

1953

Present : Nagalingam A.C.J.

R. B. KADRAMER, Applicant, and M. L. M. CASSIM,
Respondent

Election Petition 7, Batticaloa—Application by the Agent for the Respondent to draw the sum of Rs. 5,000 deposited as security.

Election Petition—Security for respondent's costs—Proper time for withdrawing it—Parliamentary Elections (Amendment) Act, No. 19 of 1948, s. 32 (c).

Neither party to an election petition is entitled to draw during the appealable period, or during the pendency of an appeal, the money deposited by the petitioner as security for the respondent's costs.

APPPLICATION by the respondent to draw the sum of Rs. 5,000 deposited as security in Election Petition 7, Batticaloa.

A. S. Vanigasooriyar, for the respondent-petitioner.

A. H. C. de Silva, with G. T. Samarawickreme, for the petitioner-respondent.

August 26, 1953. NAGALINGAM A.C.J.—

This is an application by the respondent for an order of payment in his favour for the sum of Rs. 5,000 deposited by the petitioner as security for the respondent's costs. The petition itself was dismissed, the respondent's costs having been fixed at Rs. 20,000. The petition was dismissed by the Election Judge on the 17th of July, the last appealable date being the 16th of August, but in the meantime, namely, on the 30th of July, the respondent made this application. For one thing, I think it is the usual practice to wait till the expiry of the appealable period before an order of payment is allowed in circumstances such as these and that is based upon sound principle. Under the Parliamentary Elections (Amendment) Act, No. 19 of 1948, no report of the Election Judge can be transmitted to the Governor-General until the expiry of the period provided for appeal—vide Section 82 (c). So the Legislature recognizes the fact that no finality can be said to attach to the decision of the Election Judge till the appealable period is over and no appeal has been filed or where an appeal has been filed till the decision of the matter in appeal. If this principle be once accepted, it must extend to an application by one of the parties to withdraw the money deposited as security whether he be petitioner or respondent, and I think it is a principle which has been acted upon in this Court that no order of payment is allowed before the expiry of the period of appeal and, where an appeal has been filed, I think it is just and proper and every principle of natural justice demands that the order should await the decision in appeal.

I therefore refuse the present application. As this is the first case of its kind, I make no order as to costs.

Application refused.
