

1953

*Present : Gunasekara J.**In re C. W. F. A. JAYAWARDENE***S. C. 393—APPLICATION UNDER SECTIONS 70 AND 75 OF THE CEYLON (PARLIAMENTARY ELECTIONS) ORDER IN COUNCIL, 1946**

Ceylon (Parliamentary Elections) Order in Council, 1946—Failure to make return respecting election expenses—Application for authorised excuse—Illness of election agent alleged—Factors for consideration—Sections 70 and 75 (1).

Where illness of election agent is given as excuse for the failure to make the return and declaration respecting election expenses within the thirty-one days prescribed by section 70 of the Ceylon (Parliamentary Elections) Order in Council, it is not sufficient, in an application for an authorised excuse under section 75 (1), to show that the election agent was ill towards the end of the prescribed period if it appears that he had had enough time to make the return before he fell ill.

APPPLICATION under section 75 (1) of the Ceylon (Parliamentary Elections) Order in Council for an authorised excuse for non-compliance with provisions as to return and declaration respecting election expenses.

Austin Jayasuriya, for the petitioner.

V. Tennekoon, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 30, 1953. GUNASEKARA J.—

The petitioner was an unsuccessful candidate for election to a seat in the House of Representatives at the 1952 General Election. His election agent, G. W. H. Jayasingha, failed to transmit to the returning officer the return and declarations respecting his election expenses within thirty-one days after the date of publication of the result of the election in the *Government Gazette* as required by section 70 of the Ceylon (Parliamentary Elections) Order in Council, 1946. He applies, under section 75 (1) of the Order, for an authorised excuse for this failure on the ground that it has arisen by reason of the illness of the election agent and not by reason of any want of good faith on his own part.

¹ (1952) 53 N. L. R. 382.

² (1948) 50 N. L. R. 128.

The petition was filed on the 19th August, 1952, with an affidavit of that date sworn by the petitioner. It was heard on the 9th September by my brother Pulle, and he made order permitting the petitioner to renew the application on fresh material. On the 17th September the petitioner's proctor submitted to the court two affidavits, sworn by the petitioner and Jayasingha respectively on the 16th September, together with four documents as exhibits, namely, a postcard and a letter received by the petitioner from the returning officer and two medical certificates.

It appears from these documents that the last day for the transmission of the return and declarations was the 1st July and that a return signed by the petitioner, and not by his election agent, was received by the returning officer on the 28th June. The returning officer wrote to him on the 14th July reminding him that he had appointed Jayasingha as his election agent on the 28th April and drawing his attention to the relevant provisions of section 70. A return was then sent by Jayasingha on the 1st August. Thereupon the petitioner was informed by the returning officer that he should apply to this court for an authorised excuse, and he made the present application on the 19th August.

The explanation of the election agent's failure to comply with the provisions of section 70 that was tendered by the petitioner on that occasion is contained in paragraphs 5 to 8 of his affidavit of the 19th August, which are in these terms :

“ 5. The said election agent has failed to transmit the return respecting election expenses, and the necessary declaration within the prescribed period. Few days later I looked for the election agent in order to assist him to prepare the account and to see that he transmits the return to the returning officer.

6. I went in search of the election agent to find that he was in Ragama Hospital lying seriously ill.

7. After his recovery he sent his return to the returning officer and I was informed by the returning officer that I should apply for an authorised excuse to the Supreme Court.

8. The omission on the part of my election agent to transmit the return of expenses in time was due to his illness and not due to any fault of good faith on my part. ”

This affidavit does not explain why Jayasingha failed to transmit the return and declarations by the 1st July : it speaks only of the condition in which the petitioner found him a few days after the expiry of the prescribed period and what happened thereafter. The ailment from which Jayasingha was suffering is described in a certificate from the medical officer of the Ragama Hospital, dated the 12th September, which was filed with the petitioner's affidavit of the 16th September. The certificate states that Jayasingha was admitted to the hospital on the 14th July suffering from acute hepatitis and that he was discharged on the 16th July.

In the petitioner's affidavit of the 16th September he stated for the first time that there was an occasion within the material period as well when he found Jayasingha "seriously ill". The relevant paragraphs of that affidavit are in these terms :

" 6. The last day for sending the return of election expenses, with the necessary declaration under the Order in Council, was the 1st of July 1952.

7. About a week prior to the said date 1st July 1952 I went to meet the said G. W. H. Jayasingha at Batagama in order to assist him to prepare the return and to see that he transmitted the return to returning officer within the prescribed time.

8. I found that said G. W. H. Jayasingha was seriously ill and unable to attend to any of his work and in particular to his duty of sending the return. In proof of his illness I produce marked P1 certificate from M. A. Siriwardane dated 10.9.52 with its translation.

9. As my election agent the said G. W. H. Jayasingha was unable to attend to and send the return in due time I myself forwarded the return of expenses of the election without the declaration from the said Jayasingha and my return was received by the returning officer on 28.7.1952. I produce marked P2 the acknowledgment of the said returning officer."

(The date " 28.7.1952 " is obviously an error for " 28.6.1952 ", as was submitted by the petitioner's counsel.) The petitioner's statement regarding Jayasingha's illness is supported by the latter's affidavit, which states that he " was ill and unable to attend to any work from 22 June up to 20th July, 1952 ", and that for that reason he was unable to transmit the return within the prescribed period. The document marked P1 purports to be a certificate from an ayurvedic physician stating that Jayasingha " got some stomach trouble on the 22nd June, 1952 ", and that the physician treated him till the 10th July.

It is unnecessary to consider whether the evidence submitted by the petitioner is sufficient to prove that from the 22nd June to the 1st July Jayasingha was too ill to prepare the return ; for there is nothing to shew that he was prevented by illness or any other good cause from preparing and transmitting it to the returning officer in the three weeks preceding the 22nd June. According to the petitioner a period of six days was enough for the purpose, for he himself was able to prepare and transmit it between the 22nd and 28th June.

I am unable to say that the petitioner has shown that the failure to transmit the return and declaration within the prescribed time has arisen by reason of the illness of the election agent as alleged by him. The application is refused.

Application refused.