

Punchi Banda, W. M. Vs. Lenawa, W. R. S. S. B. ; Pamunuwa, K. M. D. Vs. De Silva, C. P

481/1966

Present: Sansoni, C. J., H. N. G. Fernando, S. P. J., and Sri Skanda Rajah, J.

W. M. PUNCHI BANDA, Appellant, and W. R. S. S. B. LENAWA, Respondent

Election Petition Appeal No. 2 of 1966—Kehirawa

K. M. D. PAMUNUWA, Appellant, and C. P. DE SILVA, Respondent

Election Petition Appeal No. 4 of 1965—Minneriya

Election petitions—Deposit by candidate—Quantum—“Recognized political party”—Proof of its continued existence under its old name—Certificate of official candidature—Inferences to be drawn therefrom by the returning officer—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 28a to 28f, 29 (1), 31, 33, 77 (b).

Where the Commissioner has accepted a political party as a recognized political party falling within section 28a of the Ceylon (Parliamentary Elections) Order in Council, the certificate of official candidature issued by the authorised agent of the party in terms of section 28f is sufficient proof that the party is still in existence under its old name.

Once a certificate is produced by a candidate, certifying that he is the official candidate of a recognized political party, the returning officer would be correct in accepting a deposit of only Rs. 250 in terms of section 29 (1) (a). It is not the function of the returning

officer to hear evidence led with a view to establishing that the candidate by speeches or other conduct held himself out to be a candidate of some party other than the political party whose official candidate he claims and has been certified to be.

ELECTION Petition Appeals Nos. 2 of 1966 and 4 of 1965—
Kekirawa and Minneriya.

In Election Petition Appeal No. 2 of 1966—Nimal Senanayake, with Bala Nadarajah, for Petitioner-Appellant.

C. Thiagalingam, Q.C. with G. T. Samerawickreme, Q.C., M. L. de Silva, T. Parathalingam, R. R. Nalliah and K. Jayasekera, for Respondent-Respondent.

In Election Petition Appeal No. 4 of 1965—E. R. S. R. Coomaraswamy, with Rajah Bandaranayake, H. Ismail, H. Mendis, Nihal Jayawickreme, V. Nanayakkara, S. S. Sahabandu and P. Karunaratne, for Petitioner-Appellant.

H. V. Perera, Q.C., with C. Thiagalingam, Q.C., H. W. Jayewardene, Q.C., M. L. de Silva, A. H. de Silva, T. Parathalingam, R. R. Nalliah and K. Jayasekera, for Respondent-Respondent.

Cur. adv. vult.

June 19, 1966. **SANSONI, C. J.—**

These two appeals can be conveniently dealt with in one judgment because they turn on one question of law. The respondent in each case was, after a contested election, returned a Member of Parliament. The petitioners filed their respective petitions praying that each election be declared to be void. The petitions contain in paragraph 3 the substance of their complaint, and it is that “ the Respondent failed duly to deposit or cause to be deposited the necessary sum of money in terms of section 29 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, but was nevertheless treated as a candidate and declared elected, and accordingly there was such non-compliance with the provisions of

the said Order in Council relating to elections as conforms to the requirements of section 77 (b) of the said Order in Council. ”

It is common ground that each respondent deposited a sum of Rs. 250/- within the prescribed time. The contention for the petitioners is that Rs. 1000/- should have been deposited, and the failure to deposit that sum meant that each respondent should “be deemed to have withdrawn his candidature under section 33”, as provided by section 29 (1). The alleged non-compliance with the provisions of the Order in Council is the failure of the returning officer to declare that each respondent had so withdrawn his candidature.

It is necessary to refer to certain provisions of the Order in Council. Under section 28A (1) “ a political party shall, under and in accordance with the provisions of this Order, be entitled to be treated as a recognized political party for the purpose of elections.” Every political party which at the general election held in July 1960 was treated as a recognized political party under the Order for the purpose of section 29 relating to the deposit to be made by candidates shall be entitled to be treated as a recognized political party for the purpose of elections if at least two candidates nominated by that party at that election were elected as Members at that election : section 28A (2).

The approved symbol allotted to the party at the July 1960 election is deemed to be the approved symbol until the party ceased to be so entitled, or until it was allotted a new approved symbol by the Commissioner of Parliamentary Elections : section 28A (3). A political party which is entitled to be treated as a recognized political party for the purpose of elections is referred to in the Order in Council as a “ recognized party for the purpose of elections ” : section 28B. The Secretary of any recognized party for the purpose of elections which intends contesting a general election must give the Commissioner written notice of such intention. The name and address of the authorized agent of the party, if he is a person other than the Secretary, had to be notified to the Commissioner : section 28C. A recognized party may apply for, and the Commissioner shall allot, a new approved symbol, and the order of the Commissioner is

final and conclusive : section 28D. Each recognized party may have as many official candidates of that party as there are candidates to be returned : section 28E.

Section 28F reads :—

28F. (1) Where an election is due to be held in any electoral district, the authorized agent of any recognized party for the purpose of elections may —

(a) if one candidate has to be returned for that district at such election, validly issue, under his hand, to the returning officer for that district a certificate in respect of only one candidate of that party at such election to the effect that such candidate is the official candidate of that party at such election ; or

(b) if more than one candidate has to be returned for that district at such election, validly issue, under his hand, to such returning officer a certificate in respect of each of as many candidates of that party at such election as there are candidates to be so returned to the effect referred to in paragraph (a) of this sub-section.

A certificate so validly issued is in this Order referred to as a “ valid certificate of official candidature ”. Where more than one valid certificate of official candidature is issued in respect of any election by the authorized agent of a recognized party for the purpose of elections, one such certificate shall bear an endorsement that the candidate in relation to whom it is issued shall be allotted the approved symbol of that party.

(2) The authorized agent of a recognized party for the purpose of elections may at any time cancel a valid certificate of official candidature issued in respect of any candidate of that party at any election which is due to be held in any electoral district, and issue another such certificate in its place to any other candidate of that party.

(3) A certificate of official candidature for the purposes of sections 29 and 35 which is not validly issued shall be invalid and of no effect.

(4) In this Order, the expression “ authorized agent of a recognized party for the purpose of elections”, in relation to an election which is due to be held in any electoral district, means—

(a) the person appointed as such agent by the secretary of that party and whose name and address has been notified to the Commissioner under section 28A or section 28 C ;

(b) in the absence of such appointment and notification, the secretary of that party.

It is also relevant to consider section 29 (1), which reads :—

29. (1) A candidate at any election, or some person on his behalf, shall deposit or cause to be deposited with the returning officer or with some person authorized by the returning officer in that behalf, between the date of the publication of the Proclamation or notice referred to in section 27 and one o'clock in the afternoon of the day of nomination,—

(a) where such candidate is the official candidate of a recognized party for the purpose of elections, the sum of two hundred and fifty rupees in legal tender ; or

(b) where such candidate is not the official candidate of any such party, the sum of one thousand rupees in legal tender ;

and, if he fails to do so, he shall be deemed to have withdrawn his candidature under section 33.

The returning officer shall forthwith pay the said sum to the Treasury or the nearest kachcheri and such sum shall be dealt with in accordance with the provisions of this Order.

Finally, there is section 31.

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.

(2) No objection to a nomination paper shall be allowed unless it is made to the returning officer between twelve noon and one-thirty o'clock in the afternoon on the day of nomination.

(3) Every objection shall be in writing signed by the objector and shall specify the ground of objection. The returning officer may himself lodge an objection.

(4) The returning officer shall with the least possible delay decide on the validity of every objection and inform the candidate concerned of his decision, and, if the objection is allowed, of the grounds of his decision. His decision if disallowing the objection shall be final; but if allowing the objection shall be subject to reversal on an election petition.

In appeal No. 2 of 1966, the evidence led at the inquiry shows that the Secretary of the Lanka Prajatantra Pakshya, hereinafter referred to as the L. P. P., gave the Commissioner written notice, under section 28C, that it is a party which is a recognized party for the purpose of elections, intending to contest the forthcoming Election. He applied, under section 28D, for a change of the approved symbol from the Umbrella to the Sun. He also informed the Commissioner that the party had by resolution changed its name to Sri Lanka Nithahas Samajawadi Pakshaya. The Commissioner in reply allotted the Sun as the approved symbol of

the L. P. P. as requested, but stated that he could not take note of the resolution regarding the change of name. This reply of the Commissioner indicates that he accepted the L. P. P. as a recognized party for the purpose of elections. The Secretary thereafter, as authorized agent of the L. P. P., issued to the returning officer a certificate of official candidature certifying that the respondent to appeal No. 2 of 1966 was the official candidate of the party for the purpose of section 29 (1) (a). This certificate is the one contemplated by section 28F, and on the day of nomination the respondent as the official candidate of the L. P. P. deposited a sum of Rs. 250/-, as required by section 29 (1) (a). The Election Judge ruled that the respondent was in fact the official candidate of a recognized political party for the purpose of elections, and that the deposit of Rs. 250/- was in conformity with section 29 (1). This ruling was canvassed before us.

The appellant has to establish, under section 77 (b), “noncompliance with the provisions of this Order relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such noncompliance affected the result of the election”. The issue, therefore, is whether there has been noncompliance with any provisions of the Order. It is evident that a party which was a recognized party for the purpose of elections viz. the L. P. P. by its authorised agent validly issued a certificate that the respondent was the official candidate of that party ; on nomination day the respondent as the official candidate of that party was therefore entitled to the privilege of depositing Rs. 250/- instead of Rs. 1,000/-. Section 29 was duly complied with. If the objection had been taken to his nomination paper under section 31(1) (d) that the provisions of section 29 had not been observed—which is the only conceivable objection—that objection would undoubtedly have been overruled and correctly overruled.

Mr. Senanayake, for the appellant, urged that because the L. P. P. by resolution decided to change its name it no longer existed as a party. I cannot accept this. The subsequent correspondence and the conduct of the Secretary and authorised agent of the L. P. P. all

indicate that the L. P. P. continued to exist, having resumed the old name. The certificate of official candidature issued by the Secretary is sufficient proof that the party was still in existence under its old name.

I would dismiss appeal No. 2 of 1966 with costs.

Appeal No. 4 of 1965 raises the same question, viz. whether the respondent, who was on nomination day the official candidate of a recognized party for the purpose of elections with a valid certificate of official candidature from the authorized agent of that recognized party for the purpose of elections, failed to make the correct deposit when he deposited a sum of Rs. 250/-. No documents were produced in this case nor was evidence led before the Election Judge, because he ruled that an alleged failure to make the due deposit in terms of section 29 (1) cannot be made the subject of an election petition if no objection to such failure had been made to the returning officer. I express no opinion on this point, because I think this appeal can also be decided on the other point. Mr.

Coomaraswamy accepted that there was a certificate of official candidature. He claimed, however, that he should have been allowed to show by evidence that the respondent was not validly appointed. I notice that in the petition of appeal, paragraph 8 (h) and (i), the appellant's complaint is that he should have been allowed to go behind the certificate and show that, in spite of its " formal " validity, it had no " essential" validity. The purpose of leading evidence would have been to show that the respondent had held himself out to be a candidate of another party. Mr. H. V. Perera submitted that once a certificate was produced by a candidate, certifying that he is the official candidate of a recognized political party, the returning officer acted correctly in accepting a deposit of Rs. 250/-. I think this is the correct view,

I am satisfied that it is not the function of a returning officer to hear evidence led with a view to establishing that a candidate by speeches or other conduct held himself out to be a candidate of some party other than the party whose official candidate he claimed and was certified to be. One could visualize lengthy and involved

evidence, bearing on intricate political differences, being led with a view to impeaching the qualifications of a candidate to represent a particular political party. This would be entirely out of place on nomination day. These are not matters for a returning officer to investigate when he receives nomination papers. His duty is only to see whether the papers are on their face valid, and this is clear from the provisions of section 31 (1) (a), (b), and (c). I would interpret section 31 (1) (d) in the same way. In this view the deposit of Rs. 250/- was correct and there was complete compliance with section 29. The nomination paper was correctly accepted. The appellant has failed to make out a case under section 77 (b).

I would dismiss this appeal also with costs.

H. N. G. FERNANDO, S. P. J.—I agree.

SRI SKANDA RAJAH, J. - I agree.

Appeals dismissed.