

GAMINI ATUKORALE

v.

CHANDRIKA BANDARANAIKE KUMARATUNGA AND OTHERS

SUPREME COURT

S.N. SILVA, CJ.

WADUGODAPITTIYA, J.,

P.R.P. PERERA, J.

BANDARANAYAKE, J. AND

GUNASEKERA, J.

PRESIDENTIAL ELECTION PETITION

SC NO. 1/2000

20TH, 22ND AND 23RD JUNE AND 03RD AND 04TH JULY, 2000

Election Petition - Presidential Election - Preliminary objections - Dismissal in limine - Section 91(a) and (b) of the Presidential Elections Act, No. 15 of 1981 - General intimidation; other circumstances in consequence of which the majority of electors were or may have been prevented from electing the candidate whom they preferred - Non-compliance with the provisions of the Elections Act - Section 96 of the Act - The requirement that the petition shall contain a concise statement of the material facts on which the petitioner relies.

At the Presidential Election held on 21. 12. 1999 out of 11,779,200 registered voters the total number of votes polled was 8,635,290 reflecting a poll of 73.31%. Out of that number 199,536 or 2.31% votes were rejected leaving a balance of 8,435,754 valid votes. Chandrika Bandaranaike Kumaratunge P.A. (the 1st respondent) polled 4,312,157 viz, 51.12% votes. Ranil Wickremasinghe UNP polled 3,602,748 viz, 42.71% votes. The other candidates numbering 11 polled 520,849 votes their percentage ranging from 4.08% downwards. Accordingly, the 1st respondent was declared elected to the office of President.

The petitioner, the General Secretary of the United National Party (UNP) presented an election petition in terms of section 93(b) of the Presidential Elections Act, No. 15 of 1981 (the Act) seeking the following reliefs under section 94 of the Act:

- (a) a declaration that the election is void;
- (b) a declaration that the return of the person elected was undue.

The petition was based on three grounds provided by section 91 of the Act, namely,

- (i) General intimidation by reason of which the majority of electors were or may have been prevented from electing the candidate whom they preferred namely, Ranil Wickremasinghe (paragraphs 8(a) and 9 of the petition)
- (ii) Non-compliance with the provisions of the Presidential Elections Act, No. 15 of 1981 by reason of which the election was not conducted in accordance with the principles laid down in such provisions which non-compliance affected the result of the election (paragraphs 8(b) and 10 of the petition)
- (iii) Other circumstances, by reason of which the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely, the said Ranil Wickremasinghe (Paragraphs 8(c) and 11 of the petition)

The respondents raised certain preliminary objections to the petition and sought a dismissal of the petition *in limine*. They averred that the petition does not contain a concise statement of the material facts on which the petitioner relies to establish the grounds of avoidance pleaded therein; and also there were certain defects in pleading grounds (ii) and (iii) above.

In paragraph 9 of the petition, the petitioner pleaded incidents of intimidation in 67 polling divisions out of the 156 polling divisions in which the poll was taken and set out the relevant ground of avoidance in paragraph 8(a). As regard the alleged non-compliance with the provisions of the Act relied upon in paragraph 8(b) which is said to have affected the result of the election, paragraph 10 of the petition refers to some events relating to the counting of votes in two polling divisions, viz Kesbewa and Maharagama. It contains sub paragraphs and details in respect of which the court observed "Let alone the respondents, even the petitioner would not be in a position to comprehend the contents of these averments." In paragraph 11, the petitioner purported to state the impact of what is described as "other circumstances" relied upon for avoiding the election by referring to the "cumulative effect" of general intimidation and of non-compliance with the provisions of the Act pleaded in paragraphs 9 and 10 as well.

Held :

1. It would be incumbent on the petitioner in terms of section 96(c) to state concisely the material facts on which he relies to obtain the reliefs he has sought in terms of section 91(a). The pleadings would be considered as being adequate only if *ex facie* the petitioner could

be granted the relief sought, on the assumption that the petition is unopposed.

2. *Per S.N. Silva, CJ.*

"To secure a majority of votes Mr. Ranil Wickremasinghe had to poll 1, 230,258 additional votes (being the total of the votes polled by the PA and the other parties plus one more vote) Therefore the averment in the petition that by reason of general intimidation the majority of voters were prevented from electing Mr. Ranil Wickremasinghe, tantamounts to a statement that the general intimidation "affected" a minimum of 1,230,258 persons who would have otherwise voted for him"

3. *The degree of probable success on the part of the petitioner is not one that can be evaluated at this stage. At this stage the court could consider only whether the petition passes muster by satisfying the requirements of section 96 read with section 91 of the Act.*
4. *The petition contains a clear statement of avoidance relied on with reference to its description in section 91(a), the ingredients of the grounds of avoidance and the material facts in relation to each ingredient. If the petition is unopposed the petitioner could be granted the relief sought on the basis of these averments. The petitioner would be permitted only to lead evidence in relation to the material facts that have been disclosed, viz, the incidents referred to in paragraph 9 in relation to the respective polling divisions.*
5. *There is a total failure to set out any of the matters necessary to be pleaded in relation to the grounds of avoidance relied upon in paragraph 8(b) of the petition, viz, alleged non-compliance with the provisions of the Act. The contents of paragraphs 8(b) and 10 are, therefore, rejected; and the petitioner is not permitted to present any evidence on that account. To avoid an election non-compliance should be of such a kind or character that it could be said that the election had not been conducted in accordance with the principles underlying those provisions.*
6. *The petitioner has attempted to plead the manner in which the alleged "other circumstances" (referred to in paragraph 8(c)) affected the result of the election as a cumulative effect of the general intimidation and of non-compliance with the provisions of the Act pleaded in paragraphs 9 and 10. In view of the finding on the alleged "non-compliance with the provisions of the Act" as a ground of relief,*

the averment in paragraph 8(c) is materially defective. The averments of paragraphs 8(c) and 11 are, therefore, rejected.

Cases referred to :

1. *Bandaranaike v. Premadasa* (1989) 1 Sri L.R. 240
2. *Bandaranaike v. Premadasa* (1992) 2 Sri L.R. 1
3. *Wijewardena v. Senanayake* (1972) 74 NLR 97
4. *H.V. Kamath v. Election Tribunal* (1958) AIR Madhya Pradesh 168
5. *Bruce v. Odhams Press Ltd* (1936) 1 KB 697 at 712-13(c)
6. *Udhav Singh v. Madhav Rao Scindia* (1977) 1 Supreme Court Cases 511
7. *Hardwar Lal v. Kanwal Singh* (1972) AIR SC 515
8. *Azar Hussain v. Rajiv Gandhi* (1986) (Supp) Supreme Court Cases 315
9. *North Louth Case* (1911) 60 M & H 124
10. *Tarnolis Appuhamy v. Wilmot Perera* 49 NLR 361 at 368
11. *Illangaratne v. G.E. de Silva* 49 NLR 169
12. *Abeywardena v. Ariya Bulegoda* (1985) 1 Sri L.R. 86
13. *Rutnam v. Dingiri Banda* 45 NLR 145
14. *Pelpola v. R.S.S. Gunawardena* 49 NLR 207
15. *Jayasinghe v. Jayakody* (1985) 2 Sri L.R. 77 at 89
16. *Munasinghe v. Corea* 55 NLR 265

PRESIDENTIAL ELECTION - Preliminary objections

K.N. Choksy, P.C. with L.C. Seneviratne, P.C., Ben Eliyathamby, P.C., Paul Perera, P.C., Daya Pelpola, S.J. Mohideen, D.H.N. Jayamaha, S. Wimalachanthiran, A.P. Niles, Raja Dep, Lakshman Perera and Ronald Perera for petitioner.

H.L. de Silva, P.C. with P.A.D. Samarasekera, P.C., Ranjit Abeyhuriya, P.C., Faisz Musthapha, P.C., D.S. Wijesinghe, P.C., Nihal Jayamanne, P.C., S.S. Sahabandu, P.C., R.K.W. Goonesekera, D.P. Mendis, Peter Jayasekera, Jayampathy Wickremaratne, Javid Yoosuf, Aravintha Athurupana, Gaston Jayakody and Sarath Weerakoon for 1st respondent.

K.C. Kamalabayson, P.C., Attorney-General with Salim Marsoof, P.C., Additional Solicitor General, Shavindra Fernando, Senior State Counsel., Uditha Egalahewa, State Counsel and Nerin Pulle, State Counsel for 2nd and 3rd respondents.

December 12, 2000.

SARATH N. SILVA, CJ.

This Petition has been presented by the General Secretary of the United National Party and it relates to the Presidential Election, held on 21. 12. 1999. The Petitioner has joined three persons as Respondents. The 1st Respondent is the candidate who was declared elected to the office of President. The 2nd and 3rd Respondents are, respectively, the Commissioner and the Acting Commissioner of Elections. The Petitioner is seeking a declaration that the election of the 1st respondent is void and that the return made in her favour is undue.

Thirteen persons were nominated as candidates at the said election. The votes received by the candidates are as follows :

1. Chandrika Bandaranaike Kumaratunga	PA	4,312,157	51.12%
2. Ranil Wickremasinghe	UNP	3,602,748	42.71%
3. M.D. Nandana Gunathilake	JVP	3,44,173	4.08%
4. Harischandra Wijetunga	SMBP	35,854	0.43%
5. W.V.M. Ranjith	Ind 2	27,052	0.32%
6. Rajiva Wijesinghe	LP	25,085	0.30%
7. Vasudeva Nanayakkara	LDA	23,668	0.28%
8. Tennyson Edirisuriya	Ind 1	21,119	0.25%
9. Abdul Rasool	SLMK	17,359	0.21%
10. Kamal Karunadasa	PLSF	11,333	0.13%
11. Hudson Samarasinghe	Ind 3	7,184	0.09%
12. Ariyawansa Dissanayake	DUNF	4,039	0.05%
13 Alwis Weerakody Premawardhana	PFF	3,983	0.05%

There were 11,779,200 registered voters and the total number of votes polled was 8,635,290 reflecting a poll of

73.31%. Out of that number 199,536 or 2.31% votes were rejected with 8,435,754 valid votes being distributed amongst the candidates as stated above.

Section 93(a) read with Section 94 of the Presidential Elections Act, No. 15 of 1981, permits any person who was a candidate at the election, who claims to have had a right to be returned or elected at such election, to present a petition and to seek a declaration from this Court that such person was "duly elected and ought to have been returned," on any one or more of the grounds set out in section 91 of the Act. None of the unsuccessful candidates at the said election have availed of this right and presented a petition to this Court seeking a declaration that such candidate should have been returned or elected in place of the 1st Respondent.

The Petitioner, not having been a candidate, has presented this petition in terms of Section 93(b) as the person who signed the nomination paper of the candidate of the United National Party (U.N.P.). Although he has averred in paragraphs 8(a) and 11(b)(i) & (ii) of the Petition that "the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely, Ranil Wickremasinghe," he has not claimed the relief permitted by section 94(c) to secure a declaration from this Court that the said candidate was duly elected and ought to have been returned. The Petitioner has restricted the relief that he seeks only to a declaration that the election of the 1st Respondent is void, which if upheld by this Court would result in another election being held as provided in Section 101(1)(a) of the Act. However, it has to be noted that if the Petitioner sought the further declaration that a candidate other than the 1st Respondent should be declared elected, Section 95(1)(a) requires him to join all the candidates as Respondents to the Petition, which he has opted not to do.

The Petitioner relies on three grounds for the avoidance of the election of the 1st Respondent. These three grounds are :

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- (i) General intimidation by reason of which the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely, Ranil Wickremasinghe;
 - (ii) Non-compliance with the provisions of the Presidential Elections Act, No. 15 of 1981, by reason of which the election was not conducted in accordance with the principles laid down in such provisions, which non-compliance affected the result of the election;
 - (iii) Other circumstances, by reason of which the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely, the said Ranil Wickremasinghe;

The grounds (i) and (iii) above come within the ambit of Section 91(a) of the Act and ground (ii) comes within Section 91(b) of the Act.

Respondents have raised preliminary objections to the Petition and have sought a dismissal of the Petition, broadly on similar grounds.

The principal objection is that the Petition does not contain a concise statement of material facts on which the Petitioner relies to establish the grounds of avoidance pleaded by him. There are also certain defects in pleading grounds (ii) and (iii) stated above on which a rejection of these grounds is sought.

The objections involve an examination of the elements that constitute each ground of avoidance pleaded by the Petitioner and of the material facts pleaded by him in relation to each such ground, in order to ascertain whether the Petition complies with the mandatory requirements of law.

We have had the benefit of two judgments of this Court which relate to the Presidential Election held in December

1988, to wit, the cases of *Bandaranaike v. Premadasa*, reported in (1989) 1 SLR page 240⁽¹⁾ and (1992) 2 SLR page 1⁽²⁾. It is ironic that although a period of 12 years have lapsed from the commencement of that Election Petition to the present one, the same learned President's Counsel feature in this case as well, subject to a reversal of roles.

The objections relate to the provisions of two sections of the Presidential Elections Act, No. 15 of 1981. They are Section 91 which states the grounds of avoidance of an election of a candidate and Section 96 which lays down the contents of an election petition.

Section 91 reads thus :-

"The election of a candidate to the office of President shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Supreme Court, namely -

- (a) that by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate whom they preferred;
- (b) non-compliance with the provisions of this Act 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 non-compliance affected the result of the election;
- (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate;

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- (d) that the candidate personally engaged a person, as a canvasser or agent or to speak on his behalf, knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the Ceylon (Parliamentary Elections) Order in Council, 1946 or the law relating to the election of Members of Parliament, or the law relating to Referenda, or under this Act;
- (e) that the candidate personally engaged a person, as a canvasser or agent or to speak on his behalf, knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution and the period of such civic disability specified in such resolution had not expired;
- (f) that the candidate was at the time of his election a person disqualified for election to the office of President.”

It is to be noted that grounds (a) and (b) of Section 91 are of a general nature with a concomitant impact on the result of the election. If these grounds are established, the election would be declared void. Whereas, grounds (c), (d), (e) and (f), are what may be described as “candidate specific grounds,” where a particular action of a candidate or his agent or any disqualification of the candidate is drawn in issue. Unlike in the case of grounds (a) and (b) the entire election itself would not be drawn in issue in relation to the latter set of grounds. If any of these grounds are established in relation to the particular candidate who is elected, the return of the person so elected would be declared undue.

Section 96, which specifies the contents of an election petition, reads as follows :

“An Election Petition -

- (a) shall state the right of the Petitioner to petition within section 93;
- (b) shall state the holding and result of the election;
- (c) shall contain a concise statement of the material facts on which the Petitioner relies;
- (d) shall set forth full particulars of any corrupt or illegal practice that the Petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice, and shall be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice;
- (e) shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or as the case may be, and shall be signed by all the Petitioners;

provided, however, that nothing in the preceding provisions of this section shall be deemed or construed to require evidence to be stated in the petition."

Paragraphs (a), (b), (c) and (e) would apply in relation to any Petition, whatever be the ground of avoidance that is relied on. Whereas paragraph (d) would apply in relation to the specific grounds of corrupt or illegal practice as stated in Section 91(c).

The grounds of objection stem from Section 96(c), that the petition does not contain a concise statement of the material facts on which the petitioner relies.

This requirement has come up in issue in several cases both in this country and in India where the statutory provision is similar. In dealing with the said requirement, this Court in the case of *Bandaranaike v. Premadasa*⁽¹⁾ at page 263, cited with approval the judgment of H.N.G. Fernando, C.J., in the case of *Wijewardena v. Senanayake*⁽³⁾. In that case the Court considered the parallel provision contained in Section 80B(c) of the Ceylon (Parliamentary Elections) Order in Council, (Cap. 381), as amended. The wording of that Section is identical to Section 96(c). Commenting on the requirement that the Petition must set out the material facts on which the petitioner relies, the Court observed as follows : (at page 100)

“The learned Election Judge has held that this statement in paragraph 3 of the petition does not satisfy the requirement in S. 80B(c) that the petition must set out the material facts on which the Petitioner relies. In a case in which a Petitioner relies on the commission of a corrupt or illegal practice by the successful candidate or his agent, paragraph (d) of S.80 expressly specifies the facts which the Petitioner must state with regard to the commission of the alleged corrupt or illegal practice. But this specification of what are material facts in that class of case does not in my opinion relieve the Petitioner of the duty to specify material facts in a case in which he seeks to avoid an election on a different ground. For instance, a Petitioner cannot merely state that the successful candidate was disqualified for election, for such a statement would specify only *the ground* for the avoidance of the election, *but not any fact* on which he relies to establish that ground; in this example, if the material fact is that the Respondent was at the time of his election a public officer or a government contractor, or was not a citizen of Ceylon, or was the subject of some disqualifying conviction, S. 80B(c) requires that fact at least to be stated. So also, in the case of a charge of general intimidation, a Petitioner must specify at the least the nature of the alleged intimidation;

whether it consisted of actual violence, or of threats of violence, or of some other kind of intimidation, and when and where such intimidation is alleged to have occurred. A Petitioner cannot be permitted merely to specify a ground of general intimidation in an election petition with the hope that he can substantiate it with evidence subsequently secured.

Prior to the amendment of 1970, the scheme of the Order in Council was such that particulars of a matter alleged in an election petition could under Rule 5 of the Rules be furnished on application of the Respondent. There were decisions to the effect that in view of this rule, a bare allegation e.g. bribery by an agent, need only be made in a petition. I agree with the trial Judge in this case that the amendments of 1970, which repealed Rule 5 and required a concise statement of material facts to be made in the Petition, were intended to secure that a Respondent will know from the petition itself what facts the Petitioner proposes to prove in order to avoid the election and will thus have a proper opportunity to prepare for the trial."

Thereafter what is required was summed up at page 101 in the following terms :

"The term 'material facts' has a plain meaning in the context of the requirements relating to pleadings, namely facts material to establish a party's case.

In the case of *Bandaranaike v. Premadasa(supra)*, having referred to portions of H.N.G. Fernando C.J.'s judgment cited above, the Court made a further observation which emphasizes the object of this requirement as follows (at page 263) :-

"The object of the requirement is clearly to enable the opposite party to prepare his case for the trial so that he may not be taken by surprise."

In *Senanayake's* case(supra) H.N.G. Fernando, C.J., at page 101 observed that he was not inclined to follow decisions of the Indian courts with regard to the interpretation of this provision, since the history of our law is different. However, in the case of *Bandaranaike v. Premadasa*(supra) extensive references have been made to the decisions of the Indian Courts and in submissions before us, both counsel cited extracts of these judgments. In the circumstances I would now, bearing in mind the observations made in *Senanayake's* case, refer to the corresponding provisions in the Indian statute and the dicta in the leading cases, in which these provisions have been interpreted.

The corresponding provision in India is Section 83 of the Representation of People Act of 1951. It contains a similar provision as in Section 96 of our Act.

The distinction between a concise statement of material facts required by Section 96(c) and the requirement to state the full particulars of any corrupt or illegal practice alleged by the Petitioner, as provided in Section 96(d), is found in identical words in Section 83(1)(a) and (b) of the Indian Act. The Indian Courts have laid emphasis on the distinction, so that each requirement would have its true meaning.

In an early case, *H.V. Kamath v. Election Tribunal*⁽⁴⁾, the Court interpreted this provision with reference to a similar requirement in the Rules made under the the Judicature Act in England as to the contents of pleadings in a civil suit. The Court held as follows :

“An examination of the scheme of the Act will show that the party filing an election petition is required to state therein two things. This is to be found in S. 83 which says that an election petition shall contain a concise statement of the material facts on which the Petitioner relies and shall set forth full particulars of any corrupt practice, etc. A distinction is made between a statement of the material

facts and particulars of any corrupt practice. Under the unamended Act a list of corrupt practices had to be filed. Not much difference has, however, been made, though the language has been changed, between the requirements as they existed before the amendment and after the amendment.

Both before and after the amendment an election petition must contain a concise statement of the material facts and also set forth full particulars of any corrupt practice which the Petitioner alleges. The distinction which has been made between "material facts" and "particulars" bring to our mind the leading case on the subject of pleadings reported in *Bruce v. Odhams Press Ltd.*,⁽⁵⁾ where Scott, L.J., laid down the law in relation to Order XXV and Order XIX of the Supreme Court Rules in the following words :-

"The cardinal provision in R.4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under Order XV, R.4: see *Phillipps v. Phillipps* (1878) 4 Q.B 127 (D); or 'a further and better statement of claim' may be ordered under Order XIX, R.7".

The function of 'particulars' under R.6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the defendants. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial."

“The above quotation makes a distinction between ‘material facts’ and ‘particulars’. Neither of course includes evidence which is required to prove the allegations. The same scheme is to be found in the Code of Civil Procedure, where the cause of action has to be stated with completeness and unless there is a complete cause of action the plaintiff is not entitled to judgment. Indeed the plaint can be rejected if it does not disclose a complete cause of action. Where, however, the cause of action involves narration of particulars, e.g. in a case of fraud, those particulars have to be supplied with sufficient clarity and precision.”

In the case of *Udhav Singh v. Madhav Rao Scindia*⁽⁶⁾, the Supreme Court of India gave a similar interpretation to these provisions with a ‘more comprehensive pronouncement of the requirement. At page 523, it is stated as follows :

“All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are “material facts”. In the context of a charge of corrupt practice, “material facts” would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the Petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short all those facts which are essential to clothe the petitioner with a complete cause of action, are “material facts” which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

“Particulars”, on the other hand, are “the details of the case set up by the party”. “Material particulars” within the contemplation of clause (b) of section 83(1) would therefore

mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."

In the cases of *Hardwari Lal v. Kanwal Singh*⁽⁷⁾, and *Azhar Hussain v. Rajiv Gandhi*⁽⁸⁾, the Supreme Court of India, formulated the test to ascertain whether there has been due compliance with the requirement to plead a concise statement of material facts, from a slightly different perspective.

In *Lal's* case(supra) the Court formulated the test as follows :

"Material facts are facts which if established would give the Petitioner the relief asked for. If the respondent has not appeared could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action." (at page 520)

And, in *Rajiv Gandhi's* case(supra) at page 327 the same test is stated thus :

"Material facts are, facts which if established would give the Petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition, on the basis of the facts,pleaded in the petition."

The foregoing survey of the relevant statutory provisions that have been applicable here and in India reveals a commonalty in the requirement. It appears that the requirement to plead material facts on which a party is relying

on has been originally drawn from the Rules made under the Judicature Act of England as to pleading in civil suits.

The requirement in Section 96(c) cannot in my view, be taken in isolation. It has to be construed initially in the context of the remaining provisions of the Section, which states the contents of an election petition, commencing with the right of the Petitioner to present the petition and culminating in the prayer for relief. The words in Section 96(c) “. . . the material facts on which the Petitioner relies,” should therefore in my view be construed, as the material facts on which the Petitioner relies, *to secure the relief sought in the petition*. Relief can be sought only on the basis of any one or more of the grounds of avoidance stated in Section 91. Hence the material facts required to be stated are those necessary to establish the particular ground of avoidance that is relied upon to secure such relief. This linkage, between the ground of avoidance relied on and the disclosure of material facts, has been stated in *Wijewardena's* case (supra) in very simple language as “facts material to establish a party's case”.

The Indian Courts, following English precedents have had recourse to the phrase “cause of action”, used in civil procedure to enunciate this requirement. In civil procedure, a cause of action is the wrong, for the redress of which an action may be brought. The legal component of a wrong would be, the right, duty or obligation recognized by law. The factual component would be the matters on which, the right, duty or obligation at issue is founded and on the basis of which the claim for relief is pleaded. When related to the Elections Law, the legal component of the “wrong” would be the ingredients of the ground of avoidance, that is relied upon and the factual component would be the matters necessary to establish each such ingredient. Viewed from this perspective, the question whether there has been sufficient compliance with the requirement to plead material facts, could rightly be answered only by posing the further question as stated in the later Indian judgments. That is, whether the material facts pleaded in the

petition by themselves warrant a verdict in favour of the Petitioner, if the Respondent does not appear in defence. Hence, the Petitioner would clear this threshold, only if he has pleaded sufficient material facts to establish each ingredient of the ground of avoidance that is alleged.

The requirement to disclose material facts of the ground of avoidance in the petition itself, appears to be based on certain rules of prudence that feature in the judgments that have been cited. In *Wijewardena's* case(supra), it is stated as follows :-

"A Petitioner cannot be permitted merely to specify a ground of general intimidation in an election petition with the hope that he can substantiate it with evidence subsequently secured." (at page 100)

The observation implies that although evidence need not be pleaded in the petition, it should be available, when the petition is presented and the concise statement of material facts should be based on such evidence. The sanction is against evidence being "subsequently secured." The safeguard is imposed since the likelihood of evidence, thus secured being prevaricated or otherwise tainted is much stronger.

Another rule of prudence which underpins this requirement is stated in *Wijewardena's* and *Bandararanaiké's* cases(supra). It is based on the need to notify the Respondent of the facts the Petitioner proposes to prove in order to avoid the election, so that he will not be taken by surprise and will have a proper opportunity to prepare for the trial. Due notice to the adverse party of the matters relied on against him is a principle of natural justice. Hence the relevant provision should be construed to give its full effect.

I would now sum up the manner in which the requirements in Section 96(c), read in the context of the relevant provision of Section 96, which states the contents of

an election petition and of Section 91 which states the grounds of avoidance of an election, will apply :

- (1) It requires an election petition to contain :
 - (a) a clear statement of the ground of avoidance relied on with reference to its description in Section 91 and the ingredients of such ground of avoidance;
 - (b) a concise statement of material facts on which the Petitioner relies in relation to each ingredient of the ground of avoidance.
- (2) The question whether there has been sufficient compliance with the said requirements will be decided by examining the contents of the petition and ascertaining whether on the basis of the matters pleaded, the Petitioner would be entitled to the relief sought, if the Respondents do not appear and oppose the petition.
- (3) If the answer is in the negative, the petition itself or any particular ground in respect of which the contents of the petition are found to be deficient, will be rejected.

In the light of the foregoing, I would now examine the ground of general intimidation and the objection raised thereto.

The ground of general intimidation is contained in Section 91(a) along with certain other grounds, having an impact of a general nature, on the election as a whole. This provision, when paraphrased by deleting words that relate to other grounds, would read thus :

“that by reason of . . . general intimidation’ . . . , the majority of electors were or may have been prevented from electing the candidate whom they preferred.”

On a plain reading of the section as paraphrased, this ground of avoidance comprises of two main ingredients :-

- (1) general intimidation, which would consist of events or incidents of intimidation of a widespread nature. Halsbury's Laws of England (Vol. 15 page 442) contains a succinct statement of what constitutes intimidation, which is drawn from several judgments of the English Courts. It reads thus :

"In the case of intimidation, persons of ordinary courage and intelligence must have been prevented from voting as they wished;"

- (2) the impact these events or incidents had on the electoral process, viz, that, by reason of general intimidation, the majority of electors were or may have been prevented from electing the candidate whom they preferred.

In the case of *Bandaranaike v. Premadasa*(*supra*) it was contended by counsel for the Petitioner that the section postulates "a composite concept" and that the latter part of the section sets out "the necessary effect of the unlawful pressures" (vide 1992 SLR page 14). In other words, the contention was that by proof for the events or incidents of intimidation of a widespread nature, the Petitioner would be entitled to the relief sought : that, the Petitioner does not have a separate burden of proving the extent to which these events or incidents constituting general intimidation 'affected' the result of the election, and that this is an inference the Court should draw on the basis of the events or incidents of intimidation.

The Court clearly rejected this contention. Mr. H.L. de Silva who was the counsel for the petitioner in that case and who persistently advanced the said contention, now seeks the full benefit of the rejection of his submission.

The consistent trend of authority has been to consider the 'affect' of the events or incidents of intimidation on the result

of the election as a distinct ingredient in the ground of general intimidation. This trend of authority appears to have been influenced by a decision in England in the *North Louth* case(*supra*) which was relied on by Nagalingam, J., in the case of *Tarnolis Appuhamy v. Wilmot Perera*⁽¹⁰⁾. This case related to the first Parliamentary Election held under the Ceylon (Parliamentary Elections) Order in Council, 1946. Nagalingam, J., cited the following passage in the judgment of Gibson, J., in the *North Louth* case(*supra*), which reads thus :

“To upset an election for general intimidation it is necessary to “show that there was such general intimidation *as might have ‘affected’ the result of the election*” (emphasis added).

The decisions in the cases of *Illangaratne v. G.E.de Silva*⁽¹¹⁾, and *Abeywardena v. Ariya Bulegoda*⁽¹²⁾, are based on the premise, that the ‘affect’, the acts of intimidation had on the result, is a distinct ingredient of the ground, which has to be proved by the election petitioner. An examination of the decision in *Rutnam v. Dingiri Banda*⁽¹³⁾, and *Pelpola v. R.S.S. Gunawardena*⁽¹⁴⁾, being cases where positive findings have been made on the ground of general intimidation, shows that the Court has laid emphasis on this ingredient and has come to findings on the basis of the number of voters ‘affected’ by the acts of intimidation. In the case of *Jayasinghe v. Jayakody*⁽¹⁵⁾, Sharvananda, J., (as he then was) dealt with this ingredient, in the following terms :

“In order to succeed in his petition, the petitioner has got to *prove a further ingredient*, viz, that the majority of electors may have been prevented from electing the candidate who they preferred . . .” (emphasis added).

In the preliminary order in the case of *Bandaranaike v. Premadasa*⁽¹⁾, (at page 261) the Court summed up its findings on this aspect, as follows :

“We agree with Mr. Choksy that mere proof of the several instances or acts of general intimidation would not suffice to avoid an election. In addition, the petitioner has to prove that these several acts or instances had the result or consequence that ‘the majority of electors were or may have been prevented from electing the candidate whom they preferred’.”

In the final order in that case⁽²⁾ (at page 22) the Court considered the said finding to be a part of the *ratio decidendi*. The Court observed that :

“The order made by this Court on the preliminary objections is clearly binding on us, although Mr. de Silva argued that some of the crucial findings therein are erroneous. Having regard to the nature of the preliminary objections that were raised, the Court was called upon to analyse the ingredients of the charge of general intimidation postulated in S.91(a). At the hearing on the preliminary objections the foundation of the submissions of Mr. de Silva was that S. 91(a) embodied the essential principles of the English Common Law relating to a free and fair election. The Court did not accept this contention. The Court ruled on what it considered to be the true meaning of the words ‘. . . the majority of electors were or may have been prevented from electing the candidate whom they preferred’. This ruling is undoubtedly a part of the *ratio decidendi* of the order and it is not open to us to place a gloss on it or to deviate from it. What is more, we cannot overlook the significant fact that the trial proceeded on the basis of the interpretation placed by the Court on S. 91(a) in the preliminary order.”

It was also held that the burden of proof of this ingredient is, “clearly on the petitioner in terms of Section 91(a).” (at page 54).

Mr. de Silva’s submission before this Court is that the petitioner should plead in his election petition, as forming

part of the concise statement of material facts, not only the material facts as to the events or incidents of intimidation that constitute general intimidation, but also material facts relevant to the other ingredient of the ground of general intimidation viz, the 'affect' these events or incidents had on the result of the election. He submits that since the result is stated by way of the number of votes polled by each candidate, the manner in which the alleged incidents 'affect' the result, should also be stated in numbers. In brief, his submission is that the number of voters that the petitioner alleges were 'affected' should be stated 'at least approximately' in relation to each event, disclosed in the petition. Mr. Choksy concedes that the 'affect' the alleged general intimidation had on the result of the election is a distinct ingredient of the ground of general intimidation and that there is a burden on the petitioner to prove both ingredients viz, the events or incidents which constitute general intimidation and the 'affect' these events or incidents had on the result of the election. But, he submits that the averment in the petition, (vide paragraph 8(a)) where he has pleaded that by reason of the occurrence of the incidents set out in paragraph 9, which constitute general intimidation, the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely Ranil Wickremasinghe, there is sufficient compliance with the requirement to plead material facts relevant to the impact, general intimidation had on the result of the election. The gravamen of the submission is that, by clearly identifying the candidate who would have won, but for the general intimidation, the petitioner has indicated the total number of voters who were thus 'affected'. It was submitted that it is well nigh impossible for the petitioner to state even the approximate number of voters 'affected' in relation to each incident of intimidation stated in the petition.

In terms of Section 91(a), the ground of general intimidation would consist of two ingredients. These two ingredients would constitute the cause of action in an election petition and the burden of proving both ingredients would be on the petitioner. It would be incumbent on the petitioner in terms of Section 96(c) to state concisely the material facts on which he relies on to obtain the relief he has sought, in relation to both ingredients. The pleading would be considered as being adequate only if *ex facie* the petitioner could be granted the relief sought, on the assumption that the petition is unopposed.

The nature of the material facts the petitioner should plead in relation to the first ingredient, has been identified in *Wijewardena's case* (*supra* at page 100): "A petitioner must specify at least the nature of the alleged intimidation; whether it consisted of actual violence, or threats of violence, or of some other kind of intimidation, and when and where such intimidation is alleged to have occurred". In this case the petitioner has set out in paragraph 9 of the petition, the nature of the alleged intimidation, in several sub paragraphs, by stating the incidents in each district in relation to the respective polling divisions that come within such district. The respondents have not raised any objection as to the adequacy of the material facts thus pleaded in paragraph 9.

The objection of the respondents is in relation to the second ingredient. Mr. de Silva's submission that this ingredient is distinct and cannot be taken as a corollary of or an inference to be drawn from the first, is unassailable. This submission is supported by the ingredients that manifest on a paraphrasing of the relevant provisions of Section 91(a) and the decisions in the cases ranging from *Tarnolis Appuhamy's case* decided in 1948, to the *Bandaranaike v. Premadasa* case decided in 1992, as set out in the preceding portions of this judgment. There is also merit in Mr. de Silva's submission that since the result of the election is stated and could be

comprehended only in relation to the number of votes polled by the respective candidates, the extent to which the intimidation 'affected' the result, should also be ascertained with reference to the number of voters thus 'affected'. On this basis Mr. de Silva further submits that, to satisfy the requirement of pleading material facts relevant to the second ingredient, the petitioner should state the number of voters 'affected' by each incident of intimidation specified in paragraph 9 of the petition. This further submission is, in my view, inconsistent with the bifurcation of the content of Section 96(a) into two ingredients.

As noted above, the two ingredients, one being of general intimidation and the other based on the requirement of 'affectation', although linked in certain respects are distinct in their content. The several incidents of intimidation in respect of the given polling divisions, are pleaded in paragraph 9, in compliance with the requirement to state material facts relevant to the alleged general intimidation. It has to be borne in mind that each incident thus pleaded does not by itself constitute an ingredient of the ground of avoidance in Section 96(a). It is the collection of these incidents that constitute the ingredient of general intimidation. By submitting that the petitioner should specify the number of voters affected in relation to each incident that is pleaded, Mr. de Silva is in effect seeking particulars with regard to the material facts pleaded in relation to the ingredient of general intimidation. That would in my view, amount to a stretching of the requirement to plead material facts relevant to the ingredient of general intimidation, beyond the limits permitted by Section 96(a). From a practical perspective, it would place an unduly onerous burden on a petitioner to plead with specificity, the number of voters affected in relation to each of the numerous incidents of intimidation. Hence, the further submission of Mr. de Silva as stated above, is one that cannot be accepted.

On the other hand, the question that arises for consideration, based on the bifurcation of the ingredients in the ground of avoidance relied on, is whether the petitioner has pleaded material facts relevant to the second ingredient. This ingredient relates to the extent to which the general intimidation 'affected' the result of the election. Although general intimidation would consist of a collection of single incidents of intimidation, when considering the sufficiency of a pleading, I am of the view that what should be pleaded as material facts, is the impact the totality of general intimidation had on the result of the election.

There is a significant paucity in the averments of the petition, in stating the material facts as to the impact the alleged general intimidation had on the result of the election. The strong criticism which Mr. de Silva, makes on this score is not without merit. Whilst the petition contains pages of what are alleged as incidents of intimidation in paragraph 9, the averment with regard to the impact these incidents had on the result of the election is contained in a single sentence in paragraph 8(a), which reads thus :

"That by reason of the occurrence of the incidents and the commission of the acts set out in paragraph 9 hereof, there was general intimidation by reason of which the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely the said Ranil Wickremasinghe."

The Petitioner's case is one of 'preventive intimidation' and not 'coercive intimidation.' It is not alleged that as a result of the intimidation, persons who would have voted for Mr. Ranil Wickremasinghe, were coerced to vote for another candidate. The allegation is that persons who would have voted for Mr. Ranil Wickremasinghe were prevented from exercising their franchise. The extent to which such intimidation 'affected' the result should therefore be seen in the number of

persons who were thus prevented. This number is discernible in the statement that, if not for the alleged prevention, Mr. Ranil Wickremasinghe would have got a majority of the votes. The manner in which a majority could be claimed by an unsuccessful candidate is clearly stated in the case of *Bandaranaike v. Premadasa*⁽²⁾, at p. 54. In that case the majority of the successful candidate was 279,339 votes and the Court made the following observation :

“It was the submission of counsel that even if the petitioner got one more vote than the majority obtained by the 1st respondent she could still not have been declared elected. Mr. Choksy contends that the petitioner in order to win had to get the total votes received jointly by the UNP and the SLMP plus one more vote. Thus she would have had to get 515,059 more votes than she polled in order to have succeeded at the election. It appears to us that this submission is well-founded.”

In the present case the majority of the 1st respondent was 709,409 votes. The other candidates polled 520,849 votes. To secure a majority of votes, Mr. Ranil Wickremasinghe had to poll 1,230,258 additional votes. Therefore the averment in the petition, that by reason of general intimidation the majority of voters were prevented from electing Mr. Ranil Wickremasinghe, tantamounts to a statement that the general intimidation ‘affected’ a minimum of 1,230,258 persons who would have otherwise voted for him. This figure is given in the 1st respondent’s written submissions, which shows that the 1st respondent has comprehended the averment in like manner.

In fairness to learned counsel for the 1st respondent it should be noted that he has given the figure of 1,230,258 votes, not to fill a lacuna in the pleading of the petitioner, but to demonstrate the degree of improbability of supporting such a claim with evidence. He has described the amount of the votes thus claimed as ‘an astronomical figure.’

The poll of 8,635,290 out of 11,779,200 registered voters represents a high turnover of 73.31%. If a further 1,230,258 persons voted (on the assumption that everyone of them voted for the candidate as claimed in the petition) the turnout would have to go up to 9,845,548 which in relation to the number of registered voters would be 83.75%. Counsel uses the word 'astronomical' since such a percentage of polling would be way above what is recorded in any national poll. It is also seen that the petitioner has pleaded incidents of intimidation only in 67 polling divisions out of the total number of 156 polling divisions in which the poll was taken. Hence the additional figure of 1,230,258 votes would have to come from only these 67 polling divisions. For instance, in the Kalutara District, in which there are 8 polling divisions, the petitioner refers to incidents of intimidation only in *one polling division*.

Learned Counsel for the 1st respondent has pointed out that the largest number of incidents of intimidation stated in paragraph 9 of the petition are from the Kandy and Kurunegala districts, but according to the declared result the candidate of the U.N.P had secured a higher percentage in these districts than his national average of 42.71%. The analysis of the number of incidents related to the percentage of poll reflected in table 'A' annexed to the written submissions show that in the districts of Galle, Matara and Hambantota, where only a few incidents of intimidation are cited, the percentage of the U.N.P candidate was 38%, 36% and 37%, respectively, being figures well below his national average. On the other hand, the second largest number of incidents in the country have been cited in relation to the polling division of Mahiyangana, where the candidate of the U.N.P secured 54.82% of the votes being a figure much higher than his national average of 42.71% and the 1st respondent secured only 39.17% which is much below her national average of 51.12%. Based on such an analysis counsel has submitted "that there is no co-relation between the number of incidents of violence disclosed in the petition in respect of any particular district affecting the UNP and the

percentage of votes obtained by the UNP in respect of that district.”

When the averments in the petition are related to the declared result, the foregoing may be a valid criticism. On the declared result the candidate of the UNP secured 3,602,748 votes. To claim a further 1,230,258 votes he has to increase his vote by 29.32%. This figure may not be astronomical as described by counsel, but is undeniably on the high side. Be that as it may, these submissions of learned counsel for the 1st respondent relate to the question whether on the basis of the evidence to be adduced, the petitioner could possibly succeed in securing the relief sought by him. In my view the degree of probable success on the part of the petitioner is not one that can be evaluated at this stage. It is for the Petitioner to take stock of his case and decide whether he should proceed with the case or not. At this stage the Court could consider only whether the petition passes muster by satisfying the requirements of section 96 read with section 91 as analysed above.

In relation to the second ingredient in the ground of general intimidation which is now specifically at issue, the extent to which the result of the election is alleged to have been ‘affected’ is discernible from the statement in the petition, that the majority of the voters were thereby prevented from electing the candidate of their choice, namely, Mr. Ranil Wickremasinghe. If the averments in paragraph 8(a) and 9 are examined in the light of what is required to be pleaded in terms of Section 96(c) as construed in the preceding portions of this judgment in relation to the ground of general intimidation, it would be seen that, the petition contains :

- (i) The first ingredient of the ground viz, that there was general intimidation.
- (ii) A statement of material facts in relation to the said ingredient viz, the incidents of intimidation set out in the several sub paragraphs of paragraph 9.

- (iii) The second ingredient of the ground, viz, that by reason of the alleged general intimidation the majority of electors were or may have been prevented from electing the candidate whom they preferred.
- (iv) A statement of material facts in relation to the said ingredient, viz, the averment which clearly identifies the candidate, who would have won if not for the general intimidation. The number of voters 'affected' by the general intimidation is discernable from this averment.

Thus the petition contains a clear statement of the ground of avoidance relied on with reference to its description in section 91(a), the ingredients of the ground of avoidance and the material facts in relation to each ingredient. If the petition is unopposed, the petitioner could be granted the relief sought on the basis of these averments. The petitioner would be permitted only to present evidence in relation to the material facts that have been disclosed, viz, the incidents referred to in paragraph 9 in relation to the respective polling divisions. Hence no question would arise of the respondent being taken by surprise by evidence being presented of any other facts. It would be the petitioner's burden to prove that the general intimidation 'affected' a minimum of 1,230,258 registered voters within the polling divisions specified in paragraph 9 of the petition, all of whom would have otherwise voted for the candidate of the U.N.P, and thereby secured a majority for that candidate at the election.

Subject to the foregoing reservations, I overrule the objection raised in respect of the ground of general intimidation pleaded in paragraphs 8(a) and 9 of the petition.

The next ground relied on by the petitioner is the alleged non-compliance with the provisions of the Presidential Elections Act.

This ground as stated in section 91(b) of the Act, consists of three ingredients that could be described as follows :

1. non-compliance with the provisions of the Act in relation to elections;
2. the degree of such non-compliance in relation to the election, in that it should appear that the election was not conducted in accordance with the principles laid down in such provisions; and
3. the impact of such non-compliance, in that it 'affected' the result of the election.

There is a clear distinction in what would constitute each ingredient. Although the elements of one ingredient flow to the other, each ingredient should be perceived in its distinct dimension. To begin with, there should be an identified provision or provisions of the Presidential Elections Act, that have not been complied with. The next ingredient involves the picture that emerges from the totality of the alleged non-compliance. That, it appears from such incidents of non-compliance, that the election was not conducted in accordance with the principles laid down in the provisions that have not been complied with. The last ingredient relates to the extent to which the non-compliance 'affected' the result of the election.

In the case of *Munasinghe v. Corea*⁽¹⁶⁾ Nagalingam, ACJ, considered the application of the parallel provision contained in section 77(b) of the Ceylon (Parliamentary Elections) Order in Council, 1946. Commenting on the distinction between ingredients (1) and (2) above, viz, the non-compliance with the provisions of the Act and the failure to conduct the election in accordance with the principles laid down in such provisions, Nagalingam, ACJ, observed as follows :

"This language, to my mind, draws a sharp distinction between a failure to comply with the provisions of the

Order-in-Council in regard to elections and a failure to conduct an election in accordance with the principles laid down in such provisions.

Every non-compliance with the provisions of the Order-in-Council does not afford a ground for declaring an election void, but it must further be established (apart from any other requirement) that the non-compliance with the provisions was of such a kind or character that it could be said that the election had not been conducted in accordance with the *principles* underlying those provisions. Are the "principles laid down in the provisions" of the Order-in-Council different from the provisions themselves? Unless they were, no adequate reason can be assigned for the draftsman using the language he has used. The difference, I think, consists not so much in the nature of the non-compliance as in the degree of that non-compliance; it consists not in a bare non-compliance but in the magnitude or extent of the non-compliance."

Hence in order to plead a concise statement of material facts in compliance with the requirements stated in the preceding portions of this judgment, the petition should contain the following matters :

- (1) The provision or provisions of the Act that are alleged to have been not complied with;
- (2) the incidents relevant to such non-compliance; the degree of the non-compliance in relation to the election; and
- (3) the manner in which the non-compliance affected the result of the election.

The Petitioner adverts to this ground in paragraphs 8(b) and 10 of the petition.

Paragraph 8(b) consists of a mere repetition of section 91(b) of the Act, devoid of any fact whatever. This averment.

taken by itself, is of no consequence. It refers to paragraph 10 as containing the "reasons". Paragraph 10 refers to some events relating to the counting of votes in two polling divisions, viz, Kesbewa and Maharagama in the Colombo District. It consists of sub-paragraphs numbered (i) to (xi). Sub-paragraphs (i) to (viii) relate to Kesbewa and (ix) to Maharagama. Thereafter the sub-title "Kesbewa Electorate" appears again and the contents of sub-paragraphs (i), (ii) and (iii) are combined and repeated as sub-paragraph (x). The contents of paragraph (ix), that appear under the sub-title "Maharagama" are repeated in sub-paragraph (xi) under the sub-title "Kesbewa Electorate." Let alone the Respondents, even the Petitioner would not be in a position to comprehend the contents of these averments. There is a total failure to set out any of the matters necessary to be pleaded in relation to this ground of avoidance. I would therefore reject the contents of paragraphs 8(b) and 10 of the petition. The Petitioner is not permitted to present any evidence on this account.

I would now consider the averments relevant to the third ground relied on by the Petitioner described under the title of "other circumstances", being a ground of avoidance contained in section 91(a). This ground is adverted to in paragraphs 8(c) and 11 of the petition.

Paragraph 8(c), merely states,

"that by reason of other circumstances set out in paragraph 11 the majority of electors were or may have been prevented from electing the candidate whom they preferred. . ."

In paragraph 11 which bears the title 'other circumstances' the Petitioner has set out certain matters in seven sub-paragraphs without any averment relating to the manner in which these matters 'affected' the result of the election. In part (B) of paragraph 11, the Petitioner has purported to state the impact of what is described as 'other

circumstances' had on the election, by referring to the 'cumulative effect' of the facts and circumstances set out in paragraphs 9 and 10 as well. The Petitioner has thereby attempted to plead the manner in which the alleged 'other circumstances' affected the result of the election as a cumulative effect of the general intimidation and of non-compliance of the provisions of the Act, pleaded in paragraphs 9 and 10. Hence this averment is materially defective. I would therefore reject the averments of paragraphs 8(c) and 11 of the petition. The Petitioner is not permitted to lead any evidence on this account.

For the aforementioned reasons, I make order rejecting the contents of paragraph 8(b), 8(c), 10 and 11 of the petition and the Petitioner is not permitted to lead any evidence on this account. I also make order overruling the preliminary objections raised in respect of the ground of general intimidation pleaded in paragraphs 8(a) and 9 of the petition subject to the aforementioned reservations and direct that this application be set down for trial.

There will be no costs.

WADUGODAPITIYA, J. - I agree.

PERERA, J. - I agree.

BANDARANAYAKE, J. - I agree.

GUNASEKERA, J. - I agree.

Preliminary objection in respect of ground of general intimidation overruled subject to reservations. Other objections upheld.