

1965

Present : Abeyesundere, J.

F. B. DANISTER DE SILVA, Petitioner, and PRINS
GUNASEKERA and others, Respondents

Election Petition No. 22 of 1965—Electoral District No. 63 (Habaraduwa)

*Election petition—Contents and form of petition—“Facts and grounds relied on”—
Security for costs—Computation of number of “charges”—Parliamentary
Election Petition Rules, 1946, Rules 4 (1) (b), 12—Ceylon (Parliamentary
Elections) Order in Council, 1946, ss. 57, 58, 77 (b).*

In paragraph 5 of the election petition the petitioner stated that the election of the respondent was null and void on the ground of such non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, relating to elections as affected the result of the election. Paragraph 6 contained the statement that the respondent, or his agent, or agents, or others with his knowledge or consent committed the corrupt practice of bribery within the meaning of section 57 of the same Order-in-Council.

Held, (i) that each of the two paragraphs 5 and 6 contained a brief statement of both a fact and a ground within the meaning of Rule 4 (1) (b) of the Parliamentary Election Petition Rules, 1946. The fact that persons in the alternative were described in paragraph 6 as having committed the corrupt practice of bribery did not offend the said Rule 4 (1) (b).

¹ (1931) 33 N. L. R. 85.

(ii) that, for the purpose of determining the amount of security for costs which the petitioner in an election petition must deposit according to the number of "charges" alleged in the petition, the expression "charges" in Rule 12 (2) of the Parliamentary Election Rules, 1946, refers exclusively to allegations of misconduct of the description of corrupt or illegal practices within the meaning of the Ceylon (Parliamentary Elections) Order-in-Council.

(iii) that paragraph 6 of the petition contained only one charge, namely bribery, for the purpose of Rule 12 (2) of the Parliamentary Election Rules, 1946.

ELECTION Petition No. 22 of 1965—Electoral District No. 63 (Habaraduwa).

George E. Chitty, Q.C., with *E. A. G. de Silva, S. S. Basnayake, Varuna Basnayake, C. A. Amerasinghe* and *Ajit Wijeyewardene*, for the Petitioner.

E. R. S. R. Coomaraswamy, with *K. Shinya, George Rajapakse, K. Shanmugalingam* and *J. R. Karunaratne*, for the 1st Respondent.

M. Kanagasunderam, Crown Counsel, with *N. B. D. S. Wijesekera*, Crown Counsel, for the 2nd and 3rd Respondents.

September 28, 1965. ABEYESUNDERE, J.—

Francisku Badaturuge Danister de Silva, hereinafter referred to as the petitioner, has presented to the Supreme Court an election petition, hereinafter referred to as the election petition, against the election of Prins Gunasekera as Member of Parliament for the Electoral District of Habaraduwa at the General Election held on 22nd of March, 1965, hereinafter referred to as the respondent.

It is alleged by the respondent that paragraphs 5 and 6 of the election petition are respectively a mere repetition of the grounds of avoidance of an election set out in section 77 (b) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, and a vague and general reference to the offence of bribery set out in section 57 of that Order-in-Council and that, therefore, the petitioner has failed to comply with the provisions of Rule 4 (1) (b) of the Parliamentary Election Petition Rules, 1946.

The respondent also alleges that the petitioner has failed to deposit the amount of security required by Rule 12 of the Parliamentary Election Petition Rules, 1946, and that consequently no further proceedings can be had on the election petition. On the said allegations the respondent prays for the dismissal of the election petition.

The said Rule 4 (1) (b) provides that an election petition shall state the holding and result of the election and briefly state the facts and grounds relied on to sustain the prayer. It is contended on behalf of the respondent that, although paragraphs 5 and 6 of the election petition contain grounds relied on to sustain the prayer in that petition, there is no statement of the facts.

In paragraph 5 of the election petition there is the statement of the petitioner that the election of the respondent is null and void on the ground of such non-compliance with the provisions of the said Order-in-Council relating to elections as has affected the result of the election. That statement is a brief statement of both a fact and a ground relied on by the petitioner to sustain the prayer in the election petition.

Paragraph 6 of the election petition contains the statement that the respondent, or his agent, or agents, or others with his knowledge or consent committed in connection with the election the corrupt practice of bribery within the meaning of section 57 of the said Order-in-Council. That statement is a brief statement of both a fact and a ground relied on by the petitioner to sustain the prayer in the election petition. The fact that persons in the alternative are described in the said paragraph 6 as having committed the corrupt practice of bribery does not offend the said Rule 4 (1) (b).

For the aforesaid reasons I hold that, in regard to paragraphs 5 and 6 of the election petition, the petitioner has not failed to comply with the provisions of the said Rule 4 (1) (b).

The said Rule 12 provides that security given on behalf of the petitioner shall be to an amount of not less than Rs. 5,000 and that, if the number of charges in the election petition exceeds 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 petitioner has given security by the deposit in cash of the sum of Rs. 7,000. It is argued on behalf of the respondent that the security given by the petitioner is inadequate as there are more than four charges in the election petition. The submission made on behalf of the respondent is that in each of the paragraphs 3, 4 and 5 of the election petition there is a charge, and that in paragraph 6 of that petition there are no less than four charges, namely, in connection with the election bribery by the respondent, bribery by his agent, bribery by his agents, or bribery by persons with the knowledge or consent of the respondent.

The expression 'charges' which appears in the said Rule 12 (2) occurred in a similar rule of 1931, and in connection with the latter rule that expression was interpreted by the Supreme Court in the case of *Tillekewardene v. Obeyesekere*¹, reported in 33 New Law Reports, page 65, to be "the various forms of misconduct coming under the description of corrupt and illegal practices". That interpretation was approved and applied to the said Rule 12 (2) by a Bench of three Judges of the Supreme Court in the case of *Perera v. Jayewardene*², reported in 49 New Law Reports, page 1.

Paragraphs 3, 4 and 5 of the election petition do not contain allegations of misconduct of the description of corrupt or illegal practices within the meaning of the said Order-in-Council. Those paragraphs do not contain any charges within the meaning of the said Rule 12 (2).

¹ (1931) 33 N.L.R. 65.

² (1947) 49 N.L.R. 1.

Paragraph 6 of the election petition refers to the offence of bribery. That offence is a corrupt practice under Section 58 of the said Order-in-Council. The said paragraph 6, therefore, contains a charge within the meaning of the said Rule 12 (2). But it is contended on behalf of the respondent that the said paragraph 6 contains more than one charge. In my view that contention is not correct as the charge in that paragraph is the offence of bribery. Although there may be several instances or cases of that offence, there is only one charge, namely bribery, for the purpose of the said Rule 12 (2). This view is supported by the judgments of the Supreme Court in the two aforesaid cases.

For the above-mentioned reasons I hold that the petitioner has not failed to deposit the amount of security required by the said Rule 12.

I dismiss the petition of the respondent praying for the dismissal of the election petition and I order the respondent to pay the petitioner as costs of this inquiry the sum of Rs. 787 which is agreed upon by the counsel for the petitioner and the counsel for the respondent.

I fix 14th March, 1966, as the date on which the trial of the election petition shall commence in Colombo.

Preliminary objections overruled.

