1970 *Present:* H. N. G. Fernando, C.J., Silva, S.P.J., and Sirimane, J.

P. SAMARAWEERA, Appellant, *and* R. M. BANDARA and 2 others, Respondents

Election Petition Appeal No. 1 of 1970—Welimada

Parliamentary election—Nomination papers of a candidate—Written consent of the candidate—Imperative requirement—Objections to a nomination paper—Scope and effect—Ceylon (Parliamentary Elections) Order in Council (Cap. 381), ss. 28, 30, 31 (1), 51, 88 (2) (b).

In a Parliamentary election, the provision in section 28 (2) of the Ceylon (Parliamentary Elections) Order in Council that the written consent of the candidate must be annexed to or endorsed on the nomination papers by means of which he is nominated as a candidate is an imperative requirement. Omission to comply with this provision permits the Returning Officer, upon objection taken before him on this ground on the Nomination day under section 31 (1) (*b*), to reject the nomination papers and to declare the opposing candidate (if there is only one) to be elected uncontested. In such a case, it cannot be contended that the provisions of section 51 are applicable and that the effect of the omission of the candidate to give his written consent can be considered only by an Election Judge in the event of an Election Petition filed after the poll and not by the Returning Officer on the Nomination day.

" Although the opening words of section 31(1) state that objections may be made *to a nomination paper*, the succeeding paragraphs of the section permit several objections which are not properly objections *to a paper*, but are instead objections *to a nomination*."

ELECTION Petition Appeal No. 1 of 1970—Welimada.

C. Ranganathan, Q.C., with *D. S. Wijewardene, V. Basnayake* and *K. Kanagaratnam* for the petitioner-appellant.

K. Shinya, with *P. A. D. Samarasekera* and *N. Singaravelu*, for the 1st respondent-respondent.

N. Tiruchella, Senior Crown Counsel, with *G. P. S. Silva*, Crown Counsel, for the 2nd and 3rd respondents-respondents.

Cur. adv. vult.

November 9, 1970. H. N. G. FERNANDO, C. J.—

On the Nomination Day appointed for the election of a Member of Parliament for Electoral District No. 126, Welimada, the Respondent to this appeal was declared by the Returning Officer to be elected uncontested as such Member. The election of the respondent was subsequently challenged in Election Petition No. 1 of 1970 filed by the present appellant. This appeal is against the determination of the Election Judge dismissing the petition and holding that the respondent was duly declared elected.

On the Nomination day, three papers were handed by the appellant to the Returning Officer purporting to nominate him as a candidate for the election. Objection to these papers was taken on the ground that the appellant's written consent was not annexed to or endorsed on any of the three papers in compliance with s. 28 (2) of the Parliamentary Elections Order in Council, and this objection was upheld by the Returning Officer. The appellant attempted at the trial to establish that the omission to comply with s. 28 (2) had been rectified before the expiration of the time fixed for the nomination of candidates, but the learned trial Judge decided that the omission had not been rectified within time. In view of decisions of this Court defining the limits of its jurisdiction to reverse findings of fact reached by Election Judges, Counsel for the appellant did not attempt to challenge the correctness of that decision of the trial Judge.

The submissions of Counsel for the appellant raised only matters of law, for the discussion of which it is necessary to set out here the provisions of ss. 28 and 31 (1) of the Order in Council :—

> "28. (1) Any person eligible for election as a member of Parliament may be nominated as a candidate for election.
>
> (2) Each candidate shall be nominated by means of one or more, but not more than three, separate nomination papers each signed by two persons, whose names are in the register of electors for the

electoral district for which the candidate seeks election, as proposer and seconder respectively. The written consent of the candidate must be annexed to or endorsed on each nomination paper.

(3) The signature of the proposer and the seconder shall be attested by a Justice of the Peace, a Commissioner for Oaths or a Notary Public.

(4) Every nomination paper shall be substantially in the Form G in the First Schedule to this Order.

(5) The returning officer may, at any time between the date of the publication of the Proclamation or notice referred to in s. 27 and one o'clock in the afternoon of the day of nomination, supply a form of nomination paper to any registered elector requiring the same, but nothing in this Order shall render obligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper used be substantially in the form prescribed by this Order.

31. (1) Objection may be made to a nomination paper on all or any of the following grounds but on no other ground, namely :—

(*a*) that the description of the candidate is insufficient to identify the candidate ;

(*b*) that the nomination paper does not comply with or was not delivered in accordance with the provisions of this Order ;

(*c*) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected a Member of Parliament ;

(*d*) that the provisions of section 29 have not been observed ;

(*e*) that, by reason of his conviction for a corrupt or illegal practice or by reason of the report of an Election Judge in accordance with the law for the time being in force relating to the election of Members of Parliament, the candidate is not capable of being elected as such a Member, and, for the purposes of this paragraph, a copy of the judgment or order of the Court by which he was so convicted certified by the officer of the Court having custody of such judgment or order supported, in any case where there was an appeal against such conviction, by a copy of the order of the Supreme Court on such appeal affirming such judgment or order, or a copy of or an extract from the *Gazette* in which such report is published as required by subsection (2) (*a*) of section 82D, shall be conclusive proof of such incapacity. "

Counsel's principal submission was that s. 31 (1) does not permit objection to be taken on the ground that the written consent of the candidate is not annexed to or endorsed on the nomination paper by means of which he is nominated as a candidate. I will now summarise the arguments which were urged in support of this submission.

Sub-section (4) of s. 28 provides that a nomination paper shall be substantially in the Form G in the First Schedule. That Form requires particulars to be given of the full name and the address and occupation of the candidate, and the names of the proposer and seconder and their respective numbers in the Electoral Register, and provides for the attestation of the signatures of the proposer and seconder. Thus the Form is clearly related to the requirement in the first sentence in sub-section (2) of s. 28 and in sub-section (3) of s. 28. The Form however bears no reference to the second sentence of sub-section (2) of s. 28, for it does not include either an item for the endorsement of the candidate's consent, or for a statement that such consent is separately annexed. Again, while sub-section (3) of s. 28 requires the attestation of the signatures of the proposer and seconder, there is no such requirement of attestation of the candidate's written consent to his nomination. By this lack of emphasis on the matter of the candidate's consent, the Legislature, it was argued, has indicated that it is a matter only of slight importance.

Yet another argument in support of the principal submission depends on the history of legislation governing elections to the Legislature of Ceylon. The Legislative Council Ordinance of 1910 did not require the written consent of the candidate to be either endorsed on or annexed to a nomination paper, and this requirement was only imposed in the State Council Order in Council of 1931. It also appears that in England there was no provision for such written consent until it was imposed in the Representation of the People Act of 1949. The fact that nominations were conducted at earlier stages without a requirement for the signification of the candidate's consent, was relied on as showing the comparative unimportance of that requirement.

Counsel relied strongly on the phraseology in s. 31 (1), that objection may be made "*to a nomination paper*". Since s. 28 (2) permits the written consent of the candidate to be *annexed* to a nomination paper, and since the Form G does not provide for the signification thereon of such consent, the written consent whether endorsed on the paper or annexed to it, is something distinct from the paper itself and is not an integral part of the nomination paper. Thus, argued Counsel, an objection that there was failure to signify the candidate's written consent is not an objection *to the nomination paper*, and is therefore not an objection contemplated in s. 31 (1).

It is convenient to deal firstly with the last argument, which appears to be fundamental.

Let me consider in this connection one ground of objection which is stated in paragraph (*b*) of s. 31 (1), namely that the nomination paper "was not delivered in accordance with the provisions of this order". Such an objection is not truly an objection *to* the nomination paper;

if the paper accords completely with Form G, then such an objection is not to the paper itself, but depends on an extraneous fact, namely the lack of due delivery of what is in fact a proper nomination paper.

Paragraph (c) of s. 31 (1) provides for an objection that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected a Member of Parliament. Let me take the very example which Counsel cited, namely that a nomination paper describes the candidate as a Permanent Secretary or as a District Judge. Here also, the nomination paper itself if correctly in the Form G is beyond reproach. The objection is not that there is any defect in the paper itself, but that the particulars correctly given in the paper establish, on grounds stated in other provisions of law, the extraneous fact of the candidate's disqualification.

Again, paragraph (*d*) permits an objection on the ground "that the provisions of s. 29 have not been observed", namely that the proper deposit has not been made. In this case too, the objection is not in any way directed *to* the nomination paper, but relates to a quite distinct matter.

The new paragraph (*e*) recently added in s. 31 (1) permits an objection on the ground that a candidate is disqualified by reason of a conviction for a corrupt or illegal practice. Such an objection clearly raises a matter which is not in any way connected with the nomination paper itself or the particulars therein stated. Consideration of such an objection will require examination of the nomination paper purely for the purpose of identifying the candidate; but the question whether he is a person against whom there has been a conviction of the nature referred to in paragraph (*e*) is quite unrelated to the nomination paper.

It thus appears that, although the opening words of s. 31(1) state that objection may be made *to a nomination paper*, the succeeding paragraphs of the section permit several objections which are not properly objections *to a paper*, but are instead objections *to a nomination*. Since such objections on quite extraneous grounds are expressly permitted, the language "objections may be made *to a nomination paper*" does not bear its ordinary grammatical meaning in the several contexts which I have now examined.

Paragraph (*b*) of s. 31(1) permits objection on the ground that the nomination paper "does not comply with the provisions of this Order". The objection taken in the instant case is prima facie covered by paragraph (*b*), the objection being that there was no compliance with the provision in s. 28(2) that the written consent of the candidate be endorsed on or annexed to the nomination paper. Counsel's submission, based on the language of the opening clause in s. 31(1), is that such an objection is not truly an objection *to a paper*. Considering that in many contexts the words "objection to a nomination paper" are merely a term of art,

I see no justification for giving those words their strict meaning in relation to the one ground that the paper "does not comply with the provisions of this order".

Counsel's argument, to the effect that the endorsement or annexure of the candidate's written consent to his nomination does not form a part of the nomination paper, was designed to base upon that premiss the further argument that the objection in this case was not an objection *to the nomination paper* within the language of s. 31(1). But even upon that premiss, my reasons have been stated for the conclusion that the objection is covered in paragraph (*b*) by the words "that the nomination paper does not comply with the provisions of the Order".

The submissions earlier summarised involve the contention that no sanction attaches to a failure to signify a candidate's written consent to his nomination. There are in my opinion two answers to this submission—firstly, the language of s. 28 (2) "the written consent of the candidate *must be* annexed to or endorsed on each nomination paper" is to all appearances imperative; and secondly, an examination of s. 31(1) has shown that the objection taken in this case is referable to the ground stated in paragraph (*b*), that the nomination paper "does not comply with the provisions of this Order". I regret that I can derive little assistance from the fact that the requirement for this written consent was not considered necessary in Ceylon until 1931, and in England until 1949. One enactment of the Legislature surely cannot be considered to be more or less important than another because it was passed into law before or after the other. For instance, is an objection that a candidate is disqualified for election by reason of his conviction for a corrupt practice to be regarded as less important than all other objections, because paragraph (*e*) of s. 31(1) was enacted only in 1970 ?

One of Counsel's submissions was that there is a sanction against the failure to signify a candidate's written consent, but that the sanction operates, not on nomination day, but thereafter. According to this submission, the objection taken against the appellant should have been rejected by the Returning Officer; but if the appellant had ultimately been elected after the poll, then his election could have been challenged on an Election petition on the ground of the failure to signify his consent to nomination. At this stage, it was argued, the election could be declared void if the Election Judge was satisfied that the appellant had not in fact consented to his nomination; but if the Judge was satisfied that the appellant had in fact consented, then the election would not be declared void because under s. 51 the Judge could hold that the failure to comply with s. 28 (2) was not material for the reason that "the election was conducted in accordance with the principles laid down in the Order in Council and the failure to endorse the consent has not affected the result of the election".

With respect it seems to me that this argument is based on a purely theoretical and unrealistic supposition. If in fact a candidate had not consented to his nomination, but is ultimately elected, there can in

common sense be only two possible eventualities thereafter; the first that the candidate remains unwilling to be a Member of Parliament, in which event he would obviously resign his seat : the second that, if he does not resign, no Court would set at naught the wish of the Electorate by unseating a person who does desire to serve the Electorate as its Member of Parliament. If at the stage when an Election petition is filed he does wish to retain his seat, s. 51 will clearly prevent a Court from unseating him.

Counsel's submission that there is so to speak an alternative remedy available in the Election petition for a failure to signify a candidate's consent therefore fails.

The real burden of the appellant's complaint is that, if the requirement for a candidate's consent is regarded as imperative, the consequences are harsh in that he is debarred fron contesting an election because of what appears to be a trivial mistake. But this is no more trivial than the possibility that a candidate is delayed by a road accident and thus prevented from delivering his nomination papers until five minutes after the fixed hour for nomination, or the possibility that a seconder's number on the electoral register is by oversight not stated in a nomination paper. In such a case, if no objection is taken on nomination day, there will be an end of the matter, and perhaps a "sporting" opponent might be willing to refrain from taking the objection. But if the objection is in fact taken, it has to be allowed, however trivial the ground may appear. But, just as in the case of the objection in the present case, s. 51 will surely apply if the objection is not taken on Nomination day, and if the candidate is ultimately successful at the poll.

There was one other matter argued in the appeal. Section 30 provides that objection shall be made to the *Returning Officer*. In the instant case the objection was made in Sinhala, and the person to whom it was addressed was described in Sinhala by an expression which bears in English not the meaning "Returning Officer" but the meaning "Election Officer". It was argued on this ground that the objection was invalid in that it was not addressed to the Returning Officer. In fact however the document of objection was handed to the Returning Officer and it was that Officer who upheld the objection. The defect if any was thus purely technical. But in any event the language of s. 88 (2) (*b*), which refers to "returning officers, registering officers, presiding officers and *other* elections officers" shows that a returning officer is regarded as a species of "election officer". I see no substance in the contention that the objection was invalid on this ground.

For these reasons the determination of the Election Judge is affirmed and this appeal is dismissed with costs.

SILVA, S.P.J.—I agree.

SIRIMANE, J.—I agree.

Appeal dismissed.