

1965

Present : T. S. Fernando, J.

L. S. PERERA, Petitioner, and D. S. SAMARASINGHE,
Respondent

Election Petition No. 6 of 1965—Electoral District No. 17 (Kolonnawa)

*Election petition—Security for costs—Computation of number of “charges”—
Meaning of word “charges”—Difference between “ground” and “charge”—
Parliamentary Election Petition Rules, 1946 (Third Schedule of Parliamentary
Elections Order in Council, 1946), Rule 12 (2) (3)—Parliamentary Elections
Order in Council, 1946, ss. 56, 57, 76, 77.*

Paragraph 3 of an election petition alleged that the corrupt practice of bribery was committed, and paragraph 4 alleged the commission of the corrupt practice of undue influence. Paragraph 5 further alleged: “Your petitioner further states that by reason of misconduct on the part of the respondent his agents supporters and political connexions and by reason of other circumstances the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

Held, that paragraph 5 contained more than one charge within the meaning of Rule 12 (2) of the Parliamentary Election Petition Rules, 1946. Therefore, the security in a sum of only Rs. 5,000 given by the respondent in respect of a total of more than three charges contained in paragraphs 3, 4 and 5 of the petition was insufficient.

When Rule 12 (2) refers to a charge, it contemplates something in the nature of a complaint. The complaint need not necessarily be one against the elected candidate or his agents. It could take in “other circumstances”, e.g., acts of God. “Other circumstances” in section 77 (a) of the Parliamentary Elections Order in Council form a group of acts different from misconduct.

The word “ground” in section 77 of the Parliamentary Elections Order in Council does not mean the same thing as “charge” in Rule 12 (2). A single “ground” under clause (c) of that section may sometimes involve several “charges”.

Obiter : The word “misconduct” in clause (a) of section 77 is not confined to misconduct on the part of the elected candidate and his agents. Clause (a) has a wider import and embraces acts of persons quite independent of the elected candidate. General bribery, general treating and general intimidation can avoid an election even where the elected candidate or his agents have not participated in those acts.

ELECTION Petition No. 6 of 1965—Electoral District No. 17 (Kolonnawa).

Izadeen Mohamed, with *A. C. M. Uvais* and *H. D. Tambiah*, for the petitioner.

Colvin R. de Silva, with *Felix R. Dias Bandaranaike*, *Hannan Ismail*, (*Mrs.*) *F. R. Dias Bandaranaike* and (*Miss*) *Manouri de Silva*, for the respondent.

Cur. adv. vult.

October 12, 1965. T. S. FERNANDO, J.—

There are two election petitions filed in respect of the election of the respondent as a Member of the House of Representatives for electoral District No. 17, Kolonnawa. These two petitions are numbered 6 of 1965 and 27 of 1965 respectively.

The matter which necessitates this present order arises upon a motion of the respondent that petition No. 6 of 1965 presented by the petitioner be dismissed in terms of rule 12(3) of the Parliamentary Election Petition Rules, 1946, contained in the Third Schedule of the Ceylon (Parliamentary Elections) Order in Council, 1946. The motion is founded upon the allegation that security as provided in rule 12 has not been given by the petitioner.

Rule 12 (2) requires that the security to be given by a petitioner shall be to an amount of not less than Rs. 5,000. The rule further requires the petitioner, if the number of charges in a petition shall exceed three, to give additional security to an amount of Rs. 2,000 in respect of each charge in excess of the first three. The amount of security given was Rs. 5,000. The respondent contends that there are more charges than three in the petition in question.

An examination of the petition shows that each of the paragraphs 3 and 4 thereof contains a charge against the respondent, paragraph 3 alleging that the corrupt practice of bribery (section 57) was committed while the other paragraph alleges the commission of the corrupt practice of undue influence (section 56 of the Order in Council). In view of the decisions in *Tillekewardene v. Obeyesekere*¹ and *Perera v. Jayawardene*², there is no dispute that whatever be the number of acts or instances, for example, of bribery sought to be proved against a respondent, the charge laid against him in a petition is a single one of bribery. If then paragraphs 3 and 4 of petition No. 6 contain only two charges, the only question that remains is whether paragraph 5 alleges more than one charge within the meaning of that expression occurring in the rules in the Third Schedule.

¹ (1931) 33 N. L. R. 65.

² (1947) 49 N. L. R. 1.

Paragraph 5 is reproduced below in full :

“ Your petitioner further states that by reason of misconduct on the part of the respondent his agents supporters and political connexions and by reason of other circumstances the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

The petitioner contends that this paragraph, if it contains any charge at all, contains only one charge while the respondent argues that it contains at least two charges.

I shall now turn to the sections in the Order in Council which enumerate the grounds for avoiding elections. Section 76 has enacted that the election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice, while section 77 specifies the grounds on proof of which the election of a candidate is required to be declared void. The ground relevant to the present petition is specified in the Order in Council in the language quoted below :

(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 ;

It was first contended on behalf of the petitioner that paragraph 5 contains no charge at all within the meaning of rule 12 (2). Reliance was placed on the definition of a charge as set out by Drieberg J. in *Tillekewardene v. Obeyesekere* (supra) which was approved by the Divisional Bench in *Perera v. Jayewardene* (supra). In the first-mentioned of these cases, Drieberg J. stated “ 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 ”. I do not think it can be said that this definition—if it was intended to be such—is exhaustive. As Viscount Simon stated in *Harris v. Director of Public Prosecutions*¹, “ it must be remembered that every case is decided on its own facts, and expressions used, or even principles stated, when the Court is considering particular facts, cannot always be applied as if they were absolute rules applicable in all circumstances. ” The Court was not concerned in either of the two cases, *Tillekewardene v. Obeyesekere* and *Perera v. Jayewardene*, with allegations of general bribery, general treating, general intimidation, or other misconduct which are strictly not corrupt or illegal practices as defined in sections 54 to 71 of the Order in Council. The allegations in the petitions in both these cases were confined to what may strictly be called corrupt or illegal practices. Our Courts have held that allegations of general intimidation and general treating go to form a ‘ charge ’ as contemplated in the rule in question—vide *Jeelin Silva v. Kularatne*². It is implicit also in the

¹ (1952) A. C. at 711.

² (1942) 44 N. L. R. 21.

decision in *Mohamed Mihular v. Nalliah*¹ that grounds (a) and (b) in the petition on which that case commenced which did not by any means allege the commission of any corrupt or illegal practice constituted charges within the meaning of rule 12 (2). At one stage of the argument, learned counsel for the petitioner contended that every ground for avoiding an election is not a charge within the meaning of rule 12, and that it is only a ground that involves the respondent (the elected candidate) in some form of misconduct for which he is answerable that constitutes a charge. This proposition means that, allegations against persons like returning officers and others, allegations of general bribery, etc. and an allegation that the person elected was disqualified for election do not constitute charges at all. I am unable to agree that the argument is sound; it is indeed contrary to the practice that has hitherto obtained, and, if it is correct, it follows that where a petitioner alleges against an elected candidate three charges of corrupt or illegal practices and one or more charges against a returning officer or other officer, the amount that is required to be given as security is Rs. 5,000. Such a situation leaves the respondent or respondents other than the elected candidate without security for his costs at all.

The next line of argument on behalf of the petitioner was that clause (a) of section 77 merely gives statutory recognition to the principle of the English Common Law that an election must be real and free, and that the ground or reasons specified in clause (a) constitute but one charge within the meaning of rule 12(2). Reference was made to certain election petition cases decided in England and elsewhere, but, with all respect, I am unable to derive any assistance on the point in issue on this motion from cases decided in other jurisdictions where the amount of security for costs is not dependent on the number of charges laid in an election petition. It was also contended that each of the clauses (a) to (e) contains but one charge, but this contention, I fear, failed to take account of the fact that it is now settled that under clause (c) which must be taken as reading "that a corrupt practice or practices or an illegal practice or practices was or were committed" several charges (within the meaning of rule 12) could be laid in a petition. It follows that a ground does not mean the same thing as a charge and that a single ground may sometimes involve several charges.

There are certain dicta and decisions of election judges which bear on the point that directly arises here and which, therefore, require examination. In their chronological order, the first of these is an observation of Driberg J. in *Silva v. Karaliadde*² contained in the following passage from his judgment :

"The petition makes charges of treating, bribery, undue influence and conveyance of voters; in paragraph 3 (d) the petition alleges 'that by reason of general bribery, treating, intimidation, and other circumstances the majority of voters were prevented from voting for the candidate whom they preferred'. It was no doubt intended

¹ (1944) 45 N. L. R. 251.

² (1931) 33 N. L. R. 85.

to allege the offence set out in Article 74 (A). In my opinion the charges of general bribery, general treating, and general intimidation were distinct charges from those of bribery, treating and undue influence in regard to ascertained and named persons dealt with in Articles 51, 52 and 53 (of the Ceylon—State Council Elections—Order in Council, 1931) respectively.”

In the above observation the dictum that is relevant for the purposes of the motion before me is no doubt *obiter*, but it is permissible to say that if treating, bribery and undue influence do constitute three separate charges, there is little reason why general bribery, general treating, and general intimidation should not similarly constitute three separate charges. Eleven years later, Hearne J. in *Jeelin Silva v. Kularatne* (supra) stated “The only question is how many charges did the petition contain? The answer, as a matter of simple calculation, is four. There were three of corrupt practices alleged to have been committed by the respondent or his agents and one of general intimidation, general treating, etc. which, if proved, would have had the effect of unseating the successful candidate, even if connivance on his part or agency could not be established. It must, therefore, be held that the security tendered by the petitioner was insufficient”. I can hardly resist the inference that the main issue on which counsel and judge concentrated during the argument was whether the security of Rs. 5,000 deposited was sufficient. It would have been insufficient if the charges were in excess of three. It was immaterial whether the charges were four, five, or six.

Both these cases (*Silva v. Karaliadde* and *Jeelin Silva v. Kularatne*) came to be examined by Sri Skanda Rajah J. recently in *Piyasena v. Ratwatte*¹, and that learned judge while recognising that the dicta in both cases were made *obiter*, preferred to act as if the dictum of Hearne J. represented the correct position in law. In the petition before Sri Skanda Rajah J. there were three charges alleging the commission, with the knowledge or consent of the elected candidate, of the corrupt practice of making false statements in relation to the personal character of a candidate (section 58), of treating (section 55) and of undue influence (section 56). In addition, there was a further ground or allegation that “such misconduct and/or other circumstances prevailed at the said election within the meaning of section 77(a) that the majority of electors were or may have been prevented from electing the candidate whom they preferred”. This ground or allegation was held by the learned judge to constitute only one charge.

Next in point of time is the very recent decision of Sirimane J. in which he, on 30th September 1965, dismissed Election Petition No. 37 of 1965, holding that the allegation reproduced below constituted the laying of more than one charge :

“By reason of misconduct on the part of the respondent, her agents and supporters and others interested in promoting her candidature, and by reason of other circumstances (particulars of same to be

¹ (1965) 67 N. L. R. 473, 68 C. L. W. 41.

furnished with the particulars of the aforementioned charges) the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

Finally, there is the decision of Abeyesundere J. given on the next day, the 1st October 1965, when he came to dismiss Election Petition No. 1 of 1965. That petition contained in paragraphs 3 and 4 what constituted respectively a charge of committing a corrupt practice (section 58) and a charge of committing an illegal practice (section 68A). I understand the decision to mean that the allegation in paragraph 5 that “by reason of general intimidation and/or other misconduct and/or other circumstances, the voters were prevented from freely exercising their franchise and electing the candidate of their choice” contained two charges.

The petition (No. 6 of 1965) that is before me bears a close resemblance to that dismissed by Sirimane J. Both petitions contained allegations constituting two charges of commission of corrupt practices. They also contain additional allegations that by reason of misconduct and by reason of other circumstances the majority of electors were prevented from electing the candidate whom they preferred. In regard to the number of charges contained in the additional allegations I have reached the same view as that which commended itself to Sirimane J. I respectfully agree with his view that when the rule in question refers to a charge it contemplates something in the nature of a complaint. Counsel for the respondent suggested that anything that can avoid an election can be the subject of complaint in a petition. The complaint need not necessarily be one against the elected candidate. It could take in other circumstances, e.g., acts of God, on proof of which, with proof also that the majority of voters were or may have been prevented thereby from electing the candidate of their choice, the election is avoided. I might add that I observe that in the course of his judgment, Sirimane J. states that “misconduct” in section 77 (a) would mean some act on the part of the respondent which affects the result of the election. Here again, the judicial observation must be understood as having been made with reference to the particular facts before the Court. The petition in the particular case complained of misconduct on the part of the respondent, but I apprehend section 77 (a) as not being confined to misconduct on the part of the elected candidate and his agents. I think clause (a) has a wider import and embraces the acts of persons quite independent of the elected candidate. General bribery, general treating and general intimidation could avoid an election even where it has not been proved or even attempted to be proved that the elected candidate or his agents participated in those acts.

As a final argument the petitioner’s counsel urged that, in any event, paragraph 5 contains no more than one charge. I do not find it possible to accede to this argument. If, as in my view it must be conceded, “other circumstances” embrace inter alia, acts of God, a species of acts which can by no means be said to be misconduct, then “other

circumstances " form a group of acts different from misconduct. General bribery, general treating and general intimidation appear to be regarded as forms of misconduct, but as clause (a) of section 77 itself expressly recognises that " other circumstances " need not be similar to the forms of misconduct specified in the section, it seems to follow that where other circumstances are relied on in the petition a specific charge is to that extent therein laid. I feel compelled to observe that much of the difficulty experienced in this class of case can well be avoided if, at the time of drawing up an election petition, the draftsman gives his mind to the real nature of the allegations relied on by the petitioner. As security must be given at the time of the presentation of the petition, or within three days afterwards, the petitioner must in any event advise himself as to the correct number of charges he has laid. This is best done at the time the petition itself is being drafted, and if that counsel be heeded, later heart-burning may be avoided.

I hold that the petition contains more than three charges. Security given being only Rs. 5,000, it follows that security as provided in rule 12 has not been given by the petitioner. I have therefore to grant the motion of the respondent and to order the dismissal of the petition. I accordingly do so, and direct that the petitioner do pay the costs of the respondent which I fix, with consent of parties, at Rs. 1050.

Election petition dismissed.

