Punchi Banda V. M V. Lenawa. W. R. S. S. B

129/1965

Present: Alles, J.

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

Election Petition No. 117 of 1965—Electoral District No. 117 (Kekirawa)

Election petition—Deposit of sum of money by candidate—Objection as to quantum of deposit—Right to raise such objection by way of election petition—Averment that failure of due deposit affected result of elections unnecessary—Official Candidate of a " recognized party "—No requirement that he should be a member of that party—Deposit of Rs. 250 made by him—Sufficiency of it if he subsequently joins hands with a party which is not " recognized " —Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by Acts No. 11 of 1959 and 10 of 1964, ss. 28, 28A to 28G, 29 (1), 31, 32, 33, 35, 52B, 77, 79, 80.

(i) Objection as to the failure of a candidate to deposit, or cause to be deposited, the correct sum of money in terms of section 29 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, can be raised for the first time by the unsuccessful candidate by way of an election petition. In such a case, section 31 has no application. Nor is it necessary to aver in the petition that the alleged failure affected the result of the election.

(ii) Where the official candidate of a " recognized party for the purpose of elections " has paid the reduced deposit of Rs. 250 as required by section 29 (1) (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by Act No. 11 of 1959 and Act No. 10 of 1964, he is entitled to join hands subsequently with a political party which is not a recognized one

and contest the elections under the name and banner of the latter party. If he does so, it cannot be contended that he ought to have paid a deposit of Rs. 1,000 in terms of section 29 (1) (b) of the Order in Council. Nor is it material that, on the date of his nomination, he was in fact a member of the party which was not recognized.

ELECTION petition No. 117 of 1965—Electoral District No. 117 (Kekirawa).

Colvin R. de Silva, with *E. R. S. R. Coomaraswamy, Nimal Senanayake, Hannan Ismail* and *Miss Manouri de Silva*, for the petitioner.

C. Thiagalingam, Q.C., with *A. H. C. de Silva, Q.C., K. C. Kamalanathan, T. Parathalingam* and *K. Jayasekera*, for the respondent.

Cur. adv. vult.

December 13, 1965. **ALLES, J.**—

The petitioner, who was the unsuccessful candidate at the election, filed this petition against the respondent who was elected as Member of Parliament for the electoral district of Kekirawa at the General Election held on March 22nd, 1965. The petitioner alleged in paragraph 3 of his petition 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, 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."

Consequently the petitioner prayed for a declaration that the election of the respondent was undue and that his election as a candidate should be declared void.

It was the case for the petitioner that the respondent was nominated as the official candidate of the Lanka Prajathantravadi Pakshaya and thereby obtained the concession of paying the reduced deposit of Rs. 250 under the Order in Council when in fact he was the member of another political party called the Sri Lanka Freedom Socialist Party which was not a recognised political party under the law and that consequently the correct amount of the deposit which he should have paid was Rs. 1,000 and not Rs. 250. It was submitted by Counsel on behalf of the petitioner that in consequence of this failure to deposit the correct amount, the respondent was not eligible to be treated as a candidate and should have been deemed to have withdrawn his candidature under section 33 of the Order in Council.

When this petition was taken up for trial, Mr. Thiagalingam on behalf of the respondent raised two preliminary objections to the petition. He submitted—

(a) that the alleged failure to duly deposit the necessary sum of money in terms of section 29 (1) of the Order in Council was not an allowable objection that may be taken by way of an election petition as no objection to such failure had been made to the Returning Officer in terms of section 31 (1) (d) of the said Order ; and

(b) that paragraph 3 of the election petition did not aver that the alleged failure to make the necessary deposit affected the result of the election.

When these objections were raised, I informed Counsel that since the evidence in support of the petition fell within a very narrow compass and was of a purely formal nature, I would hear evidence in support of the petition and also consider the preliminary objections ; whether the objections succeeded or not, it would then be possible for the Court to determine all matters connected with the petition. If the objections succeeded, the petition would stand dismissed, otherwise the petition could be decided on its merits.

I will first consider the preliminary objections raised by Counsel for the respondent. It was his submission that the failure to deposit the

correct sum was a matter to which objections could have been taken on nomination day by the petitioner or his proposers, seconders or agents before the Returning Officer, under section 31 of the Order in Council; the failure to do so at that stage precluded the petitioner from raising the question by way of an election petition. Counsel sought to draw a distinction between the proceedings at the time of the nominations and the proceedings at the time of the elections and it was, in his submission, to the latter stage that relief could be sought by way of an election petition. The only exception to this procedure was the instance referred to in section 31 (4) of the Order. Section 31 of the Order in Council is in the following terms :—

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.

Section 28 of the Order lays down the matters that must be contained in the nomination paper ; according to section 28 (4) the nomination paper shall be substantially in the form G in the 1st Schedule to the Order. It will be noted that the furnishing of the deposit does not form part of the nomination paper, but I agree with Mr. Thiagalingam that it must be assumed, in view of the provisions of section 31 (1) (d), that the deposit as required by section 29 should be considered as part of the nomination paper. Indeed that is the only direct connection between section 29 and section 31.

Mr. Thiagalingam submitted that under section 31 (2) whether an objection was taken or not to the nomination paper, it precludes any person from thereafter taking any such objections. He sought to argue that section 31 (2) is a section of general application and is an absolute bar to any objections being raised thereafter. I am unable to agree. The sequence in which sub-section (2) is inserted in section 31 would seem to indicate that objections may be taken under sub-section (1) and under subsection (2) such objections that are in fact taken, can only be considered and allowed if they are taken during the limited period between 12 noon and 1.30 p.m. on nomination day. I cannot see how section 31 (2) can have any application, in the event of no objections being taken. Counsel was compelled to give this strained meaning to the language of section 31 (2) because in fact no objections were taken before the Returning Officer in this case in respect of the quantum of the deposit. If it was the intention of the legislature to make section 31 (2) of general application, whether objections were taken or not, the section would have found a place in the scheme of the Order elsewhere as a separate section.

Mr. Thiagalingam next argued that under section 31, the Returning Officer was vested with a certain jurisdiction which could not be questioned thereafter. Under section 31 (4) the validity of an objection to the nomination paper taken by any person present at the nomination or lodged by the returning officer, must be decided

by the returning officer with the least possible delay. There are two courses open to him. He may—

(a) disallow the objection in which case his decision is final; or

(b) allow the objection in which case it shall be subject to reversal on an election petition.

It was Counsel's submission that in the case referred to at (a) above the candidate's nomination is not affected ; he can be duly nominated and would be eligible to stand for election and can be elected a Member of Parliament. In the case referred to at (b) the candidate's rights are seriously affected, since he cannot proceed beyond the stage of nomination and therefore Counsel submits that in such a case the law enables the decision of the returning officer to be canvassed by way of an election petition. While I agree that the matter referred to at (b) above is one that is worthy of consideration by way of an election petition, I do not think the matters referred to at (a) above are any the less important.

A close examination of section 31 (1) reveals that there are important questions that have to be considered by the returning officer when objections to a nomination paper are raised. Under section 31 (1) (a) an objection to the identity of the candidate has to be decided by him ; under section 31 (1) (c) the capacity of the candidate to be elected a Member of Parliament at the time of nomination is a matter for his decision and under section 31 (1) (d), it might be necessary for him to give a ruling as to whether the certificate of candidature is a forged document or not, or he may have to make a summary decision whether the quantum of the deposit furnished by a candidate should be Rs. 250 or Rs. 1,000 depending on the view he takes whether at the time of nomination, the candidate is or is not a member of a recognised political party—the very matter that is the subject matter of argument in this petition. These are decisions he has to make without the assistance of Counsel, without being able to summon witnesses and within a limited time. This would invariably be within half an hour, because objections can be made only after the nomination paper is presented, and astute candidates usually present their nomination

papers just before 1 p.m. on nomination day. Did the law contemplate that on these fundamental matters the decision of the returning officer alone, summarily made, without proper inquiry and within a limited period, should be final so as to preclude the electors from seeking their redress under the provisions of the Order relating to election petitions ? If Mr. Thiagalingam's submission is correct it would mean that any objection relating to these important matters, if disallowed by the returning officer, is final as they are matters exclusively within his jurisdiction and not even subject to review by this Court. In this connection it is pertinent to consider certain analogous provisions of the law which vest a returning officer with certain powers in relation to elections. Under section 25 of the Village Communities Ordinance No. 9 of 1924, the decision of the Government Agent to decide whether a person had the right to vote or be elected a member, when an objection is taken, shall be final and conclusive. In *G. R. Karunaratne v. Government Agent, W. P.* [1 (1930) 32 N. L. R. 169.], where no objection was taken to the competency of the candidate by the petitioner at the time of the election of the committee, it was held by Maartensz, A. J., that the petitioner was not precluded from coming to Court subsequently and applying for a writ merely because he was present and did not raise an objection to the candidate. In coming to this conclusion the learned Judge made the observation that—

" With the growth of the population the inhabitants of a subdivision may not know whether a member proposed for election to the committee is qualified or not, or can be expected to know whether all persons present are entitled to vote."

The same view was taken by Wijeyewardene, J., in a similar case—*Mendis Appu v. Hendrick Singho* [2 (1945) 46 N. L. R. 126]. In that case the learned Judge said that—

" A voter cannot be expected reasonably to acquaint himself with the early history of all the villagers and much less to provide himself with the necessary evidence to prove what he knows against them so as to be ready to object successfully to the nomination of anyone of the villagers whose name may be put forward."

This same view was again followed by Nagalingam, A. J. in *James v. Fernando* [3 (1946) 48 N. L. R. 40 at 42.]. *Dharmaratne v. Commissioner of Elections* [4 (1950) 52 N. L. R. 429.] was a case under the Local Authorities Elections Ordinance No. 53 of 1946 (Cap. 262). The language of section 32 of that Ordinance is very similar to the provisions of section 31 of the Order in Council with the added circumstance that the validity of the decision to all objections to the nomination paper has to be determined by the returning officer, whose decision shall be final and conclusive. Swan, J., held in that case, that the fact of the disqualification of a village committee member to hold office may be urged in an application for a writ of quo warranto, although it was not urged before the Government Agent at the time of nomination.

If it is open to the Supreme Court to entertain objections to the nomination papers of candidates in the case of local elections, in spite of no objections being taken before the returning officer whose decision on such matters is final and conclusive, I do not see why the same considerations should not apply with greater force in the case of nominations to the supreme legislative assembly in the land. I do not think that the finality attached to the decision of the returning officer when he disallows an objection to a nomination paper should prevent the majority of electors from raising objections at a later stage in the form of an election petition. I am inclined to agree with the submission of Counsel for the petitioner that the finality attached to the decision of the returning officer is only for the limited purpose of permitting the proceedings on nomination day to continue smoothly and without interruption of the electoral process. The powers of the returning officer under section 31 to decide on the validity of objections is strictly limited to the nomination paper. Where on the face of the nomination paper there are obvious flaws, it will be the duty of the returning officer to deal with such objections speedily to ensure that proceedings on the day of nomination will be continued without interruption. Such a case would be the one referred to in Volume II of Rogers on Elections (20th Edn. p. 63) where the returning officer rejected a nomination paper which on the face of it was a mere abuse of the right of nomination or an obvious unreality— e.g. where it purported to nominate a deceased

sovereign. In the same way, if the nomination paper stated that a candidate was a Senator it is apparent from the contents of the nomination paper that the candidate is a person ‘ who is incapable of being elected ’ and the returning officer will be well within his powers if he disallows such a nomination paper and if he does so, his decision will be final for the purpose of continuing the proceedings on nomination day. If the decision of the returning officer, when he disallows an objection on nomination day, is not declared to be final, it would mean that the proceedings on nomination day will have to be interrupted until a competent tribunal decides whether the decision of the returning officer is correct or not. It is not without significance that the words used are ‘ final’ and not ‘ final and conclusive’. The use of the former word supports the view that the finality is only confined to the objections raised on nomination day. If the latter words were used, it would have suggested that the decision of the returning officer could not be canvassed subsequently in any proceedings.

There is another fundamental reason why it is not possible to accept the preliminary objection as being sound. Under section 32 of the Order, only a limited class of persons can be present before the returning officer to raise any objections to the nomination paper. If for any reason through inadvertence or otherwise a member of this class of persons does not raise any objections, the majority of the electors, in the submission of Counsel, would be precluded from raising any objections thereafter. This seems to me to be a direct negation of the rights of the electors to raise any objections which they can validly take under the provisions of sections 80 and 77 of the Order. While it is possible for the limited class of persons referred to in section 32 to raise objections to the nomination paper under section 31 because they happen to be present at the time of nomination, it does not, in my view, affect the general right of the main body of electors under sections 79, 80 and 77 of the Order in Council to proceed by way of election petition to seek to avoid the election for a breach of the mandatory provisions of the Order in Council, to aver that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election. An election petition is

a matter of public interest and a petitioner in an election petition is merely the spokesman of the electorate who seeks to investigate whether the majority of electors have elected the candidate of their choice. By restricting the category of persons who can raise objections to only those persons referred to in section 32, the right of the majority of the electors to ventilate their grievances with regard to some part of the election is unduly fettered. This is the logical conclusion that would follow if the right to raise objections to the nomination paper is only confined to those persons mentioned in section 32. While practical considerations may make it necessary to restrict the number of persons who are allowed to be present at the time the nomination papers are received and who can raise objections, there is nothing in the Order in Council which states that if a member of this class of persons does not raise objections to the nomination paper the majority of the electors are precluded from exercising their rights under the subsequent sections of the Order in Council. If this was the case one would have expected a positive prohibition to that effect in the Order itself.

This is the submission of Counsel for the petitioner, who contends with considerable force that section 31 has no application whatsoever to the present case, since there was only a contravention of section 29 of the Order when the respondent paid a deposit of Rs. 250 instead of Rs. 1,000. He submits therefore that there has been a non-compliance with the provisions of section 29 of the Order and the respondent ‘shall be deemed to have withdrawn his candidature under section 33 ’. Under section 33 (1) of the Order—

“ A candidate may before one o'clock in the afternoon on the day of nomination, but not afterwards, withdraw his candidature by giving a notice to that effect signed by him to the returning officer.”

Under section 29 this consequence is deemed to have taken place when the candidate fails to deposit or cause to be deposited with the returning officer the correct amount of the deposit. Mr. Thiagalingam submitted that the word ‘ deemed ’, to use his own language, ‘ cannot stand in mid-air ; there must be somebody else

who has to take the decision that there has been a withdrawal of the candidature '—be it the returning officer or a Court. Counsel was constrained to adopt this construction in order to connect section 29 with section 31, but I am unable to agree that the intervention of any third party is essential in order to make the withdrawal of the candidature necessary. The very fact that section 33 requires the withdrawal to be made in writing and no such requirement is necessary under section 29 would seem to indicate that the intervention of a third party is not essential to make section 29 operative. Roland Burrows in Words and Phrases Judicially Defined, citing a Canadian case, says that it would be a natural meaning of the word ' deemed ' when the doing or abstaining from doing a particular thing is to be deemed to have a particular consequence. In my view, the context in which the words ' deemed to have withdrawn ' are found in the section indicates that it shall be presumed, when the correct amount of the deposit has not been furnished, that the candidate has withdrawn his candidature. No intervention of any third party is necessary to result in this consequence which takes place by operation of law.

Counsel for the petitioner submitted that when the respondent paid the lesser amount of Rs. 250 there was a contravention of section 29 of the Order. Under section 79 the petitioner in this case was therefore entitled to present a petition on the ground that the election was void since there was a non-compliance with the provisions of the Order relating to elections which made section 77 (b) applicable. I agree with this submission of Counsel for the petitioner and hold that section 31 has no application to the present case.

Finally Mr. Thiagalingam submitted that the provisions of the Order relating to the grounds for avoiding elections as set out in section 77 have no application to objections to a nomination paper and sought to draw a distinction between the stage of nominations and elections proper. In his submission an election petition under Chapter V of the Order in Council may be brought only in respect of elections proper. I am unable to see any such distinction. The presentation of nomination papers and the objections to such

nomination papers fall within the chapter dealing with elections. If on nomination day only one candidate is nominated he will be declared elected on that day. Counsel for the petitioner draws my attention to the wording of section 52B of the Order which refers to the election as ‘ the period commencing on the day of nomination at any election and ending on the day following the day on which a poll is taken’. Rogers on Elections (20th Edn.) refers to Nomination and objections to nomination papers under the chapter of ‘ Proceedings at the Election’. For the above reasons the first preliminary objection raised by Counsel for the respondent fails.

With regard to the second objection, Mr. Thiagalingam submits that the quantum of the deposit cannot affect the result of the election because the respondent was elected by the free exercise of the votes of the electorate. Counsel for the petitioner on the other hand contends—a contention with which I am in agreement—that if the amount of the deposit was not correct, the respondent must be deemed to have withdrawn his candidature, and therefore was not a candidate at the election. In such an event it manifestly affected the result of the election because a person who was not eligible as a candidate was elected. In view of the observations of Hearne, J. in *Mihular* [(1944) 45 N. L. R. 251 at 253,], with which I am in respectful agreement, it is unnecessary to aver in the petition that the alleged failure affected the result of the election. The second objection too fails.

I shall now proceed to consider the allegation in the petition that the respondent has failed to deposit or cause to be deposited the necessary sum of money in terms of section 29 (1) of the Order in Council. According to the petitioner the respondent was not in fact the official candidate of a recognised political party on the day of nomination and was therefore not entitled to the advantage of the reduced deposit of Rs. 250 which was only available to candidates of recognised political parties. Since this is a question of mixed law and fact it is necessary to consider the law applicable in this case before I proceed to examine the facts.

With the advancement of the parliamentary electoral process in this country, the growth of the party system was a natural and inevitable phenomenon ; the law recognised this phenomenon and took certain steps to encourage and foster the growth of the party system ; in order to facilitate the recognition of organised political parties, legislation was introduced in 1959 by the Ceylon Parliamentary Elections (Amendment) Act, No. 11 of 1959 (sections 8 and 9), whereby the Commissioner of Parliamentary Elections was given the power to recognise political parties, who made applications for such recognition. In order to qualify for recognition under this law, such a party had either to have been in existence for at least 5 years prior to the application or two members of that party should have been elected as members of Parliament. If the Commissioner was satisfied on either of these grounds, the deposit that was required from candidates of such recognised political parties was the lesser amount of Rs. 500.

In 1964 by Ordinance No. 10 of 1964 drastic changes were made in the election laws in order to give fuller effect to the growth of the party system and a consideration of these changes is necessary in order to appreciate the submissions of Counsel. Section 28A of the Order in subsection (2) treated as recognised political parties every political party which at the elections of July 1960 was treated as a recognised political party for the purpose of the provisions of section 29 relating to the deposit to be made by the candidates, if at least two Members nominated by that party were elected as Members of Parliament at those elections. Such a party under sub-section (3) was entitled to use the same symbol which it used at the 1960 elections unless the party asked for and was allowed another symbol.

Section 28A (4) provided for the recognition of new parties. After the date of the publication in the Gazette of a Proclamation or notice by the Governor-General ordering the holding of a general election the secretary of any political party could make an application to the Commissioner in writing within 7 days to be treated as a recognised political party for the purpose of elections and also specify an approved symbol which such party desired to be allotted to them.

Under subsection (5) the Commissioner was empowered to either allow or disallow such an application and under sub-section (6) the order of the Commissioner was declared to be final and conclusive. In order to qualify to be recognised as a new party, the party had to satisfy the Commissioner that the party seeking recognition had been engaged in political activity for a continuous period of at least 5 years prior to the date of making such application or that at least two candidates nominated by such party at the last general election immediately preceding the date of the application were elected as members. Under sub-section (7) of section 28A a political party which is entitled to be treated as a recognised political party for the purpose of elections shall cease to be so entitled if at any general election—

(a) not even one official candidate of such party is nominated for election; or

(b) the candidate of such party so nominated or, if more candidates than one of such party are so nominated, all the candidates so nominated, forfeits his deposit, or forfeit their deposits, as the case may be, by virtue of the operation of the provisions of sub-section (3) of section 29.

An analysis of the provisions of section 28A indicates that the section provides—

(a) for the recognition of political parties which were recognised political parties at the general election of 1960 (section 28A (2)) ;

(b) for the use of the approved symbol by such parties (section 28 A (3)) ;

(c) for the recognition of new parties as recognised political parties for the purpose of elections (section 28A (4), (5) and (6)) ; and

(d) how a recognised political party ceases to exist (section 28A (7)).

Section 28C provides that notice of intention to contest elections may be given by the secretary or authorised agent of recognised political parties. Section 28D makes it possible for a recognised political party to ask for and be allowed a change of symbol by the Commissioner. Section 28E deals with the right of recognised political parties for the purpose of elections to have official candidates—one candidate for a single-member constituency and more than one for multi-member constituencies.

Under sub-section (2) a recognised political party is not precluded from having candidates other than official candidates of that party at any election which is due to be held in any electoral district. Sub-section (3) of Section 28E defines the expression ‘ official candidate of a recognised party for the purpose of elections ’ . . . . to mean ‘ a candidate of that party at such election in respect of whom there is, for the time being in force, a valid certificate of official candidature for the purposes of sections 29 and 35 in relation to such election ’. Section 28F of the Order indicates how certificates of official candidature are issued or cancelled by the secretary or authorised agent of a recognised political party. Section 28G lays down the procedure that has to be followed when a dispute arises between rival sections of a recognised political party, all of whom claim to be that party. In such a case the Commissioner is empowered to decide the dispute and issue ‘ in his absolute discretion a direction to the returning officer .... that .... such recognised party is either any one such section or none of such sections’. Such a direction is final and conclusive (section 28G) and sub-section (2) grants complete legal immunity to the Commissioner or any returning officer from the consequences of such a direction.

A consideration of sections 28A to 28G would indicate that the election authorities by laying down the rules relating to the creation, continuance and termination of recognised political parties, the use of symbols and the recognition of official candidates of such parties have given free scope to political parties to contest the elections under the party system. The authorities do not seek to interfere in any way with the electoral process of the party system but on the contrary have encouraged its development by reducing the deposit

of party candidates to Rs. 250. The only occasion when the Commissioner is compelled to step down, and enter the arena of political activity is when a dispute arises between rival sections of a recognised political party ; it becomes necessary for the continuance of the electoral process that some authority, in this case the Commissioner, should be empowered to take a decision as to which of the rival sections, if any, should constitute the recognised political party. But here too the law in its wisdom has protected the official from any consequences, by ensuring that any decision of his on this important question should be final and conclusive.

The facts of the case are not disputed and may be briefly stated : On 17th December, 1964 (which was the date of the dissolution of Parliament), the Secretary of the Sri Lanka Freedom Socialist Party (hereinafter referred to as the S. L. F. S. P.) in terms of section 28A (4) of the Order in Council, by his letter P12, applied to the Commissioner of Elections to be a recognised political party for the purposes of the forthcoming elections. The Secretary further desired that the party be allotted the approved symbol ‘ SUN ’. The letter was received by the Commissioner on 21st December and on the following day the Commissioner inquired from the Secretary of the S. L. F. S. P. under what section he applied for recognition as a political party and requested him to furnish documentary evidence immediately. No reply was received to the Commissioner’s query and on 2nd January, 1965 the Commissioner, by his letter P13, wrote to the Secretary of the party disallowing his application to be recognised as a political party for the purposes of the elections.

On 24th December, 1964, Dr. W. Dahanayake as Secretary of the Lanka Prajathantravadi Pakshaya (hereinafter referred to as the L. P. P.) wrote the letter R1 to the Commissioner informing him that his party intended contesting the forthcoming elections and also requesting a change of the approved symbol from the ‘ UMBRELLA ’ to the ‘ SUN’. He also informed the Commissioner that the L. P. P. had by resolution changed its name to the S. L. F. S. P. The Commissioner by P14 of 30th December replied to R1 allowing the change of symbol but refusing to recognise the resolution of the L.

P. P. for the change of name from L. P. P. to S. L. F. S. P. In refusing to recognise the change of name the Commissioner acted quite correctly because there is no provision in the Order for a recognition by him of the change of name of a political party.

On 5th January, 1965, Dr. Dahanayake, as authorised agent of the L. P. P. by the certificate of official candidature marked P4 in terms of section 28F, certified that the respondent was the official candidate of the party for the purposes of sections 29 (1) (a) and 35 of the Order in respect of the electoral district of Kekirawa. There is nothing in section 28E which prevents such a certificate being given in respect of a candidate who is not a member of the party which nominates him. The returning officer who had been informed by the Commissioner that the L. P. P. was a recognised political party accepted the certificate of official candidature P4 and the respondent paid the deposit of Rs. 250 as the official candidate of the L. P. P.

On 5th January, 1965, the News Editor of the Director of Broadcasting, who was covering the elections on behalf of Radio Ceylon, wrote P8 to the Secretary of the L. P. P. requesting him to send him a complete list of the candidates of his party who were contesting the General Elections and the constituencies for which they were coming forward. To this letter Mr. C. P. de Silva, the President of the S. L. F. S. P., replied by his letter P9 attaching a list of the candidates of ' his ' party and this list contained the respondent's name as the S. L. F. S. P. candidate for Kekirawa. There is unchallenged evidence that subsequent to the date of nomination (11th January, 1965) the election campaign on behalf of the official candidates of the L. P. P. was conducted under the banner of the S. L. F. S. P. and the leadership of Mr. C. P. de Silva. Meetings were conducted under the name of the S. L. F. S. P. and the symbol ' SUN', which was the symbol asked for by the Secretary of the S. L. F. S. P. in P12, posters were printed by the S. L. F. S. P. promoting the candidature of the L. P. P. candidates and political leaders of the S. L. F. S. P. addressed meetings on behalf of the L. P. P. candidates. That there was a combine between the L. P. P. and the S. L. F. S. P. to contest the elections on a common

platform is quite apparent on the evidence and has been established to my satisfaction. It would appear that this combine was one that was contemplated by the leaders of both parties even before nomination day. In R1 Dr. Dahanayake asked for and was allowed a change of symbol from the ‘ UMBRELLA ’ to ‘ SUN ’ (the symbol of the S. L. F. S. P.) and intimated to the Commissioner that by resolution the L. P. P. had changed its name to S. L. F. S. P; the President of the S. L. F. S. P. by P9 replied to P8 adopting the candidates of the L. P. P. as members of his party; the S. L. F. S. P. journal P10 gave the L. P. P. candidates as their nominees and public announcements were made in the newspapers—the Times and the Dinamina—that since the S. L. F. S. P. had not been accepted as a recognised political party, the party had obtained the symbol ‘ SUN ’ from Dr. Dahanayake, who had joined the S. L. F. S. P. as its secretary, and that the S. L. F. S. P. was contesting the elections under the presidentship of Mr. C. P. de Silva with the ‘ SUN ’ as its symbol. There was no secrecy about the arrangements between these two political parties to combine and contest the forthcoming elections on a common platform and indeed for the purpose of the election campaign they gave full publicity to this fact.

Counsel for the petitioner submits that in view of this admitted arrangement—an arrangement that commenced within a week of the dissolution of Parliament—the L. P. P. was not entitled to be recognised as a political party for the purposes of the elections ; in his submission the L. P. P. as a political party factually had ceased to exist and therefore its candidates were not entitled to the concession of the lesser deposit; he stressed the fact that to be a recognised political party it must be a party recognised for the purpose of the forthcoming elections. He went so far as to suggest that the L. P. P. by representing itself to be a recognised political party was acting falsely and in fraud of the revenue. The question that arises for determination is whether the L. P. P. ceased to be in existence in the eyes of the law when the respondent presented his certificate of official candidature as the official candidate of the L. P. P. on nomination day. Counsel does not dispute that by R1 the Secretary of the L. P. P. was entitled to claim recognition as a

recognised political party since the party had qualified to be one, by virtue of the provisions of section 28A (1) and (2) of the Order. Under the law a recognised political party ceases to exist either on nomination day (section 28A (7) (a)) or on polling day (section 28A (7) (b)) and Counsel for the petitioner concedes that under this section the L. P. P. did not cease to exist as a recognised political party. Does the rest of the evidence indicate that the L. P. P. had in fact ceased to exist as a recognised political party prior to the nominations ? It may be, as Mr. Thiagalingam submits, that the L. P. P. was a dead party or as Counsel for the petitioner contends a party that existed only in the books of the Commissioner but nevertheless there is no evidence that the L. P. P. as a political party had ceased to exist on 11th January, 1965. I am unable to agree with the submission of learned Counsel for the petitioner that when the law referred to ‘ a recognised political party for the purpose of the elections ’ it necessarily means that the political party in question, having obtained an advantage with regard to the deposit, must in fact contest the elections as a recognised political party. The phrase ‘ recognised political party for election purposes ’ may refer to the fact that the political party in question has qualified as a recognised political party for the purpose of the elections by satisfying the conditions laid down in section 28A (2) and (3) of the Order. It may well be that a recognised political party when it makes its application within the limited period of seven days—which is the time within which recognition can be granted—did in fact at the time of such application, intend to contest the elections on its own steam, although it was hoping to come to some electoral arrangements with some other party. It is not without significance that Dr. Dahanayake waited till the last day to make the application on behalf of his party to be recognised a political party for the purposes of the elections—an advantage which his party would have forfeited had he not made his application by 24th December. If for instance the L. P. P. genuinely intended to contest the elections as a recognised political party when it made its application, but when the election campaign commenced found it more advantageous to lose its identity and campaign under a more popular party with a more popular symbol, I can see no legal objection to such a course of action being adopted. It may be that

electioneering tactics, party manoeuvres and a host of other considerations compelled the L. P. P. to use the S. L. F. S. P. as a stalking horse for the purpose of advancing their own election campaign—this is the essence of free elections. Quite apart from there being no legal objection that can be raised to such an arrangement, two political parties are always entitled to pool their resources for a common cause and contest the elections as allies ; the fact that in the process the candidates of these parties obtained certain pecuniary advantages under the law should not be a ground of disqualification. The law is not concerned with electoral arrangements, party alliances, coalitions or electoral pacts which might even submerge the identity of a particular recognised political party. As far as the election authorities are concerned, they are only interested in ensuring that the provisions of the Order in Council have been complied with. In this case the L. P. P. was a recognised political party at the time of the 1960 elections and had not ceased to exist under the provisions of Section 28A (7) of the Order ; the Secretary made an application under the provisions of the law to be recognised as such for the purpose of paying the deposit; in accordance with the provisions of the law it asked for and was allowed a change of symbol, the returning officers were informed that the party was a recognised political party for the purpose of the elections and the secretary of the party issued valid certificates of official candidature to its candidates. These are all steps taken by the party in accordance with the provisions of the law. All other matters are extraneous to the legal issues in the case and in fact, the Commissioner in the course of his evidence stated, that if the candidates of a recognised political party paid the deposit of Rs. 250 required from them and later joined hands with a political party that was not a recognised one and contested the elections under the name and symbol of some other party, he was not concerned and there was nothing he could do about the matter.

I am therefore of the view that the deposit paid by the respondent in this case is in conformity with the provisions of section 29 (1) of the Order in Council and I dismiss the petition. Since much of the argument in this case has centred round the preliminary objections,

in respect of which the respondent has failed, I direct that each party should bear his own costs.

Election petition dismissed.