

1965

Present : Tambiah, J.

P. P. WICKREMASURIYA, Petitioner, and P. H. WILLIAM  
DE SILVA, Respondent

*Election Petition No. 3 of 1965—Devinuwara*

*Election petition—Contents and form of petition—Scope of requirement that petition should briefly state the facts—Parliamentary Election Petition Rules, 1946, Rules 4 (1) (b), 5—Ceylon (Parliamentary Elections) Order in Council, ss. 58 (1) (d), 77, Schedule 3.*

A paragraph in an election petition set out the following facts :—“ . . . the respondent by himself or his agents and/or other persons acting within his knowledge or consent, made or published before or during the said election, false statements of fact in relation to the personal character or conduct of the petitioner, for the purpose of affecting his return at the said election.”

*Held*, that the facts set out in the paragraph were sufficient to comply with the requirement of Rule 4 (1) (b) of the Parliamentary Election Petition Rules, 1946, that in an election petition the petitioner must set out the facts on which he relies. Although the petitioner neither set out the exact statements that were alleged to have been made nor gave any details regarding the time and place and the manner in which those statements were published, such matters could be ascertained by the respondent by making an application, under Rule 5, requiring the petitioner to provide further particulars.

**E**LECTION Petition No. 3 of 1965—Devinuwara.

*G. T. Samerawickreme, Q.C., with S. H. Mohamed and S. C. Crossette-Thambiah, for the Petitioner.*

*A. H. C. de Silva, Q.C., with Colvin R. de Silva, G. G. Mendis, Hanan Ismail, Nihal Jayawickrema and K. Sivanathan, for the Respondent.*

*Cur. adv. vult.*

October 4, 1965. TAMBIAH, J.—

Mr. A. H. C. de Silva Q.C. who appears for the respondent takes the preliminary objection that since this petition does not set out the facts as required by Rule 4 (1) (b) of the third schedule to the Ceylon (Parliamentary Elections) Order in Council (which will hereinafter be referred to as the Order in Council), this action must be dismissed. This rule enacts as follows :

“ Rule 4. (1) An election petition shall contain the following statements—

- (a) It shall state the right of the petitioner to petition within section 79 of the Order.
- (b) It shall state the holding and result of the election and shall briefly state the facts and grounds relied on to sustain the prayer.”

Mr. de Silva contended that since the petitioner has failed to set out the facts on which he relies the action should be dismissed. He contended that all that has been set out in paragraph 3 of the petition are the grounds on which the application is based and that the petition does not set out the facts.

Paragraph 3 of the petition is as follows :

“ 3. That the return of the Respondent as member at the said election was null and void on the ground of the commission of a corrupt practice within the meaning of section 58 of the Ceylon (Parliamentary Elections) Order in Council, 1946 ; in that the respondent by himself or his agents and/or other persons acting within his knowledge or consent, made or published before or during the said election, false statements of fact in relation to the personal character or conduct of Your Petitioner, for the purpose of affecting his return at the said election. ”

Mr. de Silva contended that this paragraph is a mere reproduction of section 58 (1) (d) of the Order in Council and that this subsection merely sets out the specific kind of the corrupt practice referred to in section 77 of the Order in Council which enables a court to set aside an election. Section 77 of the Order in Council empowers an Election Judge to declare an election void, *inter alia*, if a corrupt practice is committed by the candidate or with his knowledge or consent by an Agent of the candidate. A corrupt practice is not however defined, but the various types of corrupt practices are set out in section 58 (1) (d).

On a careful examination of paragraph 3 of the petition I am of the view that not only has the petitioner set out the grounds on which he prays that the election should be set aside but also has set out the facts. The grounds on which he is seeking the election to be set aside is the species of corrupt practice set out in section 58(1)(d). Paragraph 3 in addition to the ground also sets out clearly the following facts : (a) “ the respondent by himself or his agents and/or other persons acting with his knowledge and consent, made or published before or during the said election certain statements ; (b) these were false statements of fact in relation to the personal character or conduct of Your Petitioner, for the purpose of affecting his return at the said election. ” These are clearly facts which he has set out in his petition. It is true that he has not fully set out the facts on which he relies. He does not set out the exact statement that is alleged to have been made nor has he given any details regarding the time and place and the manner in which these statements have been published. These are all matters that can be ascertained by requiring the petitioner to provide particulars. The question that I have to consider is whether the election petition should be dismissed on the grounds relied on by counsel for the petitioner.

Rule 4(1)(b) of the Order in Council is very similar to Rule 2 of the English Parliamentary Election Petition Rules of 1868, which were made under the Parliamentary Elections Act of 1868 (31 & 32 Vict. Cap. 125).

In *Furness v. Beresford*<sup>1</sup>, a similar objection was taken (vide also 1869 Law Reports Court of Common Pleas, Vol. IV, page 150). Paragraph 6 of the petition filed in that case was as follows :

“ And your petitioner further says that certain persons voted at the said election who were guilty of corrupt and illegal practices, illegal payment, illegal employment, and illegal hiring at the said election, and that the votes of the said persons are void, and ought to be struck off the poll.”

The words stated in that petition were far more vague than what has been stated in this case. On an objection taken by counsel that the petition be dismissed, Smith L.J. said : “ According to the practice with regard to election petitions which has existed for many years that paragraph does not seem to me to be at all too general. It is common form to set out in a petition, after necessary averments, the reasons on which it is based, such as bribery, treating or undue influence.”

In the *St. George's Division of the Borough of Tower Hamlets Case* a similar objection was over-ruled (vide Election Petitions by O'Malley and Hardcastle, Case VII, Vol. 5, page 89 at 103).

If the contention of the counsel for the respondent in this case that all facts must be set out in the election petition is correct, then there is no necessity to ask for particulars as set out in Rule 5, which enacts as follows :

“ Evidence need not be stated in the petition, but the Judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and otherwise as may be ordered.”

An election petition is not a suit between parties but is one in which the public have an interest. Therefore it cannot be dismissed on mere technicalities.

In *Shillong Case, Kanger v. Ray*<sup>2</sup> it was held that “ when particulars are given and there is a technical compliance with the requirements of the Rule the petition cannot be dismissed because the particulars are not sufficiently specific. The correct procedure is to order further and better particulars to be filed.” (vide Elections and Election Petitions by Pandit Nanak Chand, S. C. Manchanda and Kali Sharan, p. 500).

It is clear from Rule 5 of the third schedule to the Ceylon (Parliamentary Elections) Order in Council that a petitioner need not set out all the facts but should only give a summary of the facts relied upon. If the respondent asks for particulars, this court would consider such an application favourably. But the contention of the respondent that the petition should be dismissed is not tenable.

<sup>1</sup> 68 *Law Times* 137.

<sup>2</sup> 1 *J.* 108.

The counsel for the respondent also submitted that on the averments of the petitioner it is not clear as to who has committed the acts alleged in paragraph 3 of the petition, and therefore the petition should be dismissed. Similar words have been used in the petition filed in *Tillekewardena v. Obeyesekere*<sup>1</sup>. In that case the petitioner sought to have the election of the successful candidate, the respondent, declared void on the ground of bribery, treating and payment for conveyance of voters. These offences were said to have been done by himself or with his knowledge or with his consent or by an agent of his. Driberg J. Said " I take it that this means that the offences were in some cases committed by himself, in some by his agents and, in some cases by others with his knowledge or consent ". The petition in this case is similarly worded. It alleges that either the respondent committed these acts or his agents or other persons acting with the respondent's knowledge or consent made or published the false statements referred to in paragraph 3 of the petition.

I therefore hold that the requirements of Rule 4 (1) (b) of the third schedule to the Ceylon (Parliamentary Elections) Order in Council, 1946, have been complied with. If the respondent requires further particulars he is entitled to make his application which will be considered on its merits. I over-rule the objection and set the case for trial.

The costs will abide the event.

*Preliminary objection overruled.*

