

1952

Present: Swan J.

S. J. V. CHELVANAYAKAM, Petitioner, and S. NATESAN,
Respondent

ELECTION PETITION NO. 17 OF 1952 (KANKESANTHURAI)

Election Petition—Making false declaration as to election expenses—Corrupt practice—Avoidance of election—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 53 (1) (f), 70, 76, 77 (c), 83 (1) (a), 83 (2).

The making of a false return respecting election expenses is a corrupt practice which can be made a ground for seeking to have an election declared void under section 77 (c) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

APPPLICATION for leave to amend Election Petition No. 17 of 1952 (Kankesanthurai).

C. S. Barr Kumarakulasinghe, with G. T. Samarawickreme, A. Vythialingam and Izzadeen Mohamed, for the petitioner.

G. E. Chitty, with C. C. Rasaratnam, N. Nadarasa, E. R. S. R. Coomaraswamy and V. K. Palasuntheram, for the respondent.

Cur. adv. vult.

October 21, 1952. SWAN J.—

The petitioner applies for leave to amend the election petition filed by him against the respondent. The application is made under Section 83 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946. The petitioner seeks to include an additional ground upon which the election is questioned, namely, that “ the respondent above-named was guilty of a corrupt practice under article 58 (1) (f) of the Ceylon (Parliamentary Elections) Order in Council, in that, being a candidate and his own election agent, he knowingly made declarations as to his election expenses required by Section 70 falsely. ”

Section 83 (2) provides that—

“ an election petition *presented in due time* may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the Supreme Court within the time within which an election petition questioning the return or the election upon that ground may be presented. ”

Mr. Chitty appearing for the respondent does not dispute that the original petition was presented within time. Upon that matter I do not think there can be any doubt. The result of the election was published in the *Gazette* on 2.6.52. The election petition was filed on 23.6.52.

In the Jaffna Election Petition (19 of 1952), *Kunasingam v. Ponnambalam*¹, this question was considered by Gunasekara J. There, too, the result of the election was gazetted on 2.6.52 and the election petition was filed on 23.6.52. It was contended by the respondent that the petition was out of time. Gunasekara J. held that it was within twenty-one days. My learned brother went into the matter at great length and came to the conclusion that the date of publication of the election in the *Gazette* must be excluded in the computation of the twenty-one days. With that view I am in complete agreement. Although Mr. Chitty did not dispute that the election petition was filed within time I must myself be satisfied that it has been “*presented in due time*” because that is a prerequisite for an application for leave to amend under Section 83 (2). As I have already said there can be no doubt at all, not even the shadow of a doubt that it was presented in time.

I shall now consider the application on its merits. The grounds upon which an election petition may be questioned are set out in sub-sections (a) to (e) of Section 77. Counsel for the petitioner submits that the application now made would fall under sub-section (c). I shall therefore reproduce the relevant portion of the section.

“ 77. The election of a candidate as a member shall be declared to be void on an election petition on any one of the following grounds, namely :—

- (a)
- (b)
- (c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by an agent of the candidate. ”

Mr. Kumarakulasinghe submits that the making of a false return as to election expenses would be a corrupt practice under Section 58 (1) (f). I shall now reproduce the relevant portion of that section.

“ 58 (1) Every person who—

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) being a candidate or election agent, knowingly makes the declaration as to election expenses required by Section 70 falsely shall be guilty of a corrupt practice, and shall on conviction by a District Court ”

Mr. Kumarakulasinghe contends that in as much as the making of a false return respecting election expenses is declared to be a corrupt practice under Section 58 (1)(f), it could be made a ground for seeking to have an election declared void under Section 77 (c).

¹ (1952) 54 N. L. R. 36.

The contention appears to be sound but Mr. Chitty for the respondent strenuously opposes the application to amend. He submits, in the first instance, that the proposed additional ground is not a corrupt practice committed "*in connection with the election*" within the meaning of Section 77 (c). I have no hesitation in holding that the making of a return in respect of election expenses is an act done in connection with the election. In *Kunasingam v. Ponnambalam*¹ my brother Gunasekara came to the same conclusion. It seems to me absurd to say that because the return is made after the election it is not done in connection with the election.

The next point urged was that the corrupt practice referred to in Section 77 (c) must be followed by a payment of money or something akin thereto. This contention was based on Section 83 (1) (a) which provides that :—

" an election petition questioning the return or the election upon the ground of a corrupt practice *and specifically alleging a payment of money or other act* made or done since the date aforesaid by the member whose election is questioned or by an agent of the member, or with the privity of the member or his election agent *in pursuance or in furtherance of such corrupt practice* may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act. "

Mr. Chitty submits that "*other act*" must be *ejusdem generis* with payment of money. I am unable to put such a restricted interpretation on the expression "*other act*".

Mr. Chitty also relies on the words "*in pursuance or in furtherance of such corrupt practice*" in support of his contention that the making of a false return respecting election expenses cannot be a ground for declaring an election void. He argues that, if the making of the false return is the corrupt practice alleged, there must be some other act alleged as having been done in pursuance or in furtherance thereof ; that the making of the false return cannot both be the corrupt practice alleged and the other act done in pursuance or in furtherance of the corrupt practice. But the making and transmission of a return is what every candidate is required to do under Section 70. It is the making of a false return that is a corrupt practice. One might therefore reasonably say that it is the actual preparation of the false return which is the corrupt practice and the transmission of that return to the returning officer the other act done in pursuance or in furtherance of the corrupt practice.

The last point made by Mr. Chitty was based on Section 58 (1) (f) read in conjunction with Section 76 which declares :—

" 76. The election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice. "

The making of a false return, argues Mr. Chitty, renders the offender liable to a prosecution, and if the offender is the candidate he would be automatically unseated upon his being convicted ; but the making of a

¹ (1952) 54 N. L. R. 36.

false return cannot be a ground for having an election declared void upon an election petition. If a candidate or his election agent makes a false return the only consequence is a liability to be prosecuted, but the validity of the election cannot be questioned by a voter on that ground. I am unable to reach that conclusion. If the making of a false return is a corrupt practice which renders a candidate or his election agent liable to a criminal prosecution I cannot see how it can be excluded from the scope of the expression *corrupt practice* in Section 77 (c).

It is not necessary for me to decide whether an order upon an application to amend an election petition under Section 83 (2) must also be made within the twenty-eight days referred to in Section 83 (1) (a). The application to amend was made within time, and on 28.7.52 when the matter came up before Gratiaen J. it was agreed that "whatever order may be made upon the application in terms of the petitioner's prayer shall be regarded as though it had been made today." That date, namely, 28.7.52, was clearly within the twenty-eight days.

The application to amend the petition is allowed. Costs will be costs in the cause.

Amendment of election petition allowed.

