

1952

Present : Palle J.

JAYASINGHE, Petitioner, and DAYARATNE (A. G. A., Kegalle),
Respondent

*S. C. 128—In the matter of an application for a Writ in the nature of a
Writ of Mandamus under section 42 of the Courts Ordinance*

Mandamus—Security for costs of respondent—Power of Court to order deposit.

In an application for a writ of *Mandamus* the Court has discretionary power to order the petitioner to deposit in Court a sum of money as security for the costs of the respondent.

THIS was a motion praying that the petitioner in an application for a writ of *mandamus* be called upon to deposit a sum of money as security for the costs of the respondent.

H. W. Jayewardene, with *P. Ranasinghe*, for the petitioner.

D. Jansze, Crown Counsel, with *E. R. de Fonseka*, Crown Counsel,
for the respondent.

Cur. adv. vult.

August 7, 1952. PULLE J.—

The motion on which I am asked to make an order prays that the petitioner be called upon to deposit a sum of money to the credit of the proceedings which would be sufficient security for the costs of the respondent.

One of the grounds urged in support of the motion is that the petitioner is not in a position to meet a claim for costs in the event of an order being made against him. I would not regard the poverty of a petitioner as the sole ground for asking him to furnish security for costs.

Whether I should order security or not is purely discretionary. Without in any way prejudging the issues that fall to be determined at the hearing of the application it seems to me that, apart from the allegation that the petitioner is not possessed of property, this is a fit case in which I should order security. The local option poll was held on a voters' list to which no objection was taken. Under the relevant rules when a local option poll is held on what is termed a final list it is stated to be final and conclusive for all the purposes of the rules.

The only point taken against the validity of the poll is that the respondent had failed to take the advice of the Advisory Committee in terms of rule 13. In regard to this the respondent states that no advice of the Committee was needed as the exact boundaries of the area could be determined in terms of rule 11 read with rule 10A. Further it is submitted that rule 13 did not cast any duty on the respondent in every case to consult the Committee.

The delay of two months in applying for the writ is also urged against the petitioner.

In the exercise of my discretionary powers I order the petitioner to deposit in Court a sum of Rs. 315 as security for the costs of the respondent before the 24th August, 1952. If he fails to make the deposit the application will stand dismissed with costs.

*Petitioner ordered to deposit security
for costs of the respondent.*
