

1948

*Present : Canekeratne J.*KURUPPU, Petitioner, and HETTIARATCHY *et al.*, Respondents.*Election Petition No. 6 of 1947, Nivitigala.**Election petition—Undue return—Claim to a recount—Inspection of ballot papers—Order in Council, 1946—Article 80 (b).*

Where a petition is one complaining of an undue return on the ground that on a proper counting the petitioner would have had a majority of lawful votes, an inspection of ballot papers will be allowed.

APPPLICATION for inspection of ballot papers in regard to Election Petition, Nivitigala.

N. E. Weerasooria, K.C., with *Christie Seneviratne, G. T. Samarawickreme* and *A. B. Perera*, for the petitioner.

S. Nadesan, with *Sylvan Fernando*, for the first respondent.

T. S. Fernando, Crown Counsel, with *M. Tiruchelvam, Crown Counsel*, for the second respondent.

Cur. adv. vult.

March 4, 1948. CANEKERATNE J.—

In this application before the Court the petitioner alleged that on a proper counting he would have a majority of lawful votes and prayed that a recount might be had before the trial. The applicant requests that votes given upon any ballot paper which has not on its back the official mark may be struck off. There is also a further request that a similar order be made in respect of votes given by persons who have personated voters and in this connection he desires to add to his own poll

any vote to which he can show he is entitled (tendered votes). It was conceded at the argument that no order can be made in respect of tendered votes at this stage.

One of the contentions of the first respondent was that what the petitioner claims is a scrutiny ; this would be the correct term applicable to the relief claimed according to English law but the term scrutiny as used in the Order in Council seems to be of a narrower import (Art. 85). It was contended by both respondents that there was no prayer for a recount in the petition.

A petition can be presented in England claiming the seat on the ground of miscount of the ballot papers. Such a petition is one complaining of an undue return within the meaning of section 5 of the Parliamentary Elections Act, 1868 (Rogers Parliamentary Elections, 20th Ed. 171)—in one of the cases referred to invalid ballot papers were the matters considered.

One of the reliefs which a petitioner can claim in Ceylon is that the return of the person elected is undue (Art. 80 (b)). He claims such relief in this case, and the grounds urged by him are to be found in paras. 5 and 6 of the original petition. Mr. Weerasooria referred to Article 49 (1) (b) of the Order in Council and argued that the ballot papers mentioned by him were invalid. The objection of the respondents fails. I allow an inspection of the counted ballot papers : he is precluded by the earlier order of the Court from inspecting the " rejected ballot papers ".

I would direct that all the ballot papers, excluding those rejected, should be produced before the 2nd Deputy Registrar of the Court in order that they might be inspected, in the immediate presence of the Returning Officer on a date before March 15, 1948, to be mutually agreed upon by Counsel for the petitioner and the respondents in consultation with the Registrar, and enumerated and that the 2nd Deputy Registrar should reserve for the consideration of the Judge such only of the ballot papers as might remain at the conclusion of the inspection and enumeration in dispute between the parties.

The question of costs will await the inquiry into the second application.

Inspection of counted ballot papers allowed.
