

1965

Present : Sirimane, J.

G. A. S. PERERA and another, Petitioners, and SIRIMAVO DIAS BANDARANAIKE, Respondent

Election Petition No. 37 of 1965—Attanagalla

Election petition—Quantum of security for costs—Computation of number of “charges” —Ceylon (Parliamentary Elections) Order in Council (Cap. 381), s. 77 (a), Rule 12 (2) (3) of Schedule 3.

The petitioners sought to challenge the validity of the election of the respondent as a Member of Parliament. Paragraphs 3 and 4 of the petition alleged that she was guilty of undue influence and corrupt practice respectively. Paragraph 5 of the petition stated further :—“And your petitioners further state that by reason of misconduct on the part of the respondent, her agents, her supporters and others interested in promoting her candidature, and by reason of other circumstances (particulars of same to be furnished with the particulars of the afore-mentioned charges) the majority of electors were or may have been prevented from electing the candidate whom they preferred within the meaning of Section 77 (a) of the Ceylon (Parliamentary Election) Order in Council. ”

Held, that the petition contained four complaints, grounds or charges within the meaning of Rule 12 (2) of the Ceylon (Parliamentary Elections) Order in Council. They were (1) Undue influence, (2) Corrupt practice, (3) Misconduct, and (4) Other circumstances. Accordingly, the security in a sum of Rs. 5,000 given by the petitioners was not sufficient.

ELECTION Petition No. 37 of 1965,—Attanagalla.

A. H. C. de Silva, Q.C., with Izzadeen Mohamed and A. C. M. Uvais, for the Petitioners.

George E. Chitty, Q.C., with Colvin R. de Silva, Felix R. Dias Bandaranaike and Hannan Ismail, for the Respondent.

J. G. T. Weeraratne, Senior Crown Counsel, with H. L. de Silva, Crown Counsel, as amicus curiae.

Cur. adv. vult.

September 30, 1965. SIRIMANE, J.—

The respondent moves that this petition challenging her election to the Attanagalla Electorate be dismissed on the ground that the petitioners have failed to furnish security as required by Rule 12 sub-section 2 of the Ceylon (Parliamentary Elections) Order in Council (Chapter 381). That Rule is as follows :—

“ The security shall be to an amount of not less than Rs. 5,000. If the number of charges in any petition shall exceed three, additional security to an amount of Rs. 2,000 shall be given in respect of each charge in excess of the first three. The security required by this Rule shall be given by a deposit of money. ”

The petitioners have given security in a sum of Rs. 5,000.

It is contended for the respondent that there are at least four charges in the petition.

Paragraph 3 of the petition alleges that the respondent has been guilty of undue influence.

Paragraph 4 alleges that she has been guilty of a corrupt practice.

Paragraph 5, which is the relevant paragraph, reads as follows :

“ And your petitioners further state that by reason of misconduct on the part of the respondent, her agents, her supporters and others interested in promoting her candidature, and by reason of other circumstances (particulars of same to be furnished with the particulars of the afore-mentioned charges) the majority of electors were or may have been prevented from electing the candidate whom they preferred within the meaning of Section 77 (a) of the said Order in Council. ”

The question is whether paragraph 5 contains more than one charge.

The election of a candidate as a Member can be declared void on any of the grounds set out in Section 77 of Chapter 381. The relevant section for the purposes of this inquiry is Section 77 (a) which is in the following terms :

“ 77 (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 voters were or may have been prevented from electing the candidate whom they preferred. ”

In my view every one of the grounds set out in Section 77 (a) constitutes a separate and distinct charge and the petitioners in paragraph 5 allege (a) misconduct (b) “ other circumstances (particulars of same to be furnished with the particulars of the afore-mentioned charges) ”, to reproduce the words in the petition itself. “ Misconduct ” would mean some act on the part of the respondent (other than those specified earlier in the petition) which affects the result of the election.

Those matters which do not come under “ misconduct ” but still affect the result of the election would be “ other circumstances ” e.g. a flood, a cyclone, the collapse of a bridge—any factor which prevents voters from proceeding with reasonable safety to a polling booth.

I am unable to agree with the contention of learned Counsel for the petitioners that a charge is something which can be alleged against a person and must be a corrupt practice or an illegal practice.

A charge in an election petition, in my view, is a *complaint*, i.e. something the petitioner has reason to complain of, which prevented the majority of electors from electing the candidate whom they preferred. A charge in this sense may include “ an act of God ”, like a flood.

Reliance was also placed by the petitioners on the dictum of Driberg, J. in *Tillakawardena vs. Obeyesekere*¹ where he 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.” Driberg, J. was there dealing with charges of corrupt and illegal practices and I think it is fairly clear that the definition is not exhaustive. In several cases the word “ charge ” has been applied to any allegation made against the validity of an election. (See, for example, *Illangaratne v. G. E. de Silva*² where the word “ charge ” was used with reference to “ unprecedented floods ” which, it was alleged, had affected the election.)

My attention was also drawn to a decision of Hearne J. in *Jeelin Silva v. Kularatne*³ which was later followed by Sri Skanda Rajah, J. in *Piyasena v. Ratwatte*⁴.

In *Jeelin Silva v. Kularatne* (supra) the petition contained charges of undue influence, treating and impersonation. It was also prayed that the election be declared void by reason of general intimidation and impersonation on a large scale and of general treating. The question to be decided was whether there were more than three charges. Hearne J. expressed himself thus : “ The only question is how many charges did the petition contain ? The answer, as a matter of simple calculation, is four. There were 3 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” I am inclined to agree with the submission of learned Counsel for the respondent, that once it was established in that case that there were more than 3 charges the learned Judge did not find it necessary to carefully examine the question whether the prayer which contained the fourth charge, also contained within it more charges than one. If the decisions cited above are relied on as authority for the proposition that any or all the grounds set out in Section 77 (a) which result in the majority of voters being prevented from electing the candidate of their choice form only a *single charge* because the result is the same, I regret I am unable to share that view, and with great respect must record my dissent therefrom.

The purpose in taking security is to defray, as far as possible, the costs that may be incurred by a successful respondent in defending himself against various charges. The evidence needed to meet a charge of general intimidation would be different from that needed to meet a charge of general bribery and the evidence required to meet one of “ other circumstances ” would be different from both.

Merely because the ensuing result must be shown to be the same (viz. that the majority of the electors were prevented from electing the candidate they preferred) it would be unreal, in my view, to regard all the charges as set out above as one single charge.

¹ (1931) 33 N. L. R. 65.

³ (1942) 44 N. L. R. 21.

² (1948) 49 N. L. R. 169 at 183.

⁴ (1965) 67 N. L. R. 473, 68 C. L. W. 41.

In *Silva v. Karaliyadde*¹, where a question very similar to the one in the present case came up before Driberg, J., the learned Judge said : “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” I am in respectful agreement with that view. In my opinion the petition contains four complaints, grounds or charges on which it is sought to challenge the election. They are :—

1. Undue influence,
2. Corrupt practice,
3. Misconduct, and
4. Other circumstances.

As only a sum of Rs. 5,000 has been deposited, the petitioners have failed to give security as provided by Rule 12, and acting under sub-section 3 of that Rule I dismiss the petition with costs.

I am grateful to learned Counsel who appeared for the parties and to Crown Counsel who appeared as amicus curiæ for the assistance rendered at the argument.

Petition dismissed.

