

1948

*Present : Windham J.**In re JAMES APPUHAMY.*

IN THE MATTER OF A NOTICE ISSUED ON W. L. JAMES APPUHAMY TO SHOW CAUSE WHY HE SHOULD NOT BE REPORTED TO HIS EXCELLENCY THE GOVERNOR-GENERAL UNDER SECTION 82 (2) OF THE CEYLON (PARLIAMENTARY ELECTIONS) ORDER IN COUNCIL, 1946.

Election Petition Nos. 4 and 5 (Kandy) of 1947

Election petition—Witness found guilty of corrupt practice—Opportunity of calling evidence—Report to Governor-General—Sections 81 and 82 (2)—Ceylon (Parliamentary Elections) Order in Council, 1946.

A person who has, in the course of an inquiry into an election petition, been found guilty of a corrupt practice is entitled to call evidence to show why he should not be reported under section 82 (2) of the Order in Council. This evidence may be called even after the Court has given its judgment and certificate under section 81.

Saravanamuttu v. de Silva (1942) 43 N. L. R. 243, dissented from.

ORDER made concerning a person on whom notice was issued to show cause why he should not be reported under Section 82 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

E. G. Wickremanayake, for W. L. James Appuhamy.

Alan Rose, K. C., Attorney-General, with M. Tiruchelvan, Crown Counsel, as amicus curiae on notice.

Cur. adv. vult.

April 23, 1948. WINDHAM J.—

The applicant, W. L. James Appuhamy, was found to have committed a corrupt practice by the judgment of this Court dated February 24, 1948, in the Kandy Election Petition, namely that upon August 11, 1947, he, being an agent of George E. de Silva, a candidate for election, paid a bribe to one D. S. Abeyesekere with the object of inducing him to procure the return of the said

¹ (1909) A. C. 253, at 258.

² (1918) 20 N. L. R. 411.

³ (1917) 19 N. L. R. 403.

George E. de Silva. The applicant, who was not a party to the petition, gave evidence during the trial, but he was not before the delivery of the judgment given an opportunity of calling evidence to show why he should not be reported, as provided for by section 82 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946. He has accordingly been given such an opportunity now, and has called such evidence.

The Attorney-General, who has kindly given the Court the assistance of his views on the matter, does not dispute the contention of Counsel for the applicant, namely, that section 82 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, is sufficiently *wide* in its terms to allow of the applicant's calling evidence to show why he should not be reported, even after the Court has given its judgment and certificate under Section 81. Obviously, by far the more satisfactory course would be to give an applicant such an opportunity before judgment, for the reasons which I gave in my ruling delivered during the course of this same petition (*Ilangaratne v. G. E. de Silva*¹), in considering the application of another person against whom a corrupt practice was alleged, namely, Mr. Fred de Silva. And in a case where an election had been declared void solely on the ground of a corrupt practice having been committed by the applicant, it would certainly be most illogical, and most unsatisfactory to the respondent in the petition, to allow the applicant, after the declaration, to call evidence to show that he had not committed the corrupt practice. In the present case, however, the election was declared void on other grounds also, and accordingly the course that has been adopted, though still illogical, does not affect the respondent in the petition nor the validity of the election; and the illogicality is preferable to the injustice which would result to the applicant if he were again deprived of the opportunity of exercising his rights under section 82 (2). To this extent I would qualify my earlier observations in the ruling to which I have referred, and would respectfully dissent from such similar observations as were made by de Kretser J. in *Saravanamuttru v. Joseph de Silva*².

I now turn to the merits of this application. The applicant, who gave evidence in the petition denying the act of bribery alleged against him, has now called two witnesses, both Buddhist priests, who have testified that, during the whole of the evening when the act of bribery was alleged to have taken place at the house of D. S. Abeysekere, namely, upon August 11, 1947, they were chanting a pirith in the applicant's house, in the presence of the applicant, in connection with two of the latter's children who were lying ill there. One of these witnesses produced his diary, containing an entry under the date, August 11, 1947, corroborating that upon that date he and his fellow priests had chanted a pirith at the applicant's house. An unsatisfactory feature of the applicant's having been enabled to call these witnesses after the close of the election petition has been that there was no respondent or other party interested to cross-examine them—a circumstance distinctly fortunate for the applicant. In the

¹ (1947) 49 N. L. R. 87.

² (1942) 43 N. L. R. 243.

result, I am unable to say that I disbelieve their unchallenged evidence, which affords the applicant the alibi which he seeks. In brief, while upon all the evidence adduced in the election petition I was satisfied beyond a reasonable doubt that the applicant had committed the act of bribery complained of, I cannot, in the light of the further evidence adduced in this application, hold that I am satisfied. The applicant has accordingly shown sufficient cause, under section 82 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, why he should not be reported to the Governor-General under section 81 (1), and he will not therefore be reported.

Witness not to be reported.
