

1966 Present : Manieavasagar, J.

S. W. DAHANAYAKE, Petitioner, and C. N. KANNANGARA,
Respondent

Election Petition No. 24 of 1965-Electoral District No. 66 (Deniyaya)

Election petition-Subsequent amendment-Additional security for costs-Quantum- Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 83 (1) (b), 83 (2), Schedule 3-Parliamentary Election Petition Rules, 1946, Rules 6, 12 (1) (2) (3).

Where a petitioner who has filed an election petition setting out three charges alleges subsequently that the respondent's return of election expenses reveals an illegal practice and, on this ground, applies to the Court to amend the petition, security in an additional sum of Rs. 2,000 would be sufficient compliance with Rule 12 of the Parliamentary Election Petition Rules, 1946.

INTERLOCUTORY Order in Election Petition No. 24 of 1965- Electoral District No. 66 (Deniyaya).

K. Shinya, with Hanan Ismail, Miss Manouri de Silva and Vernon Gooneratna, for the petitioner.

G. E. Chitty, Q.C., with J. W. Subasinghe, A. M. Coomaraswamy, M. Underwood and R. L. Jayasuriya, for the respondent.

Cur. adv. vult.

February 7, 1966. **MANICAVASAGAR, J.-**

The matter now before me is an application by the agent for the respondent that the petition be dismissed under Rule 12 (3) for non-compliance with Rules 12 (1) and (2) of the Parliamentary Election Petition Rules, 1946 in regard to security.

I think it necessary to state such facts as are relevant to the submissions made by Mr. Chitty for the respondent.

The result of the election of the Deniyaya Electoral District No. 66 was published in the Gazette of 29.3.65; the election petition was presented on 17.4.65 within the time prescribed by Section 83 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946 (hereinafter described as Order in Council). There were three charges set out in the petition and the petitioner prayed that the election of the respondent as a Member of the House of Representatives be declared void. The petitioner gave, within the time prescribed by Rule 12 (1), security in Rs. 5,000 which is the minimum amount he should have furnished. The respondent's return respecting election expenses was published in the Gazette of 7.5.65. The petitioner alleged that the return of expenses revealed an illegal practice by the respondent: he therefore applied to

this Court, within the time prescribed by proviso (b) to Section 83 (1), to amend the petition on this ground; the application was granted on 21.5.65 after an ex-parte hearing ; he gave security on 25.5.65 in an additional sum of Rs. 2,000 on the basis that by reason of the amendment the petition had four charges. Mr. Chitty submits that where a petitioner who has filed a petition in due time in terms of Section 83 (1) of the Order in Council, questions the return on the election on an allegation of illegal practice, two courses are open to him. He may file an election petition on this ground, in which event he should furnish security in the amount and within the time prescribed by Rule 12 (2). Such a petition would be in addition to the original petition and shall be dealt with as one petition. (Rule 6.) The other course is to amend the original petition with the leave of this Court as provided in Section 83 (2) of the Order in Council. His arguments were in regard to the latter course which was taken by the petitioner. Mr. Chitty's submission imposes a limitation on a petitioner's right to amend his petition: he contends that an application to amend may be made and granted, provided the security given at the time of the presentation of the original petition is not exhausted by the charges alleged in that petition, and is sufficient to cover the charges pleaded by way of amendment. The reason he adduces is that there is no provision for the giving of security on the petition being amended by the inclusion of more charges than is covered by the security already given.

The petitioner in this case had on filing the amended petition given further security in Rs. 2,000 to cover the additional charge of illegal practice : Mr. Chitty submits that in law this is no security, for there is no provision which enables him to give security except as provided by Rule 12. The resulting position is there are four charges and a security of Rs. 5,000 and therefore it is not in accord with Rule 12 (2). Pursuing this line of reasoning he submits that the petitioner in this case chose a course which is wrong, in that it was not applicable in the circumstances of this case, and thereby put his petition in peril of dismissal: his course was to file a petition and not to amend his petition.

Mr. Chitty's submission seeks to read into Section 83 (2) by way of limitation, a provision which the plain words of the Section do not convey. Where a statute in clear and unambiguous language provides for a certain situation, it cannot be rendered nugatory by importing additional words which give it a restricted meaning. But Mr. Chitty contends that the interpretation he suggests is an inevitable inference if Section 83 (2) is read with Rule 12. This Rule provides the time within which, and the minimum security a petitioner should give on presenting his petition : it further provides that where the charges in any petition (the underline is mine) exceeds three in number, an additional security in Rs. 2,000 shall be given in respect of each charge in excess of the first three : if the petitioner fails to provide security as thus stated, he is liable to have his petition dismissed.

Assuming Mr. Chitty is right when he submits that there is no provision for the giving of additional security on an amended petition, can the absence of such a provision render ineffectual a course of action which the statute has prescribed without imposing any restraint ? The sole object of depositing security is to secure to the respondent-however inadequate the amount specified in the Rule may be in the present time- in the event of his succeeding, the payment of all costs, charges and expenses that may become payable. If Mr. Chitty's reasoning is carried to its end, it must result in the dismissal of the petition : or it may be permissible for the petitioner to drop the allegation of illegal practice brought by way of amendment, and fall back on the original petition. It is relevant to observe that the determination of the allegations in an election petition is a matter of public order, for the reason that the country as a whole has a vital interest in seeing that the election is free, and a petition ought not to be dismissed or the trial of it restricted to certain charges unless the statute in unambiguous words provides for it. I find myself unable to adopt the interpretation suggested by Mr. Chitty on a reading of Section 83 (2) read with Rule 12.

On the contrary my view is that the words " in any petition " in Rule 12 (2) are sufficient to enable additional security to be given in a situation as in the instant case. These words do not refer only to a petition filed under Section 83 (1) : it is applicable to any subsequent petition whether it be an amended petition or not: an amended petition is in fact a new petition and it is the charges in that petition which the court enquires into ; and where the amended petition contains more charges than three, the petitioner should comply with Rule 12 (2). The petitioner has furnished security in Rs. 5,000 on the presentation of the original petition, and all that need be done is to furnish additional security in Rs. 2,000 to cover all the charges. This the petitioner has done.

The application of the respondent is refused with costs fixed at Rs. 525 payable by the respondents.

Respondent's application refused.

- End -