

ABEYWARDENE
v.
ARIYA BULEGODA AND TWO OTHERS

SUPREME COURT.

WIMALARATNE, J., ABDUL CADER, J. AND L. H. DE ALWIS, J.

S. C. ELECTION PETITION APPEAL No. 3/84.

ELECTION PETITION No. 2/83.

JANUARY 21 & 22, 1985.

- *Election Petition – General intimidation – Undue influence – Security– Rule 12 (2) of the Parliamentary Election Petition Rules 1946 as amended by Act No. 9 of 1970 – Are full particulars necessary where general intimidation is the ground of avoidance? – S. 77 (a) – Non-joinder – Should affidavit accompany petition to support charge of general intimidation? Sections 80 B (c), 80 B (d), 80 C (2), 80 A (1) of the Ceylon (Parliamentary Elections) Order-in-Council as amended.*

The petitioner sought to have the election of the 1st respondent-appellant to Parliament set aside on two grounds :

(1) By reason of general intimidation the majority of the electors were or may have been prevented from voting for the candidate whom they preferred. –s. 77 (a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended. A concise statement of facts relied on for this charge was set out in paragraph 4 (a) to (h) of the petition.

(2) The corrupt practice of undue influence was committed by the 2nd and 3rd respondents as agents of the 1st respondent-appellant (s. 77 (c) read with (s. 56 (1) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended). Particulars of the corrupt practice were set out in paragraphs 5 and 6 of the petition.

The petitioner had deposited Rs. 15,000 as security in terms of Rule 12 of the Parliamentary Election Petition Rules 1946 as amended by Act No. 9 of 1970.

Objections regarding the quantum of security, failure to set out full particulars regarding intimidation, non-joinder of parties and inadequacy of the affidavit were overruled by the Election Judge.

In appeal to the Supreme Court –

Held –

General intimidation is concerned not with the intention with which the acts are committed but with the result. Did the acts taken cumulatively have the effect of perverting the electoral process? In an allegation of general intimidation a number of acts of intimidation or other acts of undue influence will necessarily have to be relied upon by the petitioner. Any one of such acts may not constitute a charge. It is the acts taken together and their cumulative effect of preventing a free election that amounts to the ground of avoidance termed "general intimidation" and which will be the subject of a "charge" for the purpose of attracting security. Such acts taken individually or incidents taken individually will not constitute separate charges for the purpose of attracting security once they have already cumulatively attracted security on the charge of general intimidation.

General intimidation although not brought home to a candidate or his agent will avoid an election. It is different from "statutory intimidation" that is, the corrupt practice of undue influence as contemplated by the statute of which the candidate or agent may be found guilty.

Paragraph 4 of the petition sets out only a single charge and attracts security in a sum of Rs. 5,000 and no more.

Paragraph 5 of the petition contains a first charge on a distinct ground of avoidance, namely, the corrupt practice of undue influence, and attracts Rs. 5,000 as security. Paragraph 6 of the petition as it contains an additional charge on the same distinct ground as in paragraph 5, will attract Rs. 2,500 as security.

The total security being thus Rs. 12,500, the security deposited was adequate.

There is a distinction between the "concise statement of material facts" required to be given in respect of a charge of general intimidation and "full particulars" required to be given in respect of a charge of a "corrupt practice"—s. 80 B (c) and (d). As the sub-paragraphs of paragraph 4 constitute one ground of avoidance and one charge full particulars need not be given. The petitioner has sufficiently complied with the requirements of setting out the material facts in the concise statement in his petition. The petitioner has also given full particulars of the corrupt practices alleged and complied with this requirement too.

If the respondents required further particulars it was open to them to have invoked the provisions of section 80 C (1) and sought an order from the Judge directing the petition to be amplified appropriately so to ensure a fair or effective trial. There does not seem to be any provision for the dismissal of an election petition for failure to furnish particulars. The filing of interlocutory appeals from orders overruling objections based on the insufficiency of particulars will make it well nigh impossible for any election judge to comply with s. 80 C (2).

As the inclusion of several acts of intimidation or violence or threats did not have the effect of converting a single ground of avoidance into several charges and as there is no corrupt practice alleged in paragraph 4 the need to add as respondents the thugs (if known) or the supporters (if known) did not arise. Hence the objection re non-joinder fails.

No affidavit need accompany the petition to support the charge set out in paragraph 4 where only one ground of avoidance, namely, general intimidation is set out. Hence the objection to the affidavit also fails.

Cases referred to :

- (1) *Durham Election Petition (No. 2)* 31 Law Times Reports 383, 384.
- (2) *Pelpola v. Gunawardena* (1948) 49 NLR 407.
- (3) *Wijewardene v. Senanayake* (1971) 74 NLR 97, 100.

INTERLOCUTORY APPEAL from order of Election Judge.

G. Candappa, P.C., with Mark Fernando P.C., Daya Pelpola, Mrs. N. Walawage, B. Balaraman and Mr. Chandrasiri de Alwis for 1st respondent-appellant.

K. Shanmugalingam with Morris Rajapakse and Nimal de Silva for petitioner-respondent.

Cur. adv. vult.

February 14, 1985.

WIMALARATNE, J.

At a By-Election for the Hakmana Electorate held on 18.5.83 the 1st respondent-appellant Abeywardena Mahinda Yapa polled 23,336 votes whilst the petitioner-respondent Ariya Bulegoda polled 21,002 votes. Two other candidates polled 1291 and 103 votes respectively.

The petitioner-respondent filed an election petition seeking to have the election of the 1st respondent-appellant set aside on the following two grounds :-

- (a) That by reason of general intimidation the majority of the electors were or may have been prevented from voting for the candidate whom they preferred, a ground stipulated in section 77(a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended. A concise statement of facts on which the petitioner relied in respect of the charge was set out in paragraph 4 of the petition under items (a) to (h).
- (b) That the corrupt practice of undue influence was committed by the 2nd and the 3rd respondents, as agents of the 1st respondent-appellant, particulars of which corrupt practice were set out in paragraphs 5 and 6 of the petition, a ground of avoidance stipulated in section 77(c) read with section 56(1).

The 1st respondent-appellant took the following preliminary objections to the petition :-

- (i) That the sum of Rs. 15,000 deposited by the petitioner as security for costs was insufficient.
- (ii) The petition was bad in law in that –
 - (a) it did not contain a concise statement of the material facts on which the petitioner relied, in terms of section 80 B(c) of the Order-in-Council ;
 - (b) it did not set forth full particulars of the several corrupt practices alleged in the petition, in terms of section 80 B (d) ;
 - (c) it was not accompanied by an affidavit in support of the several allegations of the corrupt practices pleaded, also in terms of section 80 B (d) ;
 - (d) the petitioner has failed to join as respondents the persons against whom allegations of corrupt practice have been made in the petition, in terms of section 80 A (1) (b) ;
 - (e) the petitioner has joined as 2nd respondent a fictitious or non existent person.

The 1st respondent moved for a dismissal of the petition.

The learned Election Judge having heard arguments of Counsel, made order overruling all these preliminary objections except (II) (e) in respect of which he reserved order till the conclusion of the trial. Hence this interlocutory appeal.

Security

The quantum of security that an election petitioner is required to deposit is governed by Rule 12 (2) of the Parliamentary Election Petition Rules, 1946, as amended by Act No. 9 of 1970 ; it reads as follows :-

- (2) The security shall be an amount of not less than five thousand rupees in respect of the first charge constituting a distinct ground on which the petitioner relies, and a further amount of not less than two thousand five hundred rupees in respect of each additional charge constituting any such ground. The security required by this rule shall be given by a deposit of money".

The Election Judge has held that the sum total of security that the petitioner was required to deposit was Rs. 12,500 computed as follows :-

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|---|-----------|
| (1) In respect of the distinct ground of avoidance viz. the prevention of the exercise of free voting as a result of general intimidation as set out in the concise statement of material facts under sub-paragraphs (a) to (h) of paragraph 4 of the petition. | Rs. 5,000 |
| (2) In respect of the first charge constituting another distinct ground of avoidance viz. the corrupt practice of undue influence, as set out with particulars in paragraph 5 of the petition. | Rs. 5,000 |
| (3) In respect of the additional charge on the same distinct ground of avoidance viz. the corrupt practice of undue influence as set out with particulars in paragraph 6 of the petition. | Rs. 2,500 |

As the petitioner had deposited a sum of Rs. 15,000 as security the learned Judge overruled this first objection.

It has been contended before us by learned Counsel for the 1st respondent-appellant that paragraph 4 of the petition contains not one but three distinct grounds of avoidance, namely (1) the prevention of free voting as a result of "general intimidation" (2) the prevention of free voting as a result of "other misconduct" ; and (3) commission of the corrupt practice of undue influence by the 2nd and 3rd respondents acting as agents of the 1st respondent or with his knowledge or consent, as well as by his supporters and other thugs.

The contention of learned Counsel for the petitioner-respondent is that paragraph 4 contains only one charge on the distinct ground avoidance, that is, of general intimidation, and therefore attracts security in a sum of Rs. 5,000 only.

An election petitioner is required by section 80 B(c) to include in the petition a concise statement of the material facts on which he relies. In compliance with that section, the petition contains in sub-paragraph (a) to (h) of paragraph 4 eight incidents, the cumulative effect of which acts constitute the ground of avoidance which is "general intimidation". Sub-para (a) refers to an attack by a band of thugs on the jeep belonging to the petitioner and the robbery of valuables belonging to its occupants. Sub-para (b) refers to the wrongful confinement of the petitioner on election day by a gang of thugs near a named polling station. Sub-para (c) alleges that the 2nd and 3rd respondents acting as agents of the respondent, with a gang of thugs prevented voters from voting at a polling station by blocking access roads and by the use of thuggery. Sub-para (d) also alleges forcible prevention of voting by voters at a certain polling station by thugs. Sub-para (e) refers to the explosion of a bomb at the residence of the 1st respondent on the day before polling day which had the effect of intimidating voters. Sub-para (f) alleges intimidation on polling day of voters of four named grama sevaka divisions by supporters of the 1st respondent. Sub-para (g) alleges that voters of a state plantation were intimidated and threatened by supporters of the 1st respondent. Sub-para (h) states that voters of a named polling station were driven away by thugs and also that the polling agents of the petitioner and of another candidate were prevented from performing their duties at that polling station. There are, in the above allegations, according to learned Counsel for the 1st respondent-appellant, several charges

constituting the corrupt practice of undue influence, and according to his computation they attract security in a sum of Rs. 5,000 on the first charge set forth in sub-para (a) and Rs. 2,500 on each of the 14 additional charges of the corrupt practice of undue influence set forth in paras (b) to (h) making a total of Rs. 40,000.

Special emphasis has been placed by Mr. Candappa on the averment in sub-paragraph (c) of paragraph 4 which is directed against the 2nd and 3rd respondents who, acting as agents or with the knowledge and/or consent of the 1st respondent, are alleged to have committed the corrupt practice of undue influence. Mr. Candappa points out that just as much as paragraphs 5 and 6 aver the same corrupt practice against the 2nd and 3rd respondents but committed throughout polling day, sub-paragraph (c) of paragraph 4 alleges the same corrupt practice at different intervals of time by the 2nd and 3rd respondents ; so that in any event paragraph 4 (c) has alleged at least two classes of corrupt practice which must necessarily attract security.

Besides according to Counsel for the appellant, sub-paras (a) & (b) of paragraph 4 allege that the authorities either failed or were reluctant to investigate the offences specified therein or were unable to deal with the situation, and such failure or inability had the effect of intimidating voters who supported the petitioner. Learned Counsel contends that such failure or inability of the authorities to control the situation constitutes "other misconduct" which is one of the grounds on which an election may be avoided under section 77 (a). There being two charges on that distinct ground, they would attract security in a sum of Rs. 7,500.

Thus, according to Counsel for the 1st respondent-appellant –

- (a) The prevention of free voting as a result of "general intimidation" pleaded generally in paragraph 4 attracts as security a sum of Rs. 5,000 ;
- (b) The prevention of free voting as a result of "other circumstances" pleaded in paragraphs 4 (a) & (b) attracts as security a sum of Rs. 7,500 ;
- (c) The several corrupt practices pleaded in all the sub-paragraphs of paragraph 4 attracts a sum of Rs. 40,000 ; making a grand total of Rs. 52,000 in respect of paragraph 4.

Mr. Shanmugalingam's reply to this contention is that the law draws a clear distinction between "general intimidation" and "undue influence". When general intimidation is pleaded several incidents of intimidation or use of violence or threats are relied upon, committed not necessarily by known persons. When undue influence is pleaded, the acts of intimidation or use of violence or threats are attributed to specified or named persons. General intimidation is concerned not with the intention with which the acts are committed but with the result; did the acts taken cumulatively have the effect of perverting the electoral process? In his submission paragraph 4 (c) is only a summation of paragraphs 5 and 6 and when individual acts of undue influence which form the subject of separate charges are summarised in the concise statement of material facts relied upon by a petitioner to establish a charge of general intimidation, those individual acts of undue influence do not attract security.

An election petitioner is also required by section 80 B (d) to set forth in the petition full particulars of any corrupt practice the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed them and the date and place of such commission. In compliance with this section the petitioner alleged in paragraph 5 that between 10 and 11.30 a.m. on polling date at or near a named polling station the 2nd respondent as agent of the 1st respondent with a gang of unknown thugs prevented voters from voting by blocking all access roads to the polling station as well as by the use of force or violence and threats of use of force or violence. Mr. Candappa contends that each of these acts, namely the blocking of access roads, the use of force or violence and the threat each being an additional charge of corrupt practice attracts as security Rs. 2,500 and that the three acts together attract Rs. 7,500. A similar argument has been put forward as regards the charge of the corrupt practices committed by the 3rd respondent and set forth in paragraph 6.

The fallacy in Mr. Candappa's argument as regards paragraph 4 is that it overlooks the imperative need, when an allegation of general intimidation is made, to specify the nature of that intimidation in a concise statement of material facts. In an allegation of general intimidation, a number of acts of intimidation or other acts of *undue influence* will necessarily have to be relied upon by the petitioner. Any one of such acts may not constitute a charge. It is the acts taken together and their cumulative effect of preventing a free election that

amounts to the ground of avoidance termed "general intimidation" and which will be the subject of a "charge" for the purpose of attracting security. In sub-paragraph (a) for example, there is an allegation of an attack by a band of thugs and the robbery of valuables from the petitioner's jeep on 9th May. Proof of that allegation alone may not suffice to avoid the election on the ground that there was prevention of free election as a result of general intimidation. In order to succeed on a charge of general intimidation the petitioner has to prove that there was widespread violence, so much so that people of average courage may have been prevented from voting, and that the majority of the voters may have been prevented from voting for the candidate of their choice. It is in order to achieve that degree of persuasion that the petitioner is obliged to give a concise statement of the material facts on which he relies; otherwise the respondent will be taken by surprise at the trial. But those several acts or incidents taken individually will not constitute separate charges for the purpose of attracting security, once they have cumulatively already attracted security on the charge of general intimidation.

"Freedom of election is at common law essential to the validity of an election. If this freedom is by any means prevented *generally*, the election is void at common law. Therefore, general intimidation although not brought home to a candidate or his agent, will avoid an election" *Rogers on Elections* (19th Edition) Vol. 2 p. 521.

The distinction between "general intimidation" at common law and "statutory intimidation" defined in section 2 of the Corrupt and Illegal Practices Prevention Act, 1883 (which is identical with the definition of "undue influence" in section 56 (1) of our Elections Order in Council) has best been stated by Bramwell B in the *Durham Election Petition (No. 2) Case (1)* as follows :-

- "First of all there is the statutory intimidation, if one may use such an expression, that is intimidation contemplated by the statute, which avoids the seat - that is where a candidate or his agent, is guilty of it. But besides that there is another intimidation that has been called a common law intimidation, or intimidation at common law and it applies to a case where the intimidation is of such a character, or general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency in which the intimidation took place" *The Law Times Reports Vol. XXXI* p. 383 at 384.

In *Pelpola v. Gunawardena* (2), the respondent defeated the petitioner by the comparatively narrow margin of 387 votes. In a petition seeking to set aside the election of the respondent the petitioner relied upon two grounds of avoidance. The first was general intimidation, the particulars being that on polling day, at a number of places in the electorate, certain groups of people intimidated other groups from going to the polling station, by use and threats of force, with the result that the majority of the electors were or may have been prevented from electing the candidate whom they preferred. The second ground, as in the instant case, was based on the same incidents that formed the subject matter of the first ground, but considered as individual acts of undue influence committed against individuals by other individuals alleged to be agents of the respondent. Although the question of the quantum of security does not appear to have arisen in that case, I have referred to it in order to illustrate that in stating the material facts of general intimidation a petitioner has necessarily to rely on, and also include in his petition numerous acts of intimidation, threats and the like. If each such incident were to attract security under Rule 12, then the quantum of security a petitioner would be called upon to deposit may reach the billion rupee mark !! It seems to me that it was with a view to avoid such a drastic consequence that the legislature introduced the amendments to Rule 12 in 1970.

The statement in certain sub-paragraphs of the petition that the reluctance or incapacity of the Authorities to take necessary action may have resulted in the intimidation of voters was clearly not intended to be an allegation or charge of "misconduct" on the part of the authorities. They have been given as a reason why people feared to go to the polling station. I cannot for a moment agree to the proposition that by such inclusion in the concise statement the petitioner has introduced another ground of avoidance or another charge which attracts security.

Paragraph 4 in my view sets out only a single charge on one ground of avoidance, namely the prevention of free voting as a result of general intimidation. It therefore attracts security in a sum of Rs. 5,000 and no more.

Paragraphs 5 & 6 of the petition allege that the corrupt practice of undue influence was exercised by the 2nd and 3rd respondents respectively acting as agents of the 1st respondent or with his

knowledge and consent at a certain polling station on polling day, but at different times. Learned Counsel for the Appellants' contention, as I have stated earlier, is that each of those paragraphs contains three charges. The blocking of all access roads, it has been submitted, constitutes one act of undue influence; the use of force or violence another; and the threats of use of force or violence yet another. If counsel's submission is pushed to its logical conclusion, then there would be as many offences committed as there are access roads to the polling station! Besides, the argument derives no support whatsoever from the definition of "undue influence" contained in section 56 (1) in terms of which "every person who directly or indirectly, by himself or by any other person on his behalf, makes, uses or threatens to make use of any force or violence or restraint in order to compel such person to refrain from voting . . . shall be guilty of the offence of undue influence". The use of force or violence, the threat of the use of force or violence, or the use of restraint, if committed in the course of one and the same transaction will constitute but one offence for which there could be but one charge. I am therefore of the view that paragraph 5 contains a first charge on the distinct ground of avoidance, namely the corrupt practice of undue influence, and attracts Rs. 5,000 as security. Paragraph 6, as it contains an additional charge on the same distinct ground as in paragraph 5 will attract Rs. 2,500 as security.

Paragraphs 4, 5, & 6 together attract a sum of Rs. 12,500 as security. The Election Judge was therefore right in overruling the preliminary objection relating to the adequacy of security. His administration is in accord with the decision of the Divisional Bench in *Election Petition Appeals Nos. 1 & 2 of 1977 and No. 3 of 1978* (S.C. Minutes of 7.8.78).

The concise Statement of material facts on which the petitioner relies in support of the allegation of general intimidation is given in sub-paragraphs (a) to (h) of paragraph 4. Mr. Candappa's complaint is that his concise statement is not what is contemplated in section 80 (B) (d). He has referred us to the changes brought about in 1970 in the law relating to election petitions. The purpose of these amendments was to enable a respondent to know, immediately on a petition being filed, the particulars of the allegations he has to meet. In the words of H. N. G. Fernando, C.J. the changes in the law 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" – *Wijewardena v. Senanayake* at p. 100 (3). The Chief Justice went on to state that "the 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". *also at p. 100.*

Mr. Candappa argued that particulars of the offences given in paragraph 4 should be given in full detail, so that the respondent would not be obliged to make an investigation himself. By way of illustration he argued that in sub-paragraph (a) the names of the occupants of the jeep and the names of the persons who were robbed of cash and a gold chain should be given, so that he could lead evidence, if possible, to establish that such persons were elsewhere at the time of the alleged incident. And so in respect of each sub-paragraph more details ought to have been given. He argued, however, that there is a distinction between the "concise statement of material facts" required to be given in respect of a charge of "general intimidation" and "full particulars" required to be given in respect of a charge of a "corrupt practice". He agreed that if we rejected his argument that paragraph 4 in all its sub-paragraphs constituted not several but one ground of avoidance, and not several but one charge, full particulars will not be required to be given.

It seems to me that there has been sufficient compliance by the petitioner in setting out material facts in the concise statement. The nature of the alleged intimidation, the dates and places at which they occurred and the effect of such intimidation, have been specified in much detail. Obviously the respondent cannot be taken by surprise at the trial as a result of such details as the names of thugs not being disclosed. The proviso to section 80 B makes it clear that nothing in that section requiring a concise statement should be deemed or constructed to require evidence to be stated in the petition. The election judge has therefore correctly overruled this objection.

Full particulars of any corrupt practice that the petitioner alleges has to be set forth in the petition, including as full a statement as possible of the names of the parties alleged to have committed such corrupt

practice and the date and place of the commission of such practice. An affidavit in the prescribed form in support of the allegation of such corrupt practice has to accompany the petition – Section 80 B (d).

- The petitioner has set forth the particulars of the corrupt practice of undue influence committed by the 2nd and 3rd respondents, acting as agents or with the knowledge and consent of the 1st respondent, in paragraphs 5 & 6 of the petition. The election judge has held that the petitioner has complied with this requirement. It seems to me that the judge is correct, because the petitioner has set forth a statement containing the names of the parties (ie. the 2nd and 3rd respondents), the places of the commission of the offences, the dates and even the times at which the offences were alleged to have been committed.

If the respondents required further particulars it was open to them to have invoked the provisions of section 80 C (1) and sought an order from the Judge directing the petition to be amplified in such manner, as may be necessary to ensure a fair or effective trial of the petition. Section 80 C (2) requires the Judge to try and conclude an election petition as expeditiously as possible and to make every endeavour to conclude the trial within a period of six months after the date of presentation of the petition. There does not appear to me to be any provision for the dismissal of an election petition for failure to furnish as full a statement as possible of the particulars a petitioner is required to furnish in compliance with section 80 B (d). The filing of interlocutory appeals from the orders of election Judges overruling objections based on the insufficiency of particulars, would make it well nigh impossible for any election judge to comply with the salutary provisions of section 80 C (2).

- **Non-joinder**

- Section 80 A (1) provides that a petitioner shall join as respondents to his election petition any other candidate or person against whom allegations of any corrupt or illegal practice are made in his petition. The allegations of corrupt practice have been made in paragraphs 5 & 6 against the 1st, 2nd & 3rd respondents, and they have been made parties. Mr. Candappa's contention is that paragraph 4, although the ground of avoidance contained therein is general intimidation, also contains allegations of the commission of the corrupt practice of undue influence, by gangs of thugs as well as by supporters of the 1st respondent. In dealing with the question of the quantum of security I

have taken the view that the inclusion of several acts of intimidation or violence or threats do not have the effect of converting that single ground of avoidance into several charges. Therefore there is no charge of corrupt practice alleged in paragraph 4 and the need to make the thugs (if known) or the supporters (if known) respondents did not arise. As regards paragraphs 5 & 6 and 2nd and 3rd respondents are alleged to have committed undue influence with "a gang of thugs, unknown to the petitioner". It is thus difficult to see how these unknown thugs could have been made parties. The election Judge was therefore correct in overruling the objection re non joinder.

An objection was also taken before the election Judge that the 2nd respondent is a non-existent or fictitious person. The learned election Judge ruled that he could not make an order on that objection at this preliminary stage and reserved it for decision at the conclusion of the trial after recording evidence. Learned Counsel did not press that objection before us.

The affidavit accompanying the petition in paragraph 8 reads thus—

"I affirm to the contents of paragraph 5 above (which corresponds to paragraph 4 of the petition) partly of my personal knowledge and partly on information given to me. But with regard to the rest of the averments in this affidavit I declare and affirm that they are of my personal knowledge"

An affidavit is required to accompany and support the petition only if the petition alleges the commission of a corrupt or illegal practice. No affidavit is required in support where the petitioner alleges general intimidation. As I have already held, paragraph 4 of the petition contains only one ground of avoidance, which is general intimidation. Therefore no affidavit need accompany the petition supporting the allegation in paragraph 4 of the petition. The complaint that as the averment in support of the allegation in paragraph 4 of the petition is not spoken to entirely of the petitioner's personal knowledge there is no proper affidavit is therefore not one that merits consideration. The allegations in paragraphs 5 & 6 of the petition are supported by paragraphs 5 & 6 of the accompanying affidavit and have been made of the petitioner's personal knowledge. The objection to the affidavit has also been correctly overruled.

I would accordingly dismiss this appeal, with costs fixed at Rs. 2,000 payable by the 1st respondent-appellant to the petitioner-respondent.

ABDUL CADER, J. – I agree.

L. H. DE ALWIS, J. – I agree.

Appeal dismissed.
