

1969 Present : Sirimane, Alles and Samerawickrame, JJ.

M. C. AHAMED, Appellant, and ALIYAR LEBBE
(alias Shahul Hamced), Respondent

*Election Petition Appeal No. 5 of 1968—Electoral District
Kalmunai*

Parliamentary election—Abetment of personation—Ingredients of offence—Presiding Officer—Incapacity to refuse ballot papers—Appeal from order of an Election Judge—“Point of law”—Ceylon (Parliamentary Elections) Order in Council (Cap. 351), ss. 42 (2A), 43 (1), 54, 82C (2).

A person does not commit the offence of abetment of personation at a polling booth during a Parliamentary election if, after an impersonator has already applied for a ballot paper claiming to be a person on the register of electors, he tells the Presiding Officer, upon objection taken by a polling agent as to the identity of the impersonator, that the impersonator is the person impersonated. The Presiding Officer has no power to refuse a ballot paper to a person who applies for one; the only instances where he can do so are set out in sections 42 (2A) and 43 (1) of the Parliamentary Elections Order in Council.

Per SIRIMANE, J.—An Election Judge's inferences which are unsupported by evidence would raise a question of law giving a right of appeal to the Supreme Court.

ELECTION Petition Appeal No. 5 of 1968—Electoral District,
Kalmunai.

G. E. Chitty, Q.C., with Hannan Ismail, Stanley Tillekeratne, G. E. Chitty (Jnr.) and N. A. Rahuman, for the respondent-appellant.

C. Ranganathan, Q.C., with K. Shanmugalingam, R. Rajasingham, C. Sandaraseyara and C. Chandrasekaran, for the petitioner-respondent.

Cur. adv. vult.

July 18, 1969. SIRIMANE, J.—

The respondent-appellant, whom I shall refer to as the respondent for convenience, was elected to represent the Electoral District of Kalmunai in Parliament at a By-Election held on 18.2.68.

The petitioner-respondent (whom I shall refer to as the petitioner) filed an election petition praying that the election of the respondent be declared void on several grounds. In the petition he set out a number of charges of Undue Influence, False Statements and Personation. At the trial, however, he dropped most of these charges and confined his case to two charges of Undue Influence exercised by the respondent's agents, and two of abetment of personation committed by the respondent. The

Election Judge dismissed the charges of Undue Influence, but held that the respondent had abetted personation, and declared the election void.

The main grounds urged at the hearing of this appeal were—

- (a) that there was no evidence to support the finding against the respondent,
- (b) that a Presiding Officer has no power to refuse a ballot paper to a person who applies for one, and the trial Judge was wrong when he dealt with the evidence on the basis that the Presiding Officer had such a power,
- (c) that the offence of personation as a "corrupt practice" for the purposes of section 54 of the Ceylon (Parliamentary Elections) Order in Council is complete when a person presents himself at a polling booth and applies for a ballot paper, where it is alleged that the personation, as in this case, was committed when voting in person. It was argued that the offence being complete at that stage, there could be no abetment as it was admitted that the application for ballot papers was made before the respondent arrived at the polling booth.

The allegation made by the petitioner was that two women personated two voters named Avva Umma, wife of Seeni Mohamed Hadjar (Voter No. FI 467) who was alleged to have been dead, and Raviyath Ummah, wife of Mohamed Husain (Voter No. F 587) who was said to be a cousin of the polling agent (one Mukthar) of one of the opposing candidates.

I have to deal with this appeal on the footing that there had been personation of these two voters by two women (though it was contended that there was no convincing evidence on this point), as the learned Judge has held on the evidence led that there had been personation.

The particulars furnished by the petitioner set out the manner in which the respondent is alleged to have abetted the two personators. In each case it was set out that on this day between 1.30 and 2.30 p.m. the respondent identified the Personator as the person personated, and in column 4 setting out the particulars of each act of personation, the petitioner alleged that,

"when the impersonator claimed the ballot paper to vote, the identity was challenged and on being questioned by the Presiding Officer the respondent who was present in the booth personally identified the impersonator as the impersonated and enabled the impersonator to exercise that vote."

That was the charge which the petitioner undertook to prove beyond reasonable doubt and the charge which the respondent had to meet.

The evidence accepted by the learned Judge shows that the polling agent Mukthar had raised objections to a number of women voters—about ten or twelve—all of which had been overruled, and the respondent arrived there on learning that frivolous objections were being raised in order to delay the voting at a booth where the respondent had much support.

According to that part of the evidence of Mukthar, which the Judge has accepted, the respondent came in when he (Mukthar) was objecting to these women voting. There is no evidence that the respondent was made aware of the nature of the objections. There is no evidence that the respondent was even within hearing distance when those objections were being raised. He is alleged to have abetted the two voters by the words he used.

What then did the respondent say? On this point the learned Judge has accepted only the evidence of the Presiding Officer Gnanasekaram. The Judge thought that it was unsafe to act on the evidence of Mukthar on this point as he apparently did not understand English.

The *actus reus* consisted solely of the words used by the respondent, and in view of the very strong contention that Gnanasekaram's evidence did not support the charge, it is necessary to examine that evidence in some detail.

The petitioner relied on an entry made by Gnanasekaram in the journal P12a in the case of one woman, where he gives as one of his reasons for issuing a ballot paper to her (the number of the ballot paper is incorrectly entered) that the respondent "revealed and stood surety for her identity". What he meant by this phrase has to be gathered from his own evidence. But before passing on to the evidence one has to bear in mind that it was not proved whether or not the two persons concerned were in fact voters. Mukthar has said in evidence that he raised his objections on suspicion, and in the case of the woman who is alleged to be dead, Mukthar did not want his objection recorded. The learned Judge says in his judgment that Mukthar at the time he raised the objection was "not sure of his ground as he is now after verification". Presumably he meant verification on reference to the death certificate which was produced. It must also be noted at this stage that it was proved by the production of the electoral register of voters at this booth that there were about fifteen women by the name of Raviyath Ummah and about thirty-five by the name of Avva Umma.

To turn now to Gnanasekaram's evidence :—on being asked why he recorded one objection only, he said,

"The agent himself insisted that she was not a voter. On the other hand there was Mr. Ahamed saying that *she was a genuine voter*, that he would stand security for her. In one case the Grama Sevaka was able to identify a lady, but in the other case the Grama Sevaka said that he was doubtful that he had seen her but did not know her name.

In that case I called her and questioned her and I was satisfied that she was a genuine voter and I asked that she be issued with a ballot paper.”

Immediately after this the Judge questioned him as follows :

“ Q. The reasons for your recording the objection are the reasons you gave that Mr. Ahamed should vouch for her identity ? ”

The witness did not answer this question. The Court then put another question in this form :

“ Q. The polling agent objected to the vote but Mr. Ahamed vouched for her identity ?

A. Yes.

Q. So you thought it best to make a record of the objection ?

A. Yes.

(The witness apparently at this stage wanted to refer to the journal P12a.)

Q. Now, what is it that you want to refresh your memory ?

A. About the decision I made *and about what Mr. Ahamed said.*

Q. What you say is you have no independent recollection of exactly all what was said ; is that what you mean ?

A. *I have a faint recollection of the incident, and how I acted. The exact thing I want to refresh my memory from the journal.*”

The witness then had refreshed his memory by reference to P12a. He was then questioned as follows—

“ Q. Now that you have refreshed your memory from the document can you tell us what you remember about the incident ?

A. At about 2 o'clock a lady voter came to cast her vote. The polling agent for the F. P. candidate objected. He told me that the particular voter was dead. The clerk there directed her to me. I was at that time writing something on the journal and I requested her to wait and I asked the other clerk to find out where the Grama Sevaka was. In the course of that there was another objection. That incident was also dealt about the same time. That voter was also directed to me, and Mr. Ahamed said that he knew these two people, that he could stand surety for them and since their names were among the voters' list that I should issue a ballot paper. Then the Grama Sevaka came along and I asked him whether he knew them, and said “ yes ” and I instructed that a ballot paper be issued. The other voter he said he knew her by sight but did not know the name. *I questioned her and I was satisfied that she was a genuine voter and*

directed her to the clerk and she was issued with a ballot paper. Mr. Ahamed (apparently a mistake for Mr. Mukthar) polling agent for the F. P. candidate insisted that I should record the objection. I was busy then and I directed the clerk to record the objection and I questioned Mr. Ahamed to come over to my table to record his objection.

Q. The objection was on the ground that a particular person was dead, and the other was the sister of the polling agent of the Federal Party candidate ?

A. Yes.

Q. One of the persons was specifically identified by the Grama Sevaka ?

A. One of them was identified, I cannot say which. One was identified by the Grama Sevaka."

It is clear from the other evidence to which I shall refer presently that the word "since" in the passage should read "if".

That is all the evidence in chief on this point. Nowhere in his evidence does Gnanasekaram say that he asked the respondent whether the two persons were the Arva Umma and Raviyath Ummah that they claimed to be. He was never asked that question by the petitioner. Gnanasekaram himself does not say that he put any questions at all to the respondent.

In cross-examination the witness had been referred to what the respondent had stated according to an entry made by the respondent himself in P12a. That entry reads as follows :—

"I strongly object to the polling agent of Mr. Mansoor Maulana who had been obstructing the voters. So long as the correct number and the name is there a ballot paper should be issued."

The Court had then asked this question :

"Q. Does that contain everything that he objected to ?

A. No. He was telling about the voters, that he knows them and if the voters' names are there in the list I should give them. I said, 'You kindly write on the paper I provide to you' and he wrote this one and gave it to me."

The position taken up by the defence was then put to the witness, viz., that the respondent came to the booth and said that the polling was being delayed by frivolous objections raised by Mukthar and the voters of that area who were known to him should be allowed to vote. The question was put in this form :

"Q. And he took the view that the F. P. polling agent Mr. Mukthar was frivolously objecting to votes and that he said that these were frivolous objections and these are people from his electorate and they were free to vote ?

A. In those two cases he said *he knew they are from his area.* ”

The Court then interposed the following question :—

“ Q. The question that Mr. Shinya put to you was that these are frivolous objections, they may be allowed to vote ?

A. Those two cases may be allowed to vote. He insisted on that that he knew them and that I should give them ballot papers. ”

The re-examination on this point is as follows :

“ Q. Now go back to the incident regarding the objection which you have recorded in P12a. You said that these two ladies were waiting near your table until the Grama Sevaka arrived ?

A. Yes.

Q. And you have also said that when the Grama Sevaka arrived he positively identified one lady ?

A. Yes.

Q. On that occasion, did you immediately order the ballot paper to be issued to that lady ?

A. Yes.

Q. Thereafter with regard to the other lady, what did you do ?

A. I asked him in regard to the identity of the second lady from him. He said he had seen her by sight but does not know her name. *So I took up the case and examined it. At the end of it when I was satisfied I ordered a ballot paper to be issued.*

That is the sum total of the evidence of Gnanasekaram against the respondent.

Then there is the journal P21a. When Mukthar insisted on one of his objections being recorded, Gnanasekaram, who was busy at the time directed him to a clerk who had taken down his objection. This was done *after* the ballot papers had been issued, and the entry reads as follows :—

“ Raviyath Umma Ismail Lebbe w/o Mohamed Hussain—587 the objection is that the person given above is living in the colony and no ration book will be produced if called for. She is not the person and her actual name is Jameela. ”

At the time the clerk made this record the respondent had been with Gnanasekaram. Some time thereafter Gnanasekaram requested the respondent to record his objection. The respondent then wrote down his objection which I have already quoted. Below that the Presiding Officer had put down the number of the ballot paper which is not the

number of the ballot issued to the person who claimed to be Ravyath Ummah and then made the entry that her name and number tallied with the polling card she produced, that the respondent "revealed and stood as surety for her identity" and the Grama Sevaka informed him that he knew her by sight.

Gnanasekeram's evidence in regard to the Grama Sevaka is that he "identified" one of the women by name and the other by sight. All these entries in P12 were made long after the ballot papers were issued.

I do not think that the entries in the journal in any way advance the petitioner's case.

All that the evidence shows is that the respondent "identified" the two women as people whom he knew to be voters from his area. He further said that the Presiding Officer should issue ballot papers to them if their names are in the register. There is no evidence at all that the respondent represented to Gnanasekeram that the two women were identical with any of the persons whose names appeared in the electoral register. Had he done so it would have been the simplest thing for the petitioner to put that question to Gnanasekeram in examination-in-chief, or even in re-examination.

Counsel for the respondent contended that the learned Judge's approach to the question of burden of proof in a case like this was incorrect and, therefore, many inferences were drawn against him which were not based on evidence. I do not think it necessary to refer to all the passages in the judgment criticised by Counsel; but I think I might refer to the manner in which the learned Judge dealt with the respondent's entry in the journal P12a, which I have already reproduced above. That entry strongly supports the respondent's case. I might state here that the evidence of the respondent—(except for the difference that according to him his request to Gnanasekeram that ballot papers should be issued to all the voters if their names were in the register referred not only to these two women but to all those present at the time)—was substantially the same as the evidence of Gnanasekeram himself.

Dealing with the entry in P12a, the learned Judge said—

"One must also not lose sight of the fact that if Ahamed had deliberately, falsely said with success that these women were the persons who they claimed to be, he is hardly likely to put in writing anything that could later establish his guilt."

He drew the inference that this entry really supported the case for the petitioner. With respect, I do not think that it is permissible to draw such an inference against a person placed in the position of an accused in a criminal case.

An appeal against the order of an Election Judge can only be allowed on a point of law. But as pointed out in *Mahawithana v. Commissioner of Inland Revenue*¹ inferences which are unsupported by evidence would raise a question of law. One must also bear in mind that to prove the charge of personation, the petitioner must prove "Mens Rea" on the part of the respondent.

I am of the view that there is no evidence to support the finding that the respondent abetted personation by the two women concerned.

I am also of the view that the second point raised by the respondent-appellant is entitled to succeed. I am in agreement with the submission made by Counsel for him that a Presiding Officer cannot in his discretion refuse to grant a ballot paper to a person who has applied for one. The only instances where he can do so are set out in sections 42(2A) and 43(1) of the Order in Council. Before a ballot paper is issued each voter is "marked" by the application of some indelible ink on one of his or her fingers. Section 42(2A) provides that if a person refuses to allow the Presiding Officer or a person acting under his authority to make "the appropriate inspection" (i.e., to see whether such person has been "marked") or if having allowed such inspection it discloses that the voter has already been "marked", or if having allowed such inspection and the voter has not already been "marked" but he refuses to allow the officer to "mark" him, then no ballot paper should be delivered to such person. Under section 43(1) the Presiding Officer may in his discretion, and shall if required by a candidate or his polling agent to do so, request a voter to make a declaration in the forms J, K and L set out in the first schedule to the Order in Council, before the issue of ballot paper. Form J is as follows:—

Declaration

I,..... of..... hereby
(name in full) (address)
 declare that I am the same person whose name appears as AB on the register of electors now in force for this electoral district.

.....
 Signature or thumb mark of voter.

Declared before me this day of

.....
 Signature of Presiding Officer.

Forms K and L are similar, and by those forms a voter declares that he has not already voted in that particular electoral district (Form K) or that he has not already voted in any other electoral district (Form L).

¹ (1962) 64 N. L. R. 217.

In these instances the voter disenfranchises himself by not conforming to the requirements of the law. But if he does what the law requires him to do, the Presiding Officer has no right to disenfranchise him. The Order in Council nowhere gives him such a right, and to hold that he has such power would amount to investing a Presiding Officer with the functions of a Judge.

Our Election law is based substantially on the English Election Law. In England, in place of the Declarations referred to above, a Presiding Officer is empowered to put "certain prescribed questions". In the case of electors who vote in person, the questions are :

- " (1) Are you the person registered in the register of Parliamentary electors for this election as follows (read the whole entry from the register) ?
- (2) Have you already voted here or elsewhere at this By-election (or General Election) otherwise than as proxy for some other person? "

These questions appear at page 180 of Parker's Election Agent and Returning Officer (6th Edition). If these questions are satisfactorily answered, a Presiding Officer cannot refuse a ballot paper. Fraser, Law of Parliamentary Elections, 3rd Edition, points out at page 52, that the questions are satisfactorily answered when the answers are positive and unequivocal, i.e., the answers should be, "I am" or "I have not" and not words like "I think so" or "I do not think I have". Fraser also points out at page 51 that no inquiry is permitted at the time of polling as to the right of any person to vote. Parker in the volume referred to above at page 181 says that,

"If the above questions are satisfactorily answered by the voter the Presiding Officer cannot refuse to allow the voter to vote; and if he does refuse he may render himself liable to a criminal prosecution for the breach of official duty *even though he knew that the voter has answered falsely and committed perjury.* (*Pryce v. Belcher*, 4 C.B. 866); he must leave it to the candidate's agent to take notice of the perjury and fraud and to apply to strike off the vote on a scrutiny.

Any false statement of a material particular, made knowingly and wilfully in answer to any of the questions is a misdemeanour, *but the Presiding Officer is no judge of falsehood, and must allow a voter who has answered the questions to vote, even though he knows or believes that the voter's answers are false.*"

As to what action the Presiding Officer should take when it is brought to his notice that a person has committed the offence of personation, Parker says at page 185,

"If at the time any person applies for a ballot paper, or after he has applied and before he leaves the polling station a candidate or his election or polling agent declares to the Presiding Officer that he has

reasonable cause to believe that the applicant has committed an offence of personation and undertakes to substantiate the charge in a Court of law, then the Presiding Officer *may* order a constable to arrest the applicant, and the order is sufficient authority for the constable to do so."

The practice followed in Ceylon according to our Election Law is the same. The document R8 contains notes for the guidance of Presiding Officers issued by the Department of the Commissioner of Parliamentary Elections. It informs Presiding Officers, *inter alia*, that they may in their discretion require a voter to make declarations in forms J, K and L and that a ballot paper may be refused if a voter does not comply with such a request. Para. 47 of the instructions is worded as follows:—

"The Presiding Officer himself should not investigate into suspected cases of personation with a view to prosecution, but should hand the suspected person (*after he has recorded his vote if he made the required declarations*) to the police for investigation."

The Presiding Officer in this case does not appear to have appreciated his rights and duties when a complaint of personation was made.

This aspect of the question had not been placed before the learned Judge, as he makes no reference to it at all in the course of his judgment. He appears to have considered the question of abetment on the footing that a Presiding Officer *had a right to refuse the ballot papers*, for he says in the course of his judgment that the respondent "had deliberately done everything that he possibly could to enable these two women whom he knew were not Avva Umma and Raviyath Umma to be passed as Avva Umma and Raviyath Umma *for the obtaining of the voting slips*." With much respect, I think the learned Judge misdirected himself here.

I am of opinion that the Presiding Officer was under a legal duty to issue two ballot papers to the women who claimed them, irrespective of anything that the respondent told him. All that the Presiding Officer could have done was to ask the women to sign declarations before the issue of the ballot papers.

Finally, it was submitted for the appellant that for the purposes of section 54 of the Order in Council, which deals with "Personation", the offence is committed and complete when a person applies for a ballot paper. For, the section provides that "a person who has applied for a ballot paper for the purpose of voting in person..... shall be deemed to have voted."

It was argued for the respondent that as—admittedly—the respondent was not present when the two women applied for ballot papers and thereby committed the offence, he could not *thereafter* abet the commission of an offence which had already been committed. For the petitioner it was submitted that the offenders who were "voting in person" would be committing the offence again when they actually put

the ballot paper into the ballot box, and that the second offence was abetted by the respondent. As I hold that the appeal must succeed on the first two grounds, I think it unnecessary to decide this third point.

The appeal is allowed and the order of the learned Election Judge set aside. The respondent is declared to have been duly returned. Let a certificate of this decision be transmitted to the Governor-General in terms of section 82C (2) of the Order-in-Council (Chapter 3S1).

The respondent is entitled to taxed costs of both the trial and the appeal.

ALLES, J.—

I agree that this appeal should be allowed and that the order of the Election Judge declaring the election to be void, should be set aside.

The petitioner in his statement of particulars alleged that the respondent, in respect of both impersonators *personally identified the impersonators as the impersonated and enabled the impersonators to exercise their votes*. The learned Election Judge was in error when he held that the evidence established that the appellant identified the impersonators as the impersonated and there is no evidence that it was as a result of any act of the appellant that the impersonators exercised their votes. It is unnecessary to detail the evidence on the point which has been fully dealt with by my brother Sirimane. The essential ingredients of the offence of abetment of personation with which the appellant was charged in this case are—

- (a) that there were acts of personation committed by the impersonators;
- (b) that the appellant actively aided, abetted counselled or procured the commission of the offence of personation by the impersonators ;
and
- (c) that he did so with a guilty mind.

In my opinion the only essential ingredient which has been established beyond reasonable doubt is the first ingredient. According to Mukthar it was while he was raising objections that the appellant came into the polling booth and this evidence is supported by the evidence of the appellant himself that it was when he was walking into the booth that Mukthar was objecting to certain voters. It would therefore be after the impersonators had applied for the ballot papers, thereby committing the offence under section 54 of the Order in Council, that the appellant came and intervened. The appellant could therefore not have abetted the offence of personation at the time the impersonators applied for the ballot papers.

I agree with the observations of my brother Sirimane that when a voter applies for a ballot paper the Presiding Officer has no discretion to refuse to give him the ballot paper. This would be in accordance with

the principles of the English law (Vide Parker's Election Agent—6th Ed., pp. 180 and 181). After the impersonators applied for and obtained the ballot papers they were entitled to exercise their votes whatever might have been said by the appellant. The evidence is to the effect that the appellant came into the booth when according to him "frivolous objections" were being raised by Mukthar and he insisted that the two women should be permitted to vote so long as their names appeared on the electoral register. This is supported by the entry in Gnanasckeram's journal-P21A. According to the appellant, and on this point his evidence has not been challenged, when he purported to identify the voters he was stating that he knew them as voters from his area as distinct from the persons impersonated. This is what Gnanasckeram understood when he journalised in P12A that the appellant "revealed their identity and stood as surety". Even if the impersonators cast their votes (and thereby committed a second act of personation) at the insistence of the appellant, in permitting them to vote, the Presiding Officer was doing no more than what he was required to do under the law. This leads one to consider the question of *mens rea*. Can it be said that the appellant wilfully assisted the impersonators to cast their votes in the name of another person when in law they were entitled to cast their vote after having applied for and obtained the ballot paper? In order to establish the charge of abetment it must be proved that the appellant was aware that the impersonators were going to cast their vote in the name of the impersonated. That evidence is not present in the instant case. Indeed on the question of *mens rea* it seems to me most unlikely, that if the appellant knew that two women to be impersonators impersonating others to his knowledge, that he would have been so foolish as to insist that they be permitted to vote and thereby jeopardise his chances at an election where he had every chance of success without having to depend on the votes of these two women. I am mindful of the fact that the learned Election Judge has found as a fact that the appellant was insisting that it was these two women who should be permitted to vote and disbelieved the appellant that he was making representations in regard to all the women in the queue. I am therefore of the view that the necessary mental element to prove the charge of abetment has not been established in this case.

SAMERAWICKRAME, J.—

I agree that the appeal should be allowed and that order should be made in the terms set out in the judgment of my brother Sirimane, but as my approach to the matters that have been raised in this appeal is somewhat different, I set out my reasons for the conclusion at which I have arrived.

When a person applies for a ballot paper claiming to be on the register of electors, the presiding officer is expressly authorized under the Order in Council to refuse a ballot paper to him only in the circumstances set out in section 42 (2A) and 43 (1). On this point, I agree with respect

with the reasons and the observations of Sirimane J. I may add, however, that it appears to me that a presiding officer, may refuse a ballot paper to a person who applies for one, if it appears to him that that person is manifestly unable to exercise the franchise by reason of unsoundness of mind or drunkenness and perhaps, if the request for a ballot paper is, on the face of it, absurd. In this case, the two impersonators had, before the respondent came into the polling booth, already applied for ballot papers claiming to be persons on the register of electors. No circumstances existed which entitled the presiding officer to refuse the issue of a ballot paper to either of them. The presiding officer was, therefore, in law under a duty to issue ballot papers to them. The evidence is to the effect that the respondent requested and pressed on the presiding officer to issue ballot papers to these two persons. I do not think, that the fact that the respondent endeavoured to persuade the presiding officer to do, what in law, he was obliged to do, amounts to aiding impersonation. That the respondent supported his request to the presiding officer by making false representation to him may be a matter for censure and may even expose the respondent to criminal liability on some other charge but, in my view, it could not have the effect of rendering him guilty of aiding personation. This aspect has not been considered by the learned trial judge and he makes no reference to it in the course of his judgment apparently because it was not raised before him. His finding is that the respondent did what he did "for obtaining of the voting slips". For the reasons set out above, I am of the view that that finding is an insufficient basis for holding the respondent guilty of the offence of abetment of personation.

I am not disposed to hold that there was no evidence to support the finding of fact at which the learned trial judge arrived. As there is an appeal to this Court only on a question of law we have not to consider whether there was sufficient evidence to support the finding of the trial judge but only whether there was any evidence at all to support it. There is no direct and express evidence that the respondent stated that the women who applied for ballot papers were Raviyath Ummah and Avva Umma whose names appear on the register of electors. The learned trial judge, who is the judge of fact in this matter, has however taken the view that the respondent who came on the scene after objection had been taken and proceeded thereafter to make representation to the presiding officer in respect of those objections must have ascertained or come to be aware of the precise nature of the objections and that when he made representations to the presiding officer in regard to the identity of the applicants for ballot papers he was representing to him that these two persons were Raviyath Ummah and Avva Umma. I am unable to say that the inference that the learned trial judge has drawn is one that is unsupported by the evidence.

At the stage at which the respondent came into the polling booth it was still possible for him to abet personation either by assisting the applicants for ballot papers to obtain them without having to make the

declarations referred to in section 43 (1) of the Order in Council or by instigating the applicants, if they were not disposed to make the declarations, to proceed to make the declarations and cast their votes. It is not suggested in this case that the respondent requested the presiding officer to issue ballot papers without asking for declarations. Indeed, had the polling agent of the other candidate who took the objection to the issue of the ballot papers to these two persons requested the presiding officer to obtain the declarations, the presiding officer would have had no alternative in law, but to ask for them. Nor has it been suggested that the respondent in any way instigated these two women or even spoke to them. In fact it would appear that the conversation between the respondent and the presiding officer was in English and it is very unlikely that the women even understood what he said. I am accordingly of the view that there was no evidence to support the finding that the respondent had abetted the two women to commit personation.

Appeal allowed.
