

1932

Present : Dalton J.

## LATEEF v. SARAVANAMUTTU.

IN THE MATTER ON AN ELECTION PETITION AGAINST THE ELECTION  
OF THE MEMBER FOR COLOMBO NORTH.

*Election petition—Engagement of canvasser guilty of corrupt practice—What constitutes personal engagement—Meaning of canvassing—Solicitation for support by distribution of pamphlets—Ceylon (State Council Elections) Order in Council, s. 74.*

Where, in an election petition to have an election declared void under Article 74 (d) of the Order in Council, 1931; on the ground that the respondent had personally engaged a person as a canvasser, knowing that such person had been found guilty of a corrupt practice, it was proved that the respondent's husband, who had been unseated for corrupt practices, had issued an appeal to the electorate, by distributing leaflets, to extend their support to his wife the respondent,—

*Held*, that solicitation for votes or for support by the distribution of pamphlets amounted to canvassing within the meaning of the section.

*Held further*, that to constitute a person an agent or canvasser "personally engaged by the candidate", it was sufficient if such person acted as agent or canvasser with the candidate's knowledge and consent.

Employment of a reported person is not a corrupt practice, unless it can be brought within the provisions of Article 65 of the Order in Council.

THIS was an election petition in which the petitioner sought to have the election declared null and void upon allegations of the corrupt practices of treating and personation, and also on the ground that the respondent had employed as a canvasser or agent her husband, Dr. Saravanamuttu, who had been found guilty of corrupt practices by an election Judge. The petitioner confined himself at the trial to the last charge under Article 74 (d) of the Ceylon (State Council Elections) Order in Council, 1931, which as follows: That the candidate personally engaged a person as his election agent or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice by a District Court or by the report of an election Judge.

*Soertsz*, for respondent.—The words "personally engaged" presuppose a prior act, that he was engaged before the act. They mean something more than mere engagement. It is something more than ratifying or adopting what was done or not repudiating it. The respondent did nothing more than adopt something done for her benefit.

The word "canvassing" has here a more specific meaning than the mere soliciting of votes. See the definition of canvassing in Vol. II. (2nd edition), p. 548 of the *Encyclopaedia of the Laws of England*, 1 O'M. & H. 56; *Imperial Dictionary*, p. 388.

A personal contract is necessary; a personal relation which may be abused.

With regard to the respondent's knowledge of the report of the election Judge, it must exist as a fact. The notice in the *Gazette* on April 8 is the earliest day on which knowledge can be imputed to her. The word "knowing" in the section is important.

Section 78 of the Order in Council, 1931, draws a sharp distinction between "conclusion of trial" and "determination". "Conclusion" is anterior to "determination".

[DALTON J.—The whole idea is that no one should be reported without showing cause. No party to a petition need show cause.]

The difficulty is that I have been heard as to corrupt practice but I have not been heard as to why I should not be reported. In view of the difficulty in construing this section, see *Ex parte Walker*<sup>1</sup>.

*B. F. de Silva* (with him *J. R. Jayawardene*), for petitioner.—The engagement lasts as long as the purpose for which it was secured—till election day. The word "report" in section 74 (d) means the report of the Judge to the world after a person has been found guilty of corrupt practice. It does not mean the report to the Governor.

Section 79 contemplates the case of persons who are not parties to an election petition. No election Judge would, on a person showing cause, annul the decision avoiding an election. See section 70 which bears out the argument that the finding of the Judge under section 78 is a report.

Taking it at its lowest Dr. Saravanamuttu was disqualified on March 22, but right up to the polling day the leaflets were in circulation and were never repudiated.

Counsel cited *20 Empire Digest*, 61 s. 397; 1 *O'M. & H.* 200; 4 *O'M. & H.* 11.

*J. W. R. Illangakoon*, Acting S.G. (with him *H. Basnayake*, C.C.), for the Attorney-General.—Both Articles 78 and 79 commence with the expression "At the conclusion of the trial". Under Article 78 the Judge is required at the conclusion to certify whether the election is valid or not and under Article 79 he has to report whether any corrupt or illegal practices have been committed and send in a description of the persons who have been proved at the trial to have been guilty of such offences. This report must be forwarded at the same time as the certificate, namely, at the conclusion of the trial. Article 79 (2) has been taken from 46 & 47 *Vict. c. 51*, s. 38 (1). Under the English law a candidate who is a party to the election proceedings is not granted an opportunity of showing cause, presumably because he has already had the opportunity during the trial. See 3 *O'M. & H.* 88, 17, 75. Article 79 (2) is wider than the English law. "Canvasser" is defined in 35 & 36 *Vict. c. 60*, s. 2.

September 7, 1932. DALTON J.—

This petition that the election of the respondent, Mrs. Naysum Saravanamuttu, should be declared null and void is based upon allegations of the corrupt practices of treating and personation, and further that respondent had as a canvasser or agent Dr. Saravanamuttu, although she knew he had within seven years been found guilty of a corrupt practice by the report of an election Judge. The petitioners led no evidence in respect of the corrupt practices alleged, but confined themselves entirely to the last charge. Article 74, sub-section (d), of the Ceylon (State Council Elections) Order in Council, 1931, enacts, among other things, that the election of a candidate as a member shall be declared void on an election petition, if it be proved to the satisfaction of the election Judge that the candidate personally engaged a person as a canvasser or agent, knowing

<sup>1</sup> 22 *Q. B. D.* 584, 388.

that such person had within seven years previous to such engagement been found guilty of a corrupt practice by the report of an election Judge.

At the general election Dr. Saravanamuttu was elected member for the constituency of Colombo North on June 13, 1931. He was, however, unseated on petition on March 8, 1932, on the ground that he was guilty of the corrupt practices of bribery and undue influence. Thereupon his wife, the present respondent, came forward as a candidate for election, and was elected at the by-election held on May 29, 1932.

The evidence led in support of the charges under Article 74 (d) may be divided into two portions—first, that contained in leaflets admittedly issued by Dr. Saravanamuttu asking voters to support his wife, and second, that of witnesses who speak of having been canvassed by Dr. Saravanamuttu personally, or who say they have seen him canvassing.

It is stated by respondent, by her election agent and brother-in-law N. Saravanamuttu, and by Dr. Saravanamuttu that immediately the latter was unseated they were approached by voters in the constituency to put the respondent forward as a candidate, and it is admitted they had a family meeting to consider the proposal which was then agreed to. Dr. Saravanamuttu had been unseated on March 8, and after his wife, the respondent, published, as she says, a notice in the newspapers to the effect that she was coming forward as a candidate, on March 12, he (Dr. Saravanamuttu) drew up and sent to the printers a leaflet (exhibit P 2) in English, signed by himself and addressed to the voters of the Colombo North electorate, calling attention to the fact that he had been unseated and stating that another election would therefore be held within two months. It goes on to state "my wife, Mrs. Naysum R. Saravanamuttu, is seeking election as your representative at this by-election," and he appeals to them to vindicate the confidence they placed in him by extending to his wife the same measure of support that they had given him. He concludes: "You will find her as competent as myself to represent you." 5,000 copies of this leaflet were printed and delivered to the respondent at No. 1, Hill street, Colombo, by the printers on March 14. She paid for them on March 24.

On March 19, the printer received another order for 3,000 copies of the same leaflet in Tamil (exhibit P 3). The wording is slightly different, this leaflet closing with the words (as translated) "I humbly request you to elect her with as much trust and devotion you have had in electing me. She has the courage of serving the country as myself." It is also signed by him and issued from No. 1, Hill street, Colombo, on March 19, According to the evidence this is his professional address, their private residence being at the time in New Chetty street. The leaflets were duly printed and delivered to the respondent at No. 1, Hill street, and were paid for by her on May 2.

On March 22, the printer received a further order for 10,000 copies of the same leaflet in Sinhalese (P3). This order was duly carried out, and delivery made to respondent on March 23, payment therefor being made on May 2.

In her evidence the respondent states that she only came to know of these leaflets just before they were sent to the printers, and that her husband was responsible for them. She states they were composed

without reference to her, but she admits they were shown to her before they were sent to the printers. She clearly approved of what was being done in respect of them, and the evidence of the Manager of the press where they were printed is definite to the effect that the orders were placed by her, the leaflets were delivered to her, and were paid for by her. The manuscript of P 2 sent to the printer is admitted by her election agent to be in the handwriting of Dr. Saravanamuttu, and neither respondent, her election agent, nor Dr. Saravanamuttu denies responsibility for the issue of this leaflet as it was printed in English, Sinhalese, and Tamil.

The evidence of respondent and her election agent goes on to show that the leaflets were divided up into batches and sent out to the workers in the different sections into which the electoral area had been divided up, for distribution to the voters. The distribution of this appeal by Dr. Saravanamuttu was made on a systematic basis by means of the machinery set up by the election agent of the respondent to further the campaign of the respondent, and in such a way so as to reach all communities in the constituency. They both state that, with the exception of a few kept for their own files, all the leaflets would be distributed within forty-eight hours of receipt. I am not satisfied, however, as I point out later, that this is correct, as both otherwise state that no canvassing was done before nomination day. No evidence was further called to show when the various workers would have completed distributing the batches of leaflets issued to them and I have do doubt, as the evidence shows, that voters received copies of this appeal by Dr. Saravanamuttu to support the respondent even after the nomination of the candidates on April 14. Even if that had not been so, the leaflets were never withdrawn, nor did the respondent ever repudiate or disown this plea to the electors by Dr. Saravanamuttu on her behalf, but she took full advantage of it, as the evidence of her electoral agent shows, throughout her electoral campaign up to date of polling, May 28. The importance of the support of Dr. Saravanamuttu for any candidate for Colombo North is stressed by her election agent. He states Dr. Saravanamuttu desired his wife's return. He calls him a big asset, a very influential person in the constituency, and one who would be of great use in respect of the respondent's candidature. With this both Dr. Saravanamuttu and his wife agreed, the former admitting but only "to some extent" that his leaflets would obtain voters for her.

It has been urged by counsel for the respondent that the issue of these leaflets by Dr. Saravanamuttu could not be said to be a canvassing on behalf of the respondent, as the word "canvass" is used in Article 74 (d) of the Order in Council. He sought to show that the word "canvass" as used there imported some personal contact between the person making the request and the person to whom it is made, and further would only apply to one individual dealing with another. I am unable to agree with his argument. To adopt such an interpretation of the term would necessitate giving it a very narrow and restricted meaning entirely different from its ordinary and general meaning, for which I can see no justification in the Order in Council. Even the respondent's election agent was forced to admit that in terms (although he says it was not intended) the appeal contained in the leaflets (P 1-3) was a canvassing of

votes for the respondent. I see no reason to conclude that the word is used in any other sense but its ordinary meaning when applied to elections,—a solicitation for votes or for support, which solicitation may be made in various ways, such as by personal request to individuals, by speeches, or by the distribution of leaflets such as these. Both Dr. Saravanamuttu and his brother stated that the leaflets were issued only for the purpose of conveying to electors the fact that Dr. Saravanamuttu was a consenting party to his wife standing for election. It was suggested this was necessary, because they said they were dealing with an ignorant electorate in case a report was spread by other candidates that she was standing without his approval. I regret I am unable to accept their evidence on this point. The leaflets speak for themselves. Both the witnesses are professional men, with a knowledge of the meaning of words, and they had to admit that the leaflets went far beyond any such alleged intention. The reason they put forward, I have no doubt whatsoever, was not true.

Counsel then urged, if I am unable to accept his argument that the preparation and distribution of these leaflets was not a canvassing by Dr. Saravanamuttu, nevertheless there was no evidence to justify a finding that he had been personally engaged by the respondent as a canvasser or agent within the meaning of Article 74 (d). That article has been adapted from 31 & 32 Vict. c. 125, s. 44<sup>1</sup>. That section provides for the voidance of an election where a corrupt agent is employed, and requires a personal engagement by the candidate to be proved. In the *North Norfolk case*<sup>2</sup> Blackburn J. sets out what this means. In that case a person Mr. P. who was on the schedule of persons guilty of corrupt practices acted as Chairman at one or two public meetings, proposed the respondent as a candidate, attended meetings of the respondent's committee, on several occasions acted as its chairman and as such signed handbills and circulars. It was not proved, however, that there had been any direct personal engagement of Mr. P. by the respondent, nor in fact had he ever known that he had acted as chairman of his committee, although his agents knew it and also knew that Mr. P. was on the schedule. Blackburn J. states, after citing section 44,

“It is to be observed in the first place that the legislature has carefully confined the operation of the enactment to the candidate having ‘personally engaged’ the person; therefore in order to bring the candidate, who is alleged to have committed the offence within the enactment, it is necessary that he shall have been personally guilty of that offence. I do not construe personal guilt in the sense of doing it with his own hand in order to bring him within the section. I do not think it is necessary to show that the candidate went and spoke to the scheduled man himself and said ‘act as my agent’, but I think the statute means that it must be brought home to his personal knowledge. If I send a man out to hire someone in order to shoot someone else, I am personally guilty of the murder if it is done, though I hire the murderer in a round-about way and though I may not know who ultimately did it. I think this section means that where what is done is done with the candidate's ‘knowledge and consent’ which is the phrase used in the section immediately preceding then it amounts to a personal engagement.”

<sup>1</sup> *The Parliamentary Elections Act, 1868.*

<sup>2</sup> 1 O'M. & H. 236.

The section immediately preceding plays the same part in the Statute as Article 79 does in the Order in Council.

The learned Judge goes on to point out that the employment used need not be paid employment, nor for the whole of the election. This interpretation of the section was approved and followed in the *Norwich case*<sup>1</sup>. It is applicable to the equivalent provisions of the Order in Council which I am called upon to construe, and following this authority I hold that Dr. Saravanamuttu was personally engaged by the respondent as a canvasser and agent, by means of these leaflets and canvassing to use his influence with the electors on her behalf, to solicit votes for her, and to help in her return as member for the constituency in his place. The first act by Dr. Saravanamuttu as her agent and canvasser, the preparation of the leaflets and their despatch to the printer, was done before he had in fact been reported under Article 79, but the distribution of his appeal continued after the report, and after the respondent was aware that he had been reported.

At this point it is necessary to consider some further proceedings which took place in the hearing of the petition against Dr. Saravanamuttu after he had been declared to be unseated on March 8, as they affect this petition. The learned election Judge issued his certificate on that date (exhibit P 9) as required by Article 78. Therein he sets out that in pursuance of Article 78 of the Order in Council he held and determined that Dr. Saravanamuttu was guilty of the corrupt practices of bribery and undue influence in connection with the said election, and that his election was void. He further names in the certificate other persons described as Dr. Saravanamuttu's agents who were also found guilty of the corrupt practice of undue influence. This certificate is final and conclusive as to the validity of the election. Inasmuch, however, as it goes on to state that Dr. Saravanamuttu and others had been found guilty of certain corrupt practices, and was forwarded to His Excellency the Governor, counsel for petitioners before me urged that it was not only a certificate under Article 78, but also a report to the Governor under Article 79. That view of the exhibit (P 9) I am unable to accept for reasons which will appear, although in fact the document does report him as being guilty of corrupt practices. The subsequent proceedings show it was not intended to be the report required of the election Judge under the provisions of Article 79.

On the construction of these Articles, and the procedure in respect of certificate and report for which they provide, I have had the benefit of hearing counsel on both sides, and also the Acting Solicitor-General, to whom I am indebted for the help given me.

Article 79 (2) has been adapted from the provisions of 46 & 47 Vict. c. 51, s. 38. The purport of the provisions seems to be that no one should be reported for any corrupt or illegal practice, who has not had an opportunity of being heard in his own defence. There would appear to be no uncertainty as to the practice followed in England, as set out in the cases to which the Acting Solicitor-General has referred. There is no suggestion there that any further proceedings subsequent to judgment are denoted. The indications are all to the contrary. In the *East*

<sup>1</sup> 2 O.M. & H. 38.

*Kerry case*<sup>1</sup> Kenny J. set out at the end of his judgment, after stating that the respondent would be declared not to have been duly elected and that the election was void, the names of persons, including the respondent, who would be returned as guilty of corrupt practices. In the *Barrow-in-Furness case*<sup>2</sup> Field J. at the conclusion of his judgment declaring the seat void stated that the respondent and his election agent would be reported for an illegal practice. One must infer that any person entitled to notice under section 38 duly received such notice before judgment. It must be noted, however, that the requirements of our Order in Council in respect of procedure do not go so far as section 38. In the *East Dorset case*<sup>3</sup> applications for relief were heard before the termination of the proceedings, and at one point Pickford J. formally asked Lady Wimborne, who was a witness and had given evidence, whether she had any cause to show against being reported. The same practice is denoted in the *Monmouth Boroughs case*<sup>4</sup>. On this matter I am in entire agreement with the argument of Mr. Illangakoon and have no doubt that under the provisions of the Order in Council the certificate and report are required to issue at the same time, namely, at the conclusion of the trial. In practice in England in reported cases one finds the certificate and report contained in one document (*The Gloucester case*<sup>5</sup>; *Grant v. Overseers of the Parish of Pagham*<sup>6</sup>).

I conclude, however, from what counsel for respondent has stated, and he was also counsel for Dr. Saravanamuttu in the petition against him, that there was some uncertainty on that occasion as to what practice should be followed in view of the provisions of Article 79 (2) which sets out that before a person is reported by an election Judge under Article 79, he should be given an opportunity of being heard. There can, of course be no doubt that Dr. Saravanamuttu, as a party to the election petition against himself, had had full opportunity of being heard in those proceedings, and had been heard before judgment was delivered on March 8. He stated in evidence before me it had been a very exhaustive inquiry. In the uncertainty which prevailed, however, as to the practice to be followed under a new Order in Council it seems to have been thought, so I gather, that Article 79 (2) provides for further proceedings to be held after judgment and certification, before any report could be sent to the Governor under Article 79, giving all parties a further opportunity of showing cause why they should not be reported.

On that construction of the article Dr. Saravanamuttu was on March 8 called upon by the election Judge to show cause (exhibit R 16) why he should not be reported to His Excellency the Governor in respect of the offences, which it had been found by the judgment of the election Judge he had committed. He was allowed time, and the learned election Judge sat again to hear evidence on March 15, 16, and 17, and on the latter date intimated to the persons called upon to show cause that he would make his report to the Governor in the ordinary course. His proctor in the election petition and in the subsequent proceedings was his brother,

<sup>1</sup> 6 O'M. & H. 58.

<sup>2</sup> 4 O'M. & H. 82.

<sup>3</sup> 6 O'M. & H. 55.

<sup>4</sup> 5 O'M. & H. 175.

<sup>5</sup> 3 O'M. & H. 75.

<sup>6</sup> 37 L. T. 404.

Mr. N. Saravanamuttu, who is also the present respondent's election agent. From the evidence before me I have no doubt that both Dr. Saravanamuttu and his proctor were aware on March 17 that he had failed to show cause against being reported and that he was to be reported for the offences, which it had been found, as set out in the judgment and certificate of March 8, he had committed. The latter did not convince me that he was to be believed when he stated that Dr. Saravanamuttu had not put the whole of the case, which he wished to present to the election Judge in respect of the charges against him, before the learned Judge prior to the proceedings to show cause. On this point he is not in agreement with Dr. Saravanamuttu, and I cannot conceive any proctor who appreciates his duty and who knows the finality of the certificate of the election Judge under Article 78 not putting all proper and relevant material before the election Judge before he comes to a conclusion as to the validity of the election. The respondent also, I am satisfied, was fully aware on March 17 that Dr. Saravanamuttu was to be reported to the Governor in respect of the offences of which he had been found guilty on March 8. She admits she read the judgment the next day, on which date it was also decided she was to come forward to contest the seat.

The report of the election Judge was in fact made on March 22 (exhibit R 17). It was of course not intimated to the parties, being a communication to His Excellency the Governor, although the parties were aware on March 17 that Dr. Saravanamuttu was to be reported in due course, which under the circumstances must have meant within a few days at the most. He was not a reported person until March 22, but any employment as agent or canvasser of a person who was to be reported under these circumstances, after the person knew he was to be reported and that the report might go in at any time, would obviously be a very risky thing to do. The report was published in the *Gazette* of April 8 under the provisions of Article 79 (4) of the Order in Council, in order that the registering officers might have notice and take the necessary action in respect of the register of voters. This publication is not for the benefit of the parties reported. There is no need for any such provision either in the case of the issue of the certificate respecting the validity of the election, or in the case of the report, since both follow as a matter of course on the judgment, if any person is found to have committed any corrupt or illegal practice and if any report is to be made at all on the conclusion of the trial, under the provisions of the Order in Council. The parties who have been heard and others, who the circumstances may require should be given an opportunity of being heard during the proceedings before its conclusion, have full notice at the time judgment is given of any electoral offences they are found to have committed and of the result which will necessarily, under the Order in Council, follow on those findings.

It has been urged for respondent, relying upon the publication of the report in the *Gazette* of April 8, that she did not know that Dr. Saravanamuttu had been found guilty of a corrupt practice by the report of an election Judge until that date, and the pamphlets (P 1-3) which were drawn up by him having been distributed some time before that date, there was no employment by her of him as a canvasser after she became

aware he was a reported person. I have no doubt, as I have stated before, that some of those leaflets reached the voters by distribution subsequent to April 8, but even if it had not been so, I do not think it is open to respondent to plead ignorance of the report after the day on which it was made, namely, March 22. She was aware that it was to issue any time after March 17. She was aware on March 8 that the election Judge had found that corrupt practices had been committed by Dr. Saravanamuttu, and she was aware on March 17 that he would be reported to His Excellency the Governor in due course. Her evidence as to whether or not she knew it was right for Dr. Saravanamuttu to take part in her campaign, and as to the point of time at which she knew it was wrong for her husband to assist her is contradictory; she does admit however more than once that after March 22 she was aware he could not lawfully help her, but that up to that date there was no reason why he should not have accompanied her anywhere in the electorate on her campaign, although she says he did not do so. On that latter point of canvassing with her I regret I am unable to accept her evidence for the reasons given below.

I come now to the second portion of the evidence led in support of the charge under Article 74 (d).

[His Lordship, after discussing the evidence, proceeds.]

On the second portion of the evidence in this case, therefore, I have come to the conclusion that the evidence of the witnesses whom I have named goes to show that Dr. Saravanamuttu actively in person joined in the campaign in support of his wife, even after nomination day. There is ample evidence, in my opinion, however, in the first portion of the case dealing with the leaflets P 1 to P 3, in the evidence and admissions of the respondent, her election agent, and Dr. Saravanamuttu himself, to justify the conclusion that the ground for declaring the election of the candidate void, as set out in Article 74 (d), had been fully established. My view of the evidence of the witnesses Simon Perera and Ahamadu Lebbe shows that the action taken by Dr. Saravanamuttu in respect of the issue of these leaflets to the voters was followed up by further steps on his part to obtain her return. In my conclusions I have borne in mind Mr. Soertsz's contention, based on the remarks of Baron Martin in the *Warrington case*<sup>1</sup> that a Judge ought not to upset an election unless satisfied beyond all doubt that the election is void. As pointed out there, the return of a member is a serious matter and not to be lightly set aside, but in this case I have not the least doubt on the evidence here that the respondent was returned as member for the constituency by the active and continuous help of a person who was found guilty of a corrupt practice by an election Judge within the terms of Article 74 (d), which help was readily and willingly accepted by her. In that event I am required to declare the election void and I shall so certify to His Excellency the Governor.

I am further required, under the provisions of Article 79, to certify at the conclusion of the trial whether any corrupt or illegal practice has, or has not been proved in terms of that Article. The petitioners alleged

<sup>1</sup> 1 O'M. & H. 44.

certain corrupt practices in their petition but led no evidence in support of them. As to whether any illegal practice has been proved is a matter of greater difficulty. Under Article 65 of the Order in Council it is enacted that certain employments for payment or promise of payment are illegal. I can find nothing in the Order in Council to the effect that the employment of a reported person is an illegal practice, unless it can be brought within the provisions of Article 65, which is not the case here. Whilst such employment is unlawful in this respect, that it will have the effect, if satisfactorily proved, of rendering the election void, unless it is also employment which is prohibited by Article 65, it does not comprise one of the practices which is termed an "illegal practice" within the meaning of the Order in Council. No argument or suggestion to the contrary has been made to me by any of the learned counsel who have appeared in the case, nor have I been able to find anything in the law in England on this point which shows that the law there is different. The offence of illegal employment is an illegal practice, but only when committed by the candidate, his election agent, or sub-agent (*Rogers on Elections, Vol. II., p. 369*). This is provided by 46 & 47 *Vict. c. 51, s. 21 (2)*. The illegal employment referred to, however, would appear to be that defined in section 17 of the Statute, and its schedules, from which Article 65 of the Order in Council has been framed. It is possible that the payments for the leaflets might be illegal payments under section 13 of the Statute, and so illegal practices, but it has not been suggested they can come within the terms of Article 64 of the Order in Council, which sets out what expenditure is illegal. There is no doubt, of course, under other sub-sections of Article 74, that an election can be declared to be void for other reasons than the proof of corrupt or illegal practices. I shall therefore report that no corrupt or illegal practices have been proved to have been committed.

I would finally add in fairness to the candidate that although in law she is responsible for the employment of Dr. Saravanamuttu as an agent and canvasser, willingly agreeing to his doing what he did to assist in her election, I have no doubt on the evidence she was not given any opportunity by either Dr. Saravanamuttu or her election agent for taking up any other position. There is nothing to suggest she wished to do so, but had she done so, she would probably not have been put forward by them as candidate. To make use of the words of her election agent, she was put forward by the family and she did what she was told to do in respect of her campaign, relying, I have not the least doubt from the evidence led before me, on the experience and assistance of her husband. The latter had been his own election agent in his electoral campaign. She cannot of course say she was not a free agent, but the responsibility for her being unseated under the provisions of Article 74 (d) rests primarily and chiefly upon Dr. Saravanamuttu and her election agent, her brother-in-law.

The result is that the election is declared void. The petitioners are entitled to their costs, save in regard to the witnesses Bonnie Wijegunaratne and Canagasabapathy, and save in so far as any expenses have been incurred by them in respect of the charges that were not pursued.

*Election declared void.*