

1935

Present : Poyser J.

SAMARASINGHE v. SAMARASEKERA.

78—P. C. Matara, 3,833.

Urban District Council—Payment of rates and taxes by candidate of persons nominating him—To avoid objection to nomination—No corrupt motive—Ordinance No. 11 of 1920, s. 36 (2).

Where a candidate for an Urban District Council election deposited a sum of money on account of any rates and taxes due from certain persons, who had nominated him, in order to avoid any objection being raised to the nomination papers and subsequently withdrew the money, no objection having been made,—

Held, that his conduct did not amount to the giving of a gratification within the meaning of section 36 (2) of the Local Government Ordinance, No. 11 of 1920.

A PPEAL from a conviction by the Police Magistrate of Matara.

R. L. Pereira, K.C. (with him *Rajapakse* and *Senanayake*), for accused appellant.

H. V. Perera (with him *S. W. Jayasuriya*) for complainant, respondent.

June 19, 1935. POYSER J.—

The appellant has been convicted, under section 36 (2) of Ordinance No. 11 of 1920, for making a payment to the Urban District Council of the rates and taxes due from certain voters with the object of inducing the said voters to exercise their electoral rights in his favour. There was very little dispute as to the facts which are briefly as follows:—The appellant was a candidate for Ward No. 3 in the Matara Urban District Council elections. On nomination day, November 17, 1934, he went with his nomination papers to the Urban District Council Offices. The appellant had 22 nomination papers but attached particular importance to two of these, viz. :—one in which he was proposed by Karunanayaka and seconded by Coopman, and another one in which he was proposed by Goonewardene and seconded by White. He attached importance to these particular nominations as he considered the above-mentioned persons were the most respectable of those who had signed nomination papers on his behalf.

At the Urban District Council Offices the appellant heard a rumour that his opponent was going to raise an objection to these nomination papers on the ground that the persons signing them were in arrears with their rates and taxes.

The appellant then, after a consultation with the clerk of the Urban District Council, in the course of which the latter suggested a deposit of Rs. 50 in case he himself was in arrears, deposited a sum of Rs. 400 on account of any arrears due by these proposers and seconders. In fact these persons were in arrears with their rates and taxes to the extent of Rs. 311.

When the Assistant Government Agent received the appellant's nomination papers no objection was recorded nor in fact could any objection have been recorded on the grounds that the proposer or seconder were in arrears with their rates or taxes.

A person is not entitled to have his name entered on the electoral roll if he has not paid all rates and taxes due by him (section 28 (2) (b)), but there is no provision in the Ordinance requiring that all persons who nominate candidates shall have paid all rates and taxes that are due.

After the appellant's nominations had been received by the Assistant Government Agent the appellant tried the same day to recover the Rs. 400 he had deposited; according to Goonewardene, the Secretary of the Urban District Council, the application was made at 1.15 P.M.

This application was refused as the money had been sent to the Kachcheri and he was told to make another application.

On November 21 the appellant applied again and the sum of Rs. 400 was refunded to him. The Police Magistrate considers that the officials of the Urban District Council acted improperly in permitting this refund but I do not consider that point of importance in regard to the appellant.

The question in this case is whether the appellant's conduct amounted to giving any gratification to the persons previously mentioned as a motive or reward for giving or promising to give their votes in his favour at the election. This question is not free from difficulty. There are many points in favour of the appellant. He acted perfectly openly. He deposited the Rs. 400 at the Kachcheri in his own name in the presence of a number of people. His immediate object was to avoid any objection being raised to his nomination paper.

As the appellant himself has stated:—"If I was depositing this money as a bribe I should have sent others to pay it. I wanted it to remain as a temporary deposit to perfect my nomination papers."

Further, when no objection was made to his nomination papers he immediately applied for the withdrawal of the sum he had deposited and in fact withdrew it four days afterwards.

The only authority cited which has any bearing on the point to be decided is a case under section 49 of 30 & 31 Vict. C. 102, which lays down that the payment of rates to influence a vote at a future election is bribery. In that case, *Oldham Election Petition, Grandridge's Case*,¹ it was held that—

"Paying the rates of a voter in order that he may be registered is not bribery unless done corruptly and to influence the voter. Where, therefore, S, a partisan, paid the rates of G, who was of his own politics, to enable him to be placed on the register, and both G and S knew perfectly well that the payment was made with a view to the election, it was held this was not within the Statute and the vote of G was good."

In this case it can be assumed that the persons who signed nomination papers for the appellant were his supporters and were going to vote for him, there was consequently no apparent need for him to give them any gratification for voting in his favour.

The Magistrate, however, has held that this money was deposited for the sole purpose of pleasing his supporters and save them from any disgrace or humiliation which they would have been exposed to if the question was raised, as it undoubtedly would have been, if arrears stood against their names.

¹ 20 *Law Times Rep. NS.*, 311.

I do not think the finding of the Police Magistrate is altogether justified; there was no evidence that the appellant's opponents had made any inquiries into arrears of rates due by persons who nominated the appellant or that they had any intention of objecting to the appellant's nomination papers on these grounds, and in fact no objection could have been sustained on these grounds.

The Police Magistrate has, in my view, correctly observed that the point in the case is whether the appellant has acted corruptly. I do not think that the evidence sufficiently establishes that the appellant did so act.

The persons on whose behalf the appellant deposited money in the Kachcheri have all denied that they were aware of his intentions to do so. Their evidence the Police Magistrate rejects on the ground that if they admitted knowledge of the appellant's contemplated action they themselves would be guilty of an offence.

On the other hand the Police Magistrate describes these persons as elderly respected people and certainly Goonewardene and White, both pensioned Government officers, who were in arrears for a small sum for conservancy fees, appear to be thoroughly respectable.

There is consequently some doubt as to whether the evidence justified this finding of the Police Magistrate.

Having carefully considered all the evidence in the case, I am of the opinion that the appellant's object in paying this sum to the Urban District Council was as stated by him, viz.: to avoid objections being taken to his nomination papers, and I do not think he made this payment with the object of pleasing his supporters or for inducing them to vote for him.

No doubt the appellant acted extremely foolishly but I do not think the evidence proves that he acted corruptly. The appeal is allowed and the conviction set aside.

Set aside.

