

1931

Present: Drieberg J.

IN THE MATTER OF AN ELECTION PETITION *re* AVISSAWELLA DISTRICT
ELECTORATE.

TILLEKEWARDENE *v.* OBEYESEKERE.

*Election petition—Security for respondent's costs—Three charges—The Ceylon
(State Council Elections) Order in Council, 1931.*

Where an election petition alleged three offences against the respondent, viz., bribery, treating, and contracting for payment for conveyance of voters,—

Held, that security of five thousand rupees deposited for respondent's costs was sufficient on the basis of three charges within the meaning of section 12 (2) of the rules in the sixth schedule to the Order-in-Council, 1931.

The word "charge" may be applied to the offence stated in the petition and also to each act constituting the offence.

THIS was an election petition in which the respondent moved that the petition be dismissed on the ground that the security of Rs. 5,000 given was inadequate as there were more than three charges.

¹ 15 Moore I. A. 131.

² (1888) 13 A. C. 780.

R. L. Pereira, K.C. (with him *H. V. Perera* and *Seneviratne*), for respondent.—The petition must be dismissed because the security is insufficient. The Order in Council requires a deposit of Rs. 5,000 on account of the first three charges and Rs. 2,000 for every subsequent charge. In this petition the petitioner states 17 cases of bribery, 26 of treating, and at least 14 of the offence of conveyance of voters.

[DRIEBERG J.—Must not the amount be determined on the averments in the petition when security is tendered?]

Any objection at that time would be premature. It would be open to the petitioner to say that he limited himself to three specific acts. The time for objection would be when particulars were disclosed and the number of charges could be discovered. Each act of bribery or treating would constitute a specific charge. This is clear from the English authorities.¹ The object of the provisions of the Order in Council is to prevent the harassing of a respondent by frivolous charges. A multiplication of charges would mean an increase of costs to be incurred by the respondent. In previous election cases where the number of charges was not limited a respondent's costs generally amounted to about Rs. 25,000. A deposit of Rs. 5,000 is obviously inadequate to meet a case of 57 charges as in this petition.

B. F. de Silva (with him *E. B. Wikramanayake*), for petitioner.—The word "charge" is loosely used in the English cases. The number of charges is not limited in England so that no distinction is made between the form of misconduct alleged and the number of acts sought to be proved under it. The word "charge" means the form of misconduct coming under the description of corrupt and illegal practices. Any number of acts can be proved under it. These are generally referred to in England as "cases" or "instances". There are therefore only three charges in this petition. An election petition is not a matter that concerns merely the parties to it. It is a matter of public interest and a full investigation into the conduct of the respondent is necessary.

Counsel cited 1 *O'M & H* 197; *Rogers on Parliamentary Elections* (new ed.); p. 196; 6 *O'M & H* 105; 150; 336; 59; 34; 119; 112.

R. L. Pereira, K.C., in reply.—When a "charge" is investigated and proved it becomes a "case".

September 18, 1931. DRIEBERG J.—

In his petition the petitioner alleged that the respondent was guilty of three offences: bribery, treating, and paying or contracting for the payment for conveyance of voters. The petitioner gave security in a sum of Rs. 5,000 on the basis that there were three charges only.

In answer to an application for particulars the petitioner stated 17 cases of bribery and 26 of treating; the particulars of the offence of conveyance of voters are not clear but they include at least 14 cases of payments or contracts for conveyance.

On these particulars being furnished, the respondent moved on the 14th instance that the petition be dismissed on the ground that the security of Rs. 5,000 was inadequate as there were more than three charges.

¹ 4 *O'M. & H.* 200; 4 *L. R. Common Pleas* 145.

Mr. Pereira for the respondent contends that each act of bribery, treating, or conveyance is a charge in the sense in which the word is used in section 12 (2) of the rules in the 6th schedule of the Order in Council of 1931. If this is so, the security should have been Rs. 5,000 for the first three and Rs. 2,000 for each of the additional 54 charges, amounting in the aggregate to Rs. 118,000. Our rules regarding election petitions follow the English Parliamentary Rules made under the Parliamentary Elections Act, 1868,¹ the form of the petition for declaring an election void being the same.

Security to the required amount has to be given on the presentation of the petition or within three days and, if not so given, the petition must be dismissed. It follows from this that the amount of the security must be determined on the averments in the petition.

If each act on which the respondent is charged with an offence such, for example, as bribery constitutes a distinct charge within the meaning of rule 12 (2), then it will be necessary to disclose them in the petition for the purpose of determining the amount of security; but is this necessary?

It can be urged that the requirement in the form of the petition given in the rules that "the facts and grounds on which the petitioners rely" should be stated calls for an averment of each act of, e.g., bribery, and that an averment generally that the respondent has been guilty of the offence of bribery is not enough.

This question was settled shortly after the passing of the Parliamentary Elections Act of 1868 in the case of the *Westminster Election Petition*², where it was contended that a petition which merely alleged that the respondent was guilty of certain offences was bad as it did not set out the facts and grounds on which the petitioner relied. It was held that the petition was sufficient and that further information of the act or acts sought to be proved need not be furnished until an order for particulars is made. The many cases in which the petitions appear in the reports of English Cases show that they are so drawn. That this is the recognized practice appears from the form of petition given in *Rogers, Vol. II., page 523*. Mr. R. L. Pereira argued that though such a petition would be adequate in England it will not be so here for this reason. In England, under the Parliamentary Election Rules, security has to be given in £1,000 whatever may be the number of offences stated in the petition or the acts given in the particulars. Under our rules the amount of security depends on the number of the "charges in the petition". He contends that sufficient mention of the number of the acts sought to be proved must be made in the petition in order that the amount of the security can be ascertained. If this contention is right the petition should not be dismissed but the trial should be limited to one act of bribery, one of treating, and one of payment or contract for conveyance.

In my opinion by the word "charges" in rule 12 (2) is meant the various forms of misconduct coming under the description of corrupt and illegal practices; for example, whatever may be the number of acts of bribery sought to be proved against a respondent the charge to be laid against him in a petition is one of bribery. The fact that the security here has

¹ 31 & 32 Vict. c. 125.

² (1869) L. R. 4 C. P. 145 & 19 L. T. 565.

to depend on the number of matters submitted for inquiry in the petition does not compel us to adopt a different view of what these matters are from what is accepted in practice in England nor does it necessitate any departure from what an election petition should state. The matters on which the petition prays for inquiry are that the respondent has committed the offences of bribery, treating, and conveyance of voters, and so far as the petition is concerned each constitutes a charge against the respondent.

The word "charge" can be applied to the offence stated in the petition and also to each act constituting the offence though the latter are more often referred to in the reports as "cases" or "instances" of the offence.

The distinction between the charges set out in the petition and the charges in the particulars is shown in the manner in which evidence of new matter is allowed after particulars have been given. An additional circumstance of an offence is, on good cause being shown, allowed to be proved at the trial though not included in the particulars—*Cheltenham (1869)*,¹ *Wigan*,² in which other cases on this point are mentioned. This is not allowed unless it falls under one of the offences alleged in the petition.

It was urged that it was the intention of the Legislature to require heavy security to prevent a large number of unlawful acts being alleged on insufficient grounds and to prevent protracted trials. The object of this provision is stated in the rule itself and this is to secure a successful respondent against the costs incurred by him. A petitioner who has failed to prove a large number of charges can be deprived of his costs, though he has succeeded on others in having the election declared void—the *Hereford Case*.³ Counsel laid stress on the large number of specific instances of offences set out in the particulars, but this is not an unusual feature in election petitions. In the *Hereford Case (supra)* there were 184 instances of bribery alone, and in the *Norwick Case*⁴ nearly 100. The petitioners in those cases had to give security in a sum of £1,000. If the respondent's contention is right such petitions here would have to furnish security in sums of Rs. 367,000 and Rs. 199,000, respectively. The Legislature could not have acted in the belief that the cost of litigation is heavier here than in England.

I hold that the petition contains no more than three charges and the security given is in order and I disallow the respondent's motion of the 14th instant.

This matter was argued on the same day as another motion dated the 14th instant by the respondent that the charge of payments and contracts for payment for conveyance of voters be dismissed on the ground that the petitioner had not fully complied with the order for particulars. I dealt with that motion the same day but made no order as to costs.

The petitioner is entitled to the costs consequent on this motion, but I direct that they will not be payable by the respondent until the final determination of these proceedings.

Application refused.

¹ 1 O'M. & H. 63 and 19 L. T. 120.

² 1 O'M & H. 122

³ 1 O'M. & H. 194.

⁴ 1 O'M. & H. 97.