

1948

Present : Dias J.

P. SARAVANAMUTTU, Petitioner, and R. A. DE MEL,  
Respondent.

IN THE MATTER OF THE TRIAL OF ELECTION PETITION NO. 13  
OF 1947 (ELECTION FOR COLOMBO SOUTH ELECTORAL DISTRICT)  
AND IN THE MATTER TO WITHDRAW THE PETITIONER'S  
CLAIM TO BE DECLARED DULY ELECTED AND RETURNED  
IN PARAGRAPH 4 OF THE PETITION.

*Election petition—Withdrawal of part of the relief claimed—Rules 21 and 22 of  
Schedule III of Ceylon (Parliamentary Elections) Order in Council, 1946—Non-  
compliance—When permissible.*

The petitioner in an election petition prayed for two kinds of relief : (a) for a declaration that the respondent was not duly elected or returned, and (b) for a declaration that the petitioner was duly elected and ought to be returned. Pending the inquiry he moved to withdraw his claim to be duly elected and returned.

*Held*, that the petitioner's application to withdraw this part of his prayer did not amount to a withdrawal of the election petition and was, therefore, not governed by Rules 21 and 22 of the Third Schedule of the Parliamentary Elections Order in Council, 1946.

ORDER made pending the hearing of Election Petition, Colombo South Electoral District.

*C. S. Barr-Kumarakulasingham*, with *A. I. Rajasingham* and *Sam Wijesinha*, for the petitioner.

*E. G. Wikramanayake*, with *D. S. Jayewickreme*, *E. A. G. de Silva*, *G. T. Samerawickreme*, *Cecil de S. Wijeyeratne* and *G. Perera*, for the respondent.

*Cur. adv. vult.*

April 20, 1948. DIAS J.—

It is necessary that before making my final order I should deliver my order in this application which was made after the main inquiry began.

In his petition the petitioner prayed for two kinds of relief : (a) for a declaration that the respondent was not duly elected or returned, and (b) for a declaration that the petitioner was duly elected and ought to be returned, or that the election was void. This petition was filed on October 10, 1947. The inquiry was fixed for April 19, 1948.

On April 1, 1948, the petitioner moved to withdraw his claim to be duly elected and returned. The respondent having cause to show I directed that this matter should also be fixed for inquiry on April 19, 1948.

The respondent objects to the application on the ground that under Rules 21 and 22 in the Third Schedule of the Ceylon (Parliamentary Elections) Order in Council, 1946 (hereinafter referred to as "The Order in Council"), the withdrawal must be with the leave of the

Court, that with the application there should be filed affidavits which must be sworn to by certain persons and state certain things, and that a notice of the application should be published forthwith in the *Gazette*.

I do not consider that these objections have substance. Rules 21 and 22 of The Order in Council refer to the withdrawal of the petition. The petitioner is not seeking to withdraw the petition. I therefore think that Rules 21, 22, 23 and 24 have no application to the matter now under consideration.

The counsel for the petitioner states that the reason why this part of the prayer is sought to be withdrawn is because it is untenable in law. He further submits that notice of the application was given eighteen days before the inquiry so as to give the respondent the fullest notice so that he might not be taken by surprise.

In my opinion this application should be granted, particularly as it causes no prejudice whatever to the respondent, but rather makes his task lighter by restricting the scope of this inquiry which promises to be protracted. I, therefore, allow the petitioner's application to withdraw this part of his prayer.

It is conceded that if the petitioner's application succeeds the recriminatory objections filed by the respondent do not arise. It is, therefore, unnecessary for me to say anything about that.

The costs of this application will be costs in the cause.

*Application granted.*

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