

1950

*Present: Dias S.P.J.*

IN RE ABU BAKR

*S. C. 333—Application for an “ authorised excuse ” under section 75 of the Ceylon (Parliamentary Elections) Order in Council, 1946*

*Parliamentary Elections Order in Council, 1946—Sections 70 and 75—Transmission of election return—Computation of time limit—Omission to send statutory declarations—“ Authorised excuse ”—“ Inadvertence ”.*

(i) The word “ transmit ” in section 70 of the Parliamentary Elections Order in Council, 1946, means “ to send ”. Therefore, if the election return is posted to the Returning Officer within the time allowed, the law is complied with, although the return does not reach him until after the expiration of that period.

(ii) The petitioner, who was an unsuccessful candidate and his own election agent at a Parliamentary by-election, failed to send to the returning officer declarations in the Forms Q and R as required by section 70 of the Parliamentary Elections Order in Council. He subsequently moved under section 75 for an “ authorised excuse ”. He pleaded that the omission was due to “ inadvertence ” caused by “ ignorance of law ”, i.e., ignorance of the provisions of the Order in Council.

*Held*, that in the circumstances “ ignorance of law ” did not amount to “ inadvertence ” within the meaning of section 75 of the Order in Council; the petitioner’s failure to transmit the declarations was therefore not excusable.

**T**HIS was an application for “ an authorised excuse ” under section 75 of the Ceylon (Parliamentary Elections) Order in Council, 1946.

*M. A. M. Hussein*, for the petitioner.

*E. R. de Fonseka*, Crown Counsel, for the Attorney-General, on notice.

*Cur. adv. vult.*

<sup>1</sup> *Laws v. Rutherford*, (1924) A. D. 261 at 263. *Dias Bandaranayake v. Perera*, (1948) 49 N. L. R. 212.

<sup>2</sup> *North Eastern Districts Associations v. Sukheny Ltd.*, (1932) W. L. D. 181.

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The petitioner was an unsuccessful candidate at the by-election for the constituency of Colombo Central in the House of Representatives on May 6, 1950. The result of the by-election was published in the *Ceylon Government Gazette* of May 8, 1950. The petitioner was his own election agent.

Section 70 of the Order in Council provides that the election agent of every candidate shall “within thirty<sup>2</sup> days” after the publication of the result of an election transmit to the Returning Officer a true return substantially in the *Form P* in the First Schedule containing a detailed statement in regard to that candidate of his election expenses. The return has to be accompanied by two declarations on oath or affirmation in the *Forms Q* and *R*.

The result of the by-election having been published on May 8, 1950, the thirty days expired on June 7, 1950. The petitioner posted his return on June 7, 1950. June 8 was a public holiday, and the Returning Officer received the return on June 9.

In *Mackinnon v. Clarke*<sup>1</sup> the English Court of Appeal held under similar circumstances that the word “transmit” means “to send”. Therefore if the return is posted to the Returning Officer within the time allowed, the law is complied with, although the return does not reach him until after the expiration of that period. I, therefore, hold that the petitioner sent his return within the time allowed by law.

The Returning Officer, however, refused to accept the petitioner's return on the ground that it was not accompanied by the declarations in *Forms Q* and *R*. Where a return contains some error or false statement, it is open to the candidate to move the Election Judge or a Judge of the Supreme Court and show that such error was due (*inter alia*) to “inadvertence”. In this case the failure to transmit the declarations in *Forms Q* and *R* is an “error” within the meaning of s. 70. The Court on being satisfied regarding the plea raised and the *bona fides* of the application can allow “an authorised excuse” in regard to the irregularity.

The only proof tendered to me is what is stated in the petitioner's affidavit. His plea is contained in the following sentence in the affidavit: “It was by reason of my inadvertence, and not by reason of any want of good faith on my part that I failed to make the said declarations in the prescribed form”. He has not chosen to state the facts on which he asks the Court to infer that there was, in fact, “inadvertence” which is a mixed question of fact and law. The ordinary meaning of the word “inadvertence” is “not done by design”, “done heedlessly”, or “by accident or without thinking”. At the argument learned counsel for the petitioner submitted that the “inadvertence” of his client was due to “ignorance of law” that is to say, ignorance of the provisions of the Order in Council.

<sup>1</sup> (1898) 2 Q. B. 251.

In the recent case of *In re Fred E. de Silva*<sup>1</sup> my brother Nagalingam in a considered judgment has gone fully into this question. In the context in which this word "inadvertence" has been used in the section, the word has received varied meanings dependent on whether (a) the inadvertence was one which was slight and excusable in the circumstances of its commission, or (b) whether it was grave and culpable. In the former case "Ignorance of Law" has *sometimes* been held to be covered by the term "inadvertence". In the latter case, the contrary view has been expressed. Therefore, no assistance can be gained by a study of the facts of various cases. Each case must be judged on its own merits, it being premised that the salutary provisions of the Order in Council should not be whittled away by relaxing its stringency in what may appear to be "hard cases"; for by so doing, the Court will only be encouraging laxity on the part of candidates leading to the purity of elections being grievously assailed.

What are the facts? Section 70 (1) of the Order in Council in simple unambiguous terms lays down what the duties of a candidate are in regard to sending his return and declarations regarding his election expenses. It is unthinkable that any candidate would embark on an election campaign without, at least, reading or having explained to him the salient and essential steps in the procedure laid down by law—the consequences for the non-compliance of which are serious and far-reaching. Any person of intelligence would know that his return of election expenses (a) had to be substantially in the *Form P*; (b) that it had to contain detailed statements in regard to the various heads specified in s. 70 (1); (c) that the return had to be signed by the election agent; and (d) that the return had also to be accompanied by declarations on oath or affirmation by the candidate and his election agent in the *Forms Q and R*.

In the light of these circumstances I am unable to hold either that the petitioner was unaware of what he had to do, or that his omission to send the declarations in the *Forms Q and R* can be designated "slight" or "excusable", particularly when one has regard to the object and purpose for which the law requires these declarations. The declarant has to testify on oath or affirmation that "to the best of his knowledge and belief, and that except the expenses therein set forth, no expenses of any nature whatsoever have to his knowledge or belief been incurred in or for the purpose of" the candidature. No person of intelligence, unless he was unwilling to perjure himself, could fail to realise the significance of the *forms Q and R*, and that they are vitally essential documents. The petitioner must also have realised that his failure to send those forms *may* raise the inference that his failure to do so was because he was unable, as an honest man, to make those declarations. Be that as it may, I cannot conscientiously hold on the facts before me that the petitioner's failure to transmit the declarations can be regarded as being venial, slight or excusable. In such a case "Ignorance of Law" does not amount to "inadvertence". The First Schedule to the Order in Council is incorporated into s. 70, and is Law.

I, therefore, dismiss the application.

*Application dismissed.*

<sup>1</sup> (1949) 51 N. L. R. at p. 60.