



At the trial the petitioners led evidence for the purpose of showing that certain persons who were supporters of the United National Party held public meetings in support of the respondent. The petitioners' case is that these persons were agents of the respondent and the expenses incurred by them should have been included in the returns sent under the provisions of section 70 of the Ceylon (Parliamentary Elections) Order in Council, 1946 (which shall hereinafter be referred to as the Order in Council). The learned Election Judge has held that these meetings relied on by the petitioners were not meetings that were held in respect of the "management and conduct of the respondent's election" but were held by persons who were espousing the respondent's cause on their own and therefore the expenses incurred by them do not come within the purview of the term "election expenses" within the meaning of section 70 of the Order in Council. The learned Election Judge has also held that the persons who held these meetings and incurred the expenses were not agents of the respondent and the return sent by the respondent is not false to the knowledge of the respondent. Counsel for the petitioners contended in appeal that the learned Election Judge has misdirected himself on questions of fact and held that the agency of these persons who held the meetings was not proved. It is unnecessary for us to decide the matters raised by Counsel for the appellant since this appeal should be dismissed on another ground.

The petitioner's case is that persons who belonged to the United National Party, in holding meetings, acted as agents of the respondent and incurred expenses which have not been included in the returns sent by the respondent. If the distinction between an "election agent" and an agent for whose acts of bribery and corruption the seat of the successful candidate could be rendered vacant is appreciated, then it becomes clear on a perusal of the provisions of the Order in Council that expenses incurred by an agent other than an election agent, or the candidate, need not be set out in the return sent by the candidate as election expenses as required by section 70 of the Order in Council.

Under the Order in Council only one election agent can be appointed for each candidate (vide section 59 (4)). But the election law recognised other persons as agents who take part in the conduct and management of the election with the consent and acquiescence of the candidate. Subject to certain exceptions contained in the Order in Council, no monies can be paid and no expenses can be incurred by an election agent or the candidate in the conduct of the elections in excess of Rs. 7,500 or an amount equal to thirty cents per elector in the electoral district, whichever amount shall be the larger. (Vide section 66 of the Order in Council.)

Section 62 of the Order in Council enacts that, except as permitted by or in pursuance of this Order, no payment and no advance or deposit shall be made by a candidate at an election, or by an agent on behalf of the candidate, or by any other person at any time, whether before, during or after such election, in respect of any expenses incurred on

account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate. It also provides that any person who makes payment in contravention of this section is guilty of an illegal practice.

In this case the respondent is his own election agent and if it was sought to prove that the respondent has spent monies through agents other than the election agent, charges should have been laid against such persons for committing an illegal practice under section 62 of the Order in Council.

A perusal of section 70 (1) of the Order in Council shows that the return and declaration in respect of election expenses which should be sent under section 70 of the Order in Council are only confined to the items referred to in that section. Section 70 (1) enacts as follows :

“ 70 (1) Within thirty-one days after the date of publication of the results of an election in the Government Gazette the election agent of every candidate at that election shall transmit to the returning officer a true return, in this Order referred to as the “ return respecting election expenses ” substantially in the form P in the First Schedule to this Order, containing detailed statements as respects that candidate of :—

- (a) all payments made by the election agent together with all the bills and receipts referred to in subsection (1) of section 63, which bills and receipts are in this Order included in the expression “ return respecting election expenses ” and the dates of payment of all sums for which no receipt is attached ;
- (b) the amount of personal expenses, if any, paid by the candidate ;
- (c) the disputed claims so far as the election agent is aware ;
- (d) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an election judge or judge of the Supreme Court ;
- (e) all money, securities and other valuable considerations received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise.

(2) The return respecting election expenses shall be signed by the election agent and shall be accompanied by declarations by the candidate and his election agent which shall be respectively in the forms Q and R in the First Schedule to this Order and shall be on oath before a Justice of the Peace. ”

Even conceding for purposes of argument that the persons referred to by the petitioners spent monies and incurred expenses in holding meetings in support of the respondent and they were the agents of the respondent, still the expenses incurred by them do not come within the purview of section 70 of the Order in Council in respect of which it is obligatory on the part of the respondent to send a return.

Counsel for the petitioners was unable to satisfy us that monies spent by agents other than the election agent in the conduct and management of the election are caught up under any of the items of the provisions in section 70 of the Order in Council. Mr. Coomaraswamy sought to bring in the items of expenses he was relying on under the heading “valuable consideration received by, or promised to an election agent” in section 70 (e) of the Order in Council.

Section 70 (1) (e) only refers to money, securities and other valuable considerations received by or promised to the election agent from or by any candidate or any other person for the purposes of expenses incurred on account or in respect of the management of the election. Applying the *ejusdem generis* rule the term “valuable consideration” must be given the meaning it has under the English law. Expenses incurred on their own responsibility by persons who hold public meetings in support of a candidate cannot come under the provisions of section 70 (1) (e) of the Order in Council. Even if they come within the scope of section 70 of the Order in Council, such expenses were not “received by or promised to an election agent”. If it was the intention of the legislature to catch up such expenses then the legislature might have included it under another clause after section 70 (1) (e) of the Order in Council.

The declaration which should be signed by the candidate should be in form Q and the one to be signed by the election agent is in form R. In these declarations the election agent, as well as the candidate, after swearing or affirming the truth of the return of the election expenses, should also swear or affirm that no other expenses of any nature whatsoever have to his knowledge or belief been incurred in or for the purpose of his candidature. Counsel for the petitioners urged that the Forms form part of the statute. As the forms are referred to in section 70 of the Order in Council it is obligatory to follow these forms and they form

part of the statute. If the contention of the Counsel for the petitioners that all other expenses other than those caught up by section 70 (1) (e) should also be included in the return is correct, then the penultimate part of the declaration referring to other expenses incurred should be deleted by the persons sending a declaration. But this declaration is a peremptory requirement of the statute. Mr. Coomaraswamy ventured to submit that the penultimate clause in these declarations should be deleted. The course suggested by Mr. Coomaraswamy militates against his contention that the forms are part of the statute. This court cannot construe the provisions of a statute by omitting or adding portions of it, usurping the functions of the legislature.

I am of the view that in the circumstances of this case there was no obligation on the part of the respondent, who was his own election agent, to include the expenses of persons who held meetings on their own in his support (even if it is held that they are agents for the purpose of election law and expenses were incurred in the "conduct and management of the election"), since such persons are not his "election agents" within the meaning of the Ceylon (Parliamentary Elections) Order in Council, 1946.

For these reasons I dismissed this appeal with costs on the 19th of March 1967.

H. N. G. FERNANDO, C.J.—I agree.

SIVA SUPRAMANIAM, J.—I agree.

*Appeal dismissed.*

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