

1970

Present : Wijayatilake, J.

A. THIRUNAVAKARASU, Petitioner, and K. THURAIRATNAM and
2 others, Respondents

ELECTION PETITION NO. 5 OF 1970—ELECTORAL DISTRICT NO. 82
(POINT PEDRO)

Parliamentary election—Election petition—One of the respondents a minor—Requirement of appointment of a guardian-ad-litem over him—Ceylon (Parliamentary Elections) Order in Council (Cap. 381), as amended by Act No. 9 of 1970, ss. 78 (3), 80A (1) (b), 83 (2), 86.

Although there is no specific provision in the Ceylon (Parliamentary Elections) Order in Council for the appointment of a guardian-ad-litem when a minor is made a respondent to an election petition, it is the duty of the petitioner to take steps to have a guardian-ad-litem appointed over the minor when the fact of minority is brought to the notice of the Court at any stage in the proceedings.

ORDER made in respect of Election Petition No. 5 of 1970—Electoral District No. 82 (Point Pedro).

C. Motilal Nehru, for the petitioner.

N. Satyendra, for the 1st respondent.

S. C. Chandrasenan, for the 2nd respondent.

October 28, 1970. WIJAYATILAKE, J.—

This raises an important question of procedure under our Election Law. This is an application by the petitioner to appoint the 3rd respondent as guardian-ad-litem over the 2nd respondent who happens to be a minor.

The respondents are present in Court. The minor is said to have been born in July, 1958. Mr. Satyendra submits that in proceedings of this nature there is no precedent for the appointment of a guardian-ad-litem over a minor respondent. He has drawn my attention to Section 86 of the Ceylon (Parliamentary Elections) Order in Council which provides for the procedure and practice in England to be followed where there is a lacuna. According to our procedure at Section 80A (b) any other candidate or persons against whom allegations of any corrupt or illegal practice are made in the petition have to be joined as respondents. Mr. Satyendra submits that under the English Law, there is no such requirement. In India, too, the procedure would appear to be the same as in England. However, in view of the fact that our (Parliamentary Elections) Order in Council has made special provision for the addition of respondents the question does arise whether a minor who has been so joined should be represented by a guardian-ad-litem. Mr. Satyendra has referred me to Section 78 (3) which, he submits, does not provide for an Election Judge to make an appointment of this nature. On the other hand, under the Common Law it is necessary that every minor, who is a party to a proceeding in Court, should be represented by a guardian-ad-litem. Mr. Satyendra further submits that in any event the present application is out of time in view of Section 83 (2) of the Ceylon (Parliamentary Elections) Order in Council. He accordingly moves that the instant application of the petitioner be dismissed and that the main petition of the petitioner also be dismissed.

Mr. Chandrahasan, learned Counsel for the 2nd respondent submits that the 2nd respondent being a minor, under the Roman Dutch Law, which is our Common Law, the petitioner would not be able to join a minor or to proceed against a minor without a due appointment of a guardian-ad-litem; and that the petitioner has failed to do so within the time limit of 21 days provided under the Ceylon (Parliamentary Elections) Order in Council. He accordingly supports Mr. Satyendra. He further submits that if the Court is so disposed to appoint a guardian-ad-litem, the 3rd respondent is not a fit and suitable person to be so appointed as the relations between the two are adverse as set out in the affidavit filed.

Mr. Nehru, Counsel for the petitioner submits that in the absence of any statutory provisions, he has, out of an abundance of caution, taken the step to have a guardian-ad-litem appointed, and he leaves it to Court to make such an appointment if it deems necessary. He has no objection to any other suitable party being appointed as a guardian-ad-litem if the minor so consents.

In my view, as there is a lacuna in the Ceylon (Parliamentary Elections) Order in Council in regard to the appointment of a guardian-ad-litem, it is the duty of this Court to see that the minor, who has been added as a party, is not in any way prejudiced by the absence of a guardian-ad-litem to watch her interests. Although the petitioner could have made this application simultaneously with the petition or within the period of

21 days as contemplated under Section S3 (2), I do not think that the petitioner should be penalised as there is a lacuna in our Order in Council and this Court is of the view that a minor respondent should under our Common Law be represented by a guardian-ad-litem. I would accordingly hold that although there is no specific provision in the Ceylon (Parliamentary Elections) Order in Council, where a minor is made a respondent to a petition, it is the duty of the petitioner to take steps to have a guardian-ad-litem appointed when the fact of minority is brought to the notice of Court at any stage in the proceedings. An order for costs should compensate for any inconvenience caused to the respondent in a fit case.

In view of the submissions made by learned Counsel for the 2nd respondent in regard to the suitability of the proposed guardian-ad-litem and as the Counsel for the petitioner has no objection, I refuse the application of the appointment of the 3rd respondent.

Counsel for the 2nd respondent states that there is an uncle of the minor, one Ratnam Poopalakrishnan, who is present in Court, who is a fit and suitable person to be so appointed. I question both the minor and the said Poopalakrishnan, and they consent. I accordingly appoint the said Ratnam Poopalakrishnan of Mather's Lane, Manipay, as guardian-ad-litem over the minor.

As this matter has come up for consideration for the first time I do not propose to make any order in regard to costs of the instant inquiry.

Guardian-ad-litem over the 2nd respondent appointed.
