

1965

Present : Sri Skanda Rajah, J.

S. D. PIYASENA, Petitioner, and C. S. RATWATTE,
Respondent

Election Petition No. 21 of 1965—Balangoda

Election petition—Failure of petitioner to deposit sufficient security—Duty of Court to dismiss the petition—Security given on two different days—Validity thereof—Quantum of security—Computation of number of “charges”—Parliamentary Elections Order in Council, 1946, Art. 77—Parliamentary Election Petition Rules, 1946, Rule 12.

(i) Where the respondent to an election petition applies for the dismissal of the petition on the ground that sufficient security has not been given on behalf of the petitioner, the duty of the Court to dismiss the petition is implicit in Rule 12 (3) of the Parliamentary Election Petition Rules, 1946, if the averment of the respondent is true.

(ii) The security required by Rule 12 of the Parliamentary Election Petition Rules, 1946, may be given by making more than one deposit on different days within the prescribed time.

(iii) The grounds for the avoidance of an election were set out in paragraphs 3 to 6 of the election petition. Paragraphs 3, 4 and 5 alleged three different kinds of corrupt practice, viz., false statements made in relation to the personal character of the rival candidate, treating and undue influence. Paragraph 6 further stated that “such misconduct and/or other circumstances prevailed at the said election within the meaning of section 77 (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, that the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

Held, that on a proper interpretation of the word “charges” in Rule 12 (2) of the Parliamentary Election Petition Rules of 1946, the charges in the petition were four in number. Accordingly, the sum of Rs. 7,000 was sufficient security for compliance with the provisions of Rule 12 (2).

ELECTION petition No. 21 of 1965, Balangoda.

A. H. C. de Silva, Q.C. with Izadeen Mohamed and S. C. Crossette-Thambiah, for the Petitioner.

G. T. Samerawickreme, with Felix R. Dias Bandaranaike and (Mrs.) Luxmi Dias Bandaranaike, for the Respondent.

H. L. de Silva, Crown Counsel, as Amicus Curiae.

Cur. adv. vult.

July 27, 1965. SRI SKANDA RAJAH, J.—

The petitioner seeks to have the election of the respondent declared void on the grounds set out in paragraphs 3 to 6 of the petition. Paragraphs 3, 4 and 5 allege three different kinds of corrupt practice, viz.,

false statements made in relation to the personal character of the rival candidate, treating and undue influence. The subject of this inquiry is based on the allegation in paragraph 6 which is as follows :—

“ Your Petitioner further states that such misconduct and/or other circumstances prevailed at the said election within the meaning of section 77 (a) of the Ceylon (Parliamentary Elections) Order in Council 1946 that the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

Article 77 of the Ceylon (Parliamentary Elections) Order in Council, 1946, reads :—

“ The election of a candidate as a Member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely :—

- (a) that by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate whom they preferred ;
- (b) non-compliance with the provisions of this Order relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election ;
- (c) that a corrupt practice or illegal practice was committed in connexion with the election by the candidate or with his knowledge or consent or by any agent of the candidate ;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice by a District Court or by the report of an Election Judge ;
- (e) that the candidate was at the time of his election a person disqualified for election as member.”

It may be mentioned that this provision is in identical terms as Article 74 of the Ceylon (State Council Elections) Order in Council, 1931.

It is necessary to reproduce Rule 12 of the Parliamentary Election Petition Rules, 1946, which is as follows :

- “ (1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

- (2) The security shall be to an amount of not less than five thousand rupees. If the number of charges in any petition shall exceed three, additional security to an amount of two thousand rupees shall be given in respect of each charge in excess of the first three. The security required by this rule shall be given by a deposit of money.
- (3) If security as in this rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the judge, and in default of such order shall form part of the general costs of the petition."

This is a reproduction of Rule 12 of the Ceylon (State Council) Petition Rules, 1931, except for the variations that (1) in the present Rule 12 (2) security shall be given only by a deposit of money and (2) in the present Rule 12 (3) provision is made regarding the costs in respect of hearing and deciding applications under it.

Article 74 of the Ceylon (State Council Elections) Order in Council, 1931, and the old Rule 12 have been the subject of interpretation by this Court. Those cases will be referred to in this order. So will those cases dealing with the corresponding new provisions.

This petition was filed on 17.4.1965, on which date a sum of Rs. 5,000 was deposited as security. On 19.4.65 a further sum of Rs. 2,000 was deposited as security.

The respondent has applied under Rule 12 (3) for an order directing the dismissal of the petition and for costs. He contends :

- (1) The security is insufficient as the petition contains more than four charges ;
- (2) The security should have been given by making only one deposit and not two as in this instance.

The petitioner, on the other hand, submits :

- (1) There are only three charges. Therefore, Rs. 5,000 is sufficient as security. The further deposit of Rs. 2,000 was made out of abundance of caution ;
- (2) At the worst there are only four charges. Therefore, Rs. 7,000 is adequate security ;
- (3) Even if there are more than four charges, this Court is not obliged to dismiss the petition because Rule 12 (3) does not expressly provide for dismissal, but would delete the words " other circumstances " which are contained in paragraph 6.

It seems convenient to dispose of the petitioner's third submission first. The obligation to dismiss the petition is implicit in Rule 12 (3) which gives the respondent the right to apply for its dismissal. In *Silva v. Karalliadda*¹, Driberg, J., said: "The security required by Rule 12 (2) has to be given at the time of the presentation of the petition or within three days after, and if not so given the Rule 12 (3) provides that no further proceedings shall be had on the petition and that the respondent may move for an order directing its dismissal and payment of the respondent's costs. This provision is imperative and on this ground alone the petition should be dismissed; rules 19 to 21 do not apply to a case where the petitioner has not furnished security to the right amount."

In *Jeelin Silva v. Kularatne*², Herne, J., said: "It was further argued that even if the security was insufficient the petition would not be dismissed on this ground alone by reason of the provisions of Rules 19-21. It has been held by this Court that these rules have no application in cases where the petitioner has not furnished security to the right amount."

Be it noted that provisions corresponding to the old Rules 19-21, which gave some limited relief to the petitioner, have been altogether omitted. Therefore, this submission fails.

The respondent's second objection may now be disposed of. It was submitted that to allow the security to be deposited by more than one deposit may even result in 7,000 deposits of one rupee each being made. That would result in embarrassment to the Registrar of this Court. The Registrar may, perhaps, be thankful to the respondent for his solicitous concern for the Registrar's comfort. To uphold this objection is to put an undue strain on the language of this provision. If it was the intention to restrict the security to only one deposit it would have been so stated. I would reject the second objection.

The petitioner's first submission is based on the following dictum of Driberg, J., in *Tillekewardene v. Obeyesekera*³: "In my opinion by the word "charges" in rule 12 (2) is meant the various forms of misconduct coming under the description of corrupt and illegal practices; for example, whatever may be the number of acts of bribery sought to be proved against a respondent the charge to be laid against him in a petition is one of bribery."

In *Tillekewardene v. Obeyesekera* (supra) only three offences, viz. bribery, treating and contracting for the payment for conveyance of voters (i.e., two charges of corrupt practice and one of illegal practice) were alleged. But in answer to an application for particulars, the petitioner stated 17 instances or cases of bribery, 26 of treating and, at least 14 cases of payments or contracts for conveyance of voters. The *ratio decidendi* is that the word "charge" in rule 12 (2) may be applied to the offence stated in the petition and also to each act constituting the offence.

¹ (1931) 33 N. L. R. 85.

² (1942) 44 N. L. R. 21 at 22.

³ (1931) 33 N. L. R. 65 at 67.

This dictum was adopted by the Divisional Bench in *Perera v. Jayewardena*¹, where too only three offences were alleged in the petition, viz.:

- (1) Printing, publishing and distributing hand-bills which did not bear the names and addresses of the printers and publishers,
- (2) publishing false statements of fact in relation to the personal character of the rival candidate, and
- (3) undue influence, only the last two being corrupt practices.

Based on this dictum it was argued that the word "charges" in Rule 12 (2) is confined only to corrupt and illegal practices and will, therefore, apply only to the grounds mentioned in Article 77 (c) and not to the grounds which fall under the other heads, viz., Article 77(a), (b), (d) and (e).

This submission would be correct only if the definition of "charges" given by Drieberg, J., is exhaustive as pointed out by Crown Counsel. As indicated earlier in *Tillekewardene v. Obeyesekera* (supra) Drieberg, J., was dealing with two charges of corrupt practice and one of illegal practice, and not with any of the other grounds in Article 74 (now 77).

But in *Perera v. Jayewardene* (supra), though the Divisional Bench adopted the dictum, the first charge, which was neither an illegal practice nor a corrupt practice, was regarded by the Court as a "charge", when it posed the question at page 6, "Does then the petitioner's petition disclose only three charges or does it disclose more than three charges?" and held that it disclosed only three charges.

In *Mohamed Mihular v. Nalliah*² the grounds were only three, one alone being a corrupt practice, viz., bribery, the other two being neither corrupt practice nor illegal practice but falling under Article 74 (b) (now 77 (b)). Hearne, J., regarded them as three charges.

In *Ilangaratne v. G. E. de Silva*³ the following grounds;

- (1) "Your petitioner further states that by reason of circumstances attending on or following recent floods in the District including the disorganisation of the life of large sections of the voters, the segregation of refugees who were voters, disturbance of communication and the scarcity of petrol, the majority of the electors were or may have been prevented from electing the candidate whom they preferred at the said election."
- (2) "Your petitioner further states that the respondent was at the time of the election a person disqualified for nomination and/or election as a member....."

a ground falling under head (e) of Article 77—were regarded by Windham, J., as two "charges". The first of these would fall under head (a) of Article 77 in the category of "other circumstances".

¹ (1947) 49 N. L. R. 1.

² (1944) 45 N. L. R. 251.

³ (1948) 49 N. L. R. 169.

I would, therefore, hold that the definition of "charges" in *Tillekawardene v. Obeyesekera* (supra) is not exhaustive. I would further hold that there are more than three charges in this petition, the first three charges being contained in paragraphs 3, 4 and 5 of the petition.

The question which remains is: Does paragraph 6 contain only one charge, as submitted by the petitioner, or more than one charge, as contended by the respondent?

In *Vinayagamoorthy v. Ponnambalam*¹ Maartensz, J., said: "The charges in an election petition need not be formulated with the precision and exactness of a charge in criminal proceedings. The petitioner must state the facts and ground on which the petitioner relies to sustain the prayer of his petition."

Crown Counsel suggested that as regards article 77 (a) two views were possible, viz., (1) to regard each reason enumerated therein (e.g., general bribery) as a separate charge, as was done by Drieberg, J., in *Silva v. Karalliadda* (supra); or (2) to regard all the reasons enumerated therein (including other misconduct or other circumstances) as facts constituting one charge as was done by Hearne, J., in *Jeelin Silva v. Kularatne* (supra).

In *Silva v. Karalliadda* (supra) Drieberg, J., in an obiter said: "In my opinion the charges of general bribery, general treating, and general intimidation (falling under head (a) of Article 77) were distinct charges from those of bribery, treating and undue influence in regard to ascertained and named persons....."

In *Jeelin Silva v. Kularatne* (supra) the petition contained charges of undue influence, treating and impersonation. It was also prayed that the election be declared void "by reason of general intimidation and impersonation on a large scale," under Article 74 (a) (now 77 (a)). Hearne J., regarded the last allegation as constituting the fourth charge. At page 22 he said, "The only question is how many charges did the petition contain? The answer, as a matter of simple calculation, is four."

This view of Hearne, J., though it may be obiter as submitted by the respondent, appeals to this Court as the better one. I would, therefore, respectfully adopt it. In the result, I hold that this petition contains four charges and that, therefore, the sum of Rs. 7,000 is the right amount of security.

For these reasons, the motion is dismissed with costs.

Preliminary objection overruled.

¹ (1936) 40 N. L. R. 178 at 185.