In a recriminatory case, the respondent must, six days before the trial, deliver to the Registrar a list of objections on which he intends to rely (Rule 8).

These various time limits have been prescribed to ensure an early disposal of the election petition. It is well settled that the election of a candidate who has won at an election should not be lightly interfered with. It is in the interests of both the winning candidate and the electorate that the petition questioning his return be disposed of early.

Rule 15 too prescribes a time limit for service of the notice of the presentation of the petition. The object of this rule is clear – to bring the successful candidate into contact with the election petition filed against him at the earliest possible moment, so that, he too can prepare his defence and not delay an early disposal of the case filed against him. The Rule forms an integral part of the scheme of the Elections Order-in-Council.

If, as contended by learned attorney for the petitioner, the mode of service prescribed in Rule 15 (1) (b) is exempt from the time limit of 10 days, this would not only frustrate the very object of Rule 15, but also upset the entire scheme of the Order-in-Council. The petitioner could deliver to the Registrar the necessary documents for service on the 9th day after the presentation of the petition. The Court would then despatch the documents to the Fiscal for service. If the Fiscal is unable to effect personal service, he has to report to Court his inability to do so. The Court, on being satisfied by evidence that the respondent is within Sri Lanka, will give directions for substituted notice. The service of notice may ultimately be effected well after a month from the date of filing of the petition.

So, a construction to Rule 15 (1) (b) has to be given which is more consistent with the scheme of the Order-in-Council and which harmonises with its other provisions.

The learned Election Judge has quite rightly held that under para (b) of sub-section (1) of Rule 15, service by the Registrar of the notice of the presentation of the petition with a copy thereof, has to be effected within the prescribed period of 10 days.

I affirm his decision and dismiss the appeal, but, make no order as to costs.

Appeal dismissed.
