

1937

Present : Soertsz J.

In re APPLICATION BY NEIL HEWAVITARANA FOR AN AUTHORIZED EXCUSE UNDER ARTICLES 60 (2) AND 72 OF THE CEYLON (STATE COUNCIL ELECTIONS) ORDER-IN-COUNCIL, 1931.

The Ceylon (State Council Elections) Order-in-Council, 1931—Authorized excuse—Delay due to ill-health—No want of good faith—Order made subject to the condition of amended return—Article 72 (3).

Where the petitioner applied for an authorized excuse under Article 72 of the Ceylon (State Council Elections) Order-in-Council on the ground that his failure to send the omitted details in a return furnished by him of his election expenses was due to ill-health,—

Held, where the errors and omissions in the return were not due to a want of good faith on the part of the petitioner, an order may be made allowing him an authorized excuse on condition that he makes an amended return, supplying all the omissions within a given date.

THE petitioner was nominated a candidate to represent the Udugama Electoral Division on January 15, 1936, and was declared elected on February 27 of the same year. The result of the election was published in the *Government Gazette* of March 10, 1936. He, acting as his own election agent under Article 56 (2), transmitted to the Returning Officer in terms of Article 67 a return of the election expenses. On April 15, the Returning Officer complained of certain omissions set out in the judgment. Owing to illness the petitioner could not send till May 2, the

¹ 34 N. L. R. 164.

² 2 C. L. Weekly, 416.

details of the omissions pointed out by the Returning Officer, who refused to accept the statement as the time within which the return should be furnished had expired and advised the member to ask for an authorized excuse from a Judge of the Supreme Court.

In the meantime the party noticed, a voter in the Udugama Electoral Division, petitioned the Attorney-General for sanction to prosecute the petitioner for corrupt and illegal practices. The Attorney-General replied that he proposed to await the decision of the Supreme Court. A copy of the petition was sent by the party noticed to his Lordship the Chief Justice who on October 9 requested him to file an affidavit stating the objections for the granting of an authorized excuse.

H. V. Perera, K.C. (with him *M. T. de S. Amarasekera* and *N. M. de Silva*), for petitioner.—The Returning Officer pointed out omissions in the return of the election expenses on April 15. As the petitioner was ill and was away at Bandarawela from April 10 to May 2, he could not comply with the request till May 4. The Returning Officer refused to accept the reasons given, because it was not made within thirty-one days after the date of the publication of the result of the election in the *Government Gazette*.

The petitioner did not give the stamped receipts for payments over Rs. 20 and did not give details as to amounts which had been spent in small sums. There was not a total failure. When his attention was drawn, he gave the necessary details.

While these proceedings were pending an intervenient had asked for sanction to prosecute under Article 67 (4) from the Attorney-General who replied that there was an application for an authorized excuse. When the matter came before the Chief Justice, he allowed him to intervene and asked him to state the facts in the form of an affidavit. An affidavit had been filed by the petitioner to meet the points raised by the intervenient.

Counsel cited *In re de Zoysa*¹.

E. A. L. Wijeyewardene, K.C., S.-G. (with him *M. F. S. Pulle, C.C.*), for the Attorney-General.—The position taken up by the petitioner with regard to posters is that they were a gift. It should have been stated under section 1 of the Fifth Schedule. It is imperative that these sections should not be treated as mere formalities. The petitioner states that the posters were printed in a way that no remuneration was expected. The travelling expenses need not be included under section 63. Personal expenses are defined in section 62.

Colvin R. de Silva (with him *A. H. C. de Silva*), for the party noticed.—*In de Zoysa (supra)* is a case dealing with a defeated candidate. A successful candidate must show a certain amount of care. A person cannot plead inadvertance when he should have known—*Rogers on Election, vol. II. (20th ed.), p. 236*; *In West Bromwich (1911), 6 O'M. & H. 286*. Evidently the petitioner had made his return with the Order-in-Council before him, since the headings in his return follow

¹ (1936) 38 N. L. R. 244.

section 2 of the Schedule to the Order-in-Council. It is not the amount but the person having the Order in Council in front of him to disregard the provisions of section 4 of the Schedule.

[SOERTSZ J.—He may have made payments which need not be supported by vouchers.]

Article 60 (1) requires the payments to be made by vouchers and receipts to be obtained.

With regard to section 1 of the Fifth Schedule, the petitioner says that he did not receive anything. Having the bills and the sections of the schedule before him, he cannot say that he omitted this item. The affidavit and the list of expenses are inconsistent.

[SOERTSZ J.—The petitioner could have spent Rs. 18,000, though he spent only Rs. 3,000. Can you, then, say that there is want of good faith?]

He is allowed to spend 30 cents per head, but he had spent less than 5 cents. He had worked the electorate from a distance. It is only towards the end of the campaign that he had rented out a house. These may be attempts to make the return as low as possible. The discovery of the poster expenses is of this nature. He has made an omission. He may have omitted others.

If an authorized excuse is allowed let it be made under section 72 (3). If an authorized excuse is allowed without requiring a correct return, no one can question any of the items. The Returning Officer, himself could not peruse the amended return, because he would have no authority to receive it. The intervenient had already applied to the Attorney-General to prosecute under Article 55 (2).

Cur. adv. vult.

June 13, 1937. SOERTSZ J.—

This is an application for an authorized excuse under section 72 of the Ceylon State Council Elections Order-in-Council of 1931 as amended in 1934 and 1935.

The petitioner was elected a member of the State Council for the Udugama Electoral Division on February 27, 1936. He was his own election agent and in compliance with the requirements of section 67 of the Order in Council, he made his return declaration respecting election expenses to the Returning Officer. On April 15, 1936, the Returning Officer addressed the petitioner in regard to certain omissions in the Return and requested him to send by return of post the omitted details. The petitioner sought to supply the omissions to which his attention had been drawn by his letter C of May 4, 1936, that is to say, after the time limit appointed for the Return being made had elapsed. The Returning Officer by his letter D of May 30, 1936, returned to the petitioner his letter of May 4, 1936, with its annexures stating that he was unable to accept the omitted details "except upon an order of an election Judge or a Judge of the Supreme Court". Hence this application.

The petitioner has submitted an affidavit in which he affirms that the delay in supplying the omissions in his return was due to ill-health. This has not been questioned by the Attorney-General or by the party noticed and I accept it as a sufficient excuse for the delay.

In regard to the omissions complained of by the Returning Officer, they were—

(1) That the names and descriptions of person from whom any money was received in respect of expenses incurred have not been shown under the head of "Receipts" in terms of paragraph 1 of the Fifth Schedule.

(2) That vouchers have not been attached in respect of the following payments of over Rs. 20 :—

	Rs. c.
Purchase of second hand car	325 0
Paying servants when occupying—	
Baddegama house	87 50
House expenses	220 0
Stationery	30 0
Postage	40 0

(3) That sums paid but for which no receipts are attached have not been set out in detail with dates of payments, names of payees, &c.

(4) That stamped receipts have not been furnished in support of payments of resthouse bill No. 404 of January 19, 1936, viz., Rs. 23.25—

	Rs. c.
Part payment to Messrs. Siedle Bros.	50 0
Part payment to Maha Bodhi Press	325 0

(5) That the declaration has not been signed on a rupee stamp.

The petitioner sought to supply these omissions and to explain their occurrence by stating in regard to—

(1) That he did not realize the necessity for stating anything under the said head as he did not receive any monies from any person in respect of his expenses, but spent his own money.

If that were so, the petitioner should have made a "nil" return under that head. But that is an omission that can easily be accounted for on the ground of inadvertence if no other question has arisen. A question has, however, been raised by the party noticed. He points out that the petitioner had obtained from Calcutta certain posters the cost of which has not been disclosed. The petitioner's explanation of this is that the posters were sent to him by a friend and well-wisher in Calcutta without expectation of payment and that no money has been paid for the posters. That may well be so. The Attorney-General says he is unable to challenge the petitioner's statement that he spent no money himself on account of these posters. But that does not conclude the matter, for rule 1 of schedule 5 provides that "under the head receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money . . . or equivalent of money was received in respect of expenses incurred on account of or in connection with, or incidental to the election . . . clearly, there must be an equivalent in money for these posters, namely, what they cost the friend or well-wisher.

In regard to this omission, therefore, the return made by the petitioner is still incomplete.

(2) That the omission to attach the receipt for Rs. 325 in respect of the second hand car was due to the fact "that the said receipt was mislaid". The petitioner now produces a receipt. The petitioner has not tendered any explanation as to his failure to obtain another receipt in place of the original he mislaid and to attach it to his return. He should have done then what he is seeking to do now; I therefore, find his explanation of this omission not quite satisfactory.

(2) (b) That vouchers were not attached in respect of the sums of Rs. 87.50 and Rs. 220 because they were paid in sums under Rs. 20 at a time. But in that case, he should have given a detailed statement showing how those amounts were made up. His present explanation is that he "from inadvertence overlooked and forgot that it was necessary to do so", and he now produces a detailed statement supported by two bass books.

(2) (c) That in regard to this item too, the petitioner pleads inadvertence. He says he incurred the sums of Rs. 30 and Rs. 40 respectively on account of stationery and postage from time to time in small sums.

(3) That no receipts were attached in respect of payments to messengers and for petrol purchased as the expenditure in these cases was also incurred from time to time in sums under Rs. 20. As I have already observed, the petitioner should have given details of the expenditure incurred. He does so now and pleads inadvertence in excuse of his omission. I do not consider this satisfactory.

(4) That the omission to furnish a stamped receipt in support of his payment of Rs. 23.25 on account of the resthouse bill in Hikkaduwa was due to its not being customary for resthouse keepers to give stamped receipts. But the petitioner knew or should have known, that the law required a stamped receipt and he should, in this instance, have obtained one from the resthouse-keeper. In my opinion, this explanation again is not satisfactory. This omission has not been supplied as the petitioner says the resthouse-keeper's whereabouts were not known. In regard to payments made to Messrs. Siedle Bros. and the Maha Bodhi Press, the petitioner says that those were only part payments and that considerable balances are still outstanding and that that was the reason for this failure to obtain receipts. This too, I consider an unsatisfactory explanation. The fact that these sums represent part payments is no reason whatever for not obtaining receipts in respect of them. The petitioner, has however, now supplied this omission. The petitioner offers no explanation of his omission to sign his declaration on a rupee stamp.

While seeking to supply the omissions pointed out by the Returning Officer, the petitioner has applied under section 60 of the Order-in-Council to pay certain amounts which are still due to certain firms on account of expenses incurred in connection with his election.

The party noticed has himself filed an affidavit in which in addition to the matters I have already referred to in regard to posters, he submits (a) that the petitioner's statement that he forwarded his return on April 8 is false, (b) that the petitioner incurred beyond the item of Rs. 23.25 shown in resthouse charges at Hikkaduwa, a sum of Rs. 60.07 which he has concealed, (c) that there are two other items of expenditure incurred by the petitioner in respect of his candidature which were not omissions from inadvertence, but the affirmant does not state them because he was directed, he says, by this Court to limit himself to matter set out in the petitioner's affidavit.

Addressing myself to the whole matter now, as I have already observed, I find that the explanation given by the petitioner for most of the omissions are not satisfactory, but I feel that some allowance must be made, at present, when the candidates are not quite conversant with all the details of election law.

It is probable, however, that the same indulgence will not be shown on future occasions, and candidates who choose to be their own election agents must make it a point to acquaint themselves with the requirements of the law. But the real question I have to consider is whether the delay in sending an amended return, and the errors and omissions in the original return arose "by reason of illness . . . of inadvertence or any reasonable cause and not by reason of any want of good faith on the part of the applicant".

In regard to this, the Solicitor-General stated that he could not question any of the statements made in the petitioner's affidavit. I am satisfied that the delay was due to illness. In regard to the errors and omissions although I find that the explanations offered are in many cases unsatisfactory, I am unable to say that they were due to any want of good faith on the part of the applicant. They appear to me to be the result of inadvertence, or perhaps, of carelessness. He was entitled to spend nearly twenty thousand rupees on his election. He shows an expenditure of Rs. 3,210.69 and it can hardly be said that he was trying to minimise expenses in order not to exceed the limit the law imposed on him.

As regards the allegations contained in the affidavit submitted by the party noticed, I am satisfied that the discrepancy in dates in the petitioner's petition to this Court and in the declaration made by the petitioner in making his return occurred in the manner stated by the petitioner in his affidavit of January 28, 1937. I am unable to hold on the material before me that the petitioner incurred an additional expenditure of Rs. 63.07 on account of Hikkaduwa resthouse charges in connection with his election. The petitioner's explanation is that that sum represents money spent by him on visits he made to that resthouse in connection with other business matters of his. I therefore, make order giving the petitioner leave in terms of section 60 (8) of the Order-in-Council to pay the amounts set forth in paragraph 15 of his petition to the parties mentioned therein and in terms of section 72 (3) of the Order-in-Council. I make order allowing him an authorized excuse on condition that he makes an amended return to the Returning Officer within six weeks of this order being communicated to him, supplying all the omissions (except the voucher for the resthouse charges) to which his attention has been called by the Returning Officer, and stating the equivalent in money of the gift of posters made to him, and showing in addition the payments he has now been authorized to make on account of disputed claims. This amended return must be accompanied by a duly stamped declaration.

The date of allowance of this excuse will be that date within six weeks of this order being communicated to the petitioner, on which he fully complies with the directions I have given.

Application allowed.

