

**EDIRIWEERA, RETURNING OFFICER
FOR AKURESSA PRADESHIYA SABHA
v.
KAPUKOTUWA, GENERAL SECRETARY, UNITED NATIONAL
PARTY AND OTHERS**

SUPREME COURT
S.N.SILVA, CJ.
ISMAIL, J. AND
WEERASURIYA, J.
SC APPEAL No. 31/2002
CA APPLICATION No. 342/2002
19TH JUNE, 2002

Writ of Certiorari – Failure of the Secretary of a Political Party to sign the nomination paper – Local Authorities Elections Ordinance, Sections 28(5), 31(1)(a) and (b) of the Ordinance – Rejection of the nomination paper.

The appellant was the Returning Officer for the Akuressa Pradeshiya Sabha Election and the respondent was the General Secretary of the United National Party (“the UNP”). Section 28(5) of Local Authorities Elections Ordinance (“the

Ordinance") requires *inter alia* that a nomination paper be signed by the Secretary of a Political Party or the Group Leader of an Independent Group. Such signature shall be attested by a Justice of the Peace. The form of the nomination paper appearing in the First Schedule to the Ordinance also provides for the signature of such persons. Section 31(1)(e) requires the Returning Officer to reject any nomination paper which is not so signed or attested.

The nomination paper of the UNP has the office stamp of the Secretary below the space provided for the Secretary's signature. A Justice of the Peace had purported to attest the signature. But the Secretary had in fact not signed the nomination paper as required.

Held:

The requirement of section 28(5) of the Ordinance as to the signature and the rejecting of the nomination paper where the signature of the Secretary of the Party does not appear, required by section 30(1)(e) of the Ordinance are mandatory and calls for proper compliance.

APPEAL from the judgment of the Court of Appeal

Case referred to:

1. *Mayappan vs Manchanyake* 62 NLR 529

Saleem Marsoof. P.C., Additional Solicitor-General with *Janak de Silva*, State Counsel for respondent-appellant

Razik Zarook with *Lasantha Hettiarachchi* and *S.A. Jayawickrema* for petitioner - respondent

Cur.adv.vult

January 24,2003

SARATH N. SILVA, C.J.

This appeal relates to the submission of nomination papers for the election of members to the Akuressa Pradeshiya Sabhawa. Several nomination papers were submitted including a nomination paper purporting to be of the United National Party which was ten-

dered on 8.2.2002, being the last day for the delivery of nomination papers. After the expiry of the period for handing over nominations and during the period for objections, three persons objected to the nomination paper purporting to be of the United National Party on the ground that it had not been signed by the Secretary of that party. The Returning Officer, being the appellant in this case, upheld the objection and rejected that nomination paper. On that basis the election was to be held amongst the candidates who were duly nominated.

The Secretary of the United National Party and the candidates whose names appeared on the nomination paper that was rejected, filed an application in the Court of Appeal for a writ of certiorari to quash the said decision of the Returning Officer and for a writ of mandamus directing the Returning Officer to accept that nomination paper. The Court of Appeal made an interim order staying the election. By judgment dated 4.3.2002, the application was allowed with costs and the writs of certiorari and mandamus that were sought were granted. This Court allowed special leave to appeal on the application of the Returning Officer, and stayed the operation of the judgment of the Court of Appeal.

A photocopy of the relevant nomination paper has been produced marked X3(c). It is seen that the form of the nomination paper used is the one set out in the First Schedule to the Local Authorities Elections Ordinance as amended by Act, No. 25 of 1990. The first paragraph of the nomination paper gives the name of the recognized political party and states that the party, "hereby nominates the following persons as candidates for election of members of the Akuresa Pradeshiya Sabhawa." Beneath this is the space in which the names and other particulars of candidates are set out in two groups. Group II contains the names of the youth candidates. The following words appear beneath the two groups of names; "I do hereby certify that all the youth candidates whose names appear in this nomination are within the age stipulated in Section 89 of the Ordinance" with, the space for the signature of the Secretary of the recognized political party, his name and address. The form ends with the provision for the attestation of the signature of the Secretary of the recognized political party by a Justice of the Peace or a Notary Public.

In the relevant nomination paper "X3c"; the space for the signature of the Secretary of the recognized political party has been left blank. The name of the Secretary and his address have been written in the space set apart for that purpose below the space for the signature. The name and address are repeated in what appears to be the same handwriting in the attestation and the Justice of the Peace has purported to attest a signature which is plainly not there.

I will now refer to the relevant provisions of the Local Authorities Elections Ordinance.

Section 28(5) of the Ordinance as amended by Act, No. 24 of 1987 states as follows :

"Each nomination paper shall be signed by the Secretary of a recognized political party and in the case of an independent group, by the candidate whose name appears in the nomination paper of that group and is designated therein as the group leader of that group (such candidate is hereinafter referred to as "the group leader") and shall be attested by a Justice of the Peace or by a Notary Public."

As regards the proceedings after the period for submission of nominations, Section 31(1) provides as follows:

"The Returning Officer shall, immediately after the expiry of the nomination period, examine the nomination papers received by him and reject any nomination paper -

- (a) that has not been delivered in accordance with the provisions of subsection (5) of Section 28; or
- (b) that does not contain the total number of candidates required to be nominated under subsection (2) of Section 28; or
- (c) in respect of which the deposit required under Section 29 has not been made; or
- (d) where the consent of one or more candidates nominated has or have not been endorsed on the nomination paper or where the oath or affirmation in the form set out in the seventh schedule to the Constitution of one or more candidates has or have not been annexed to the nomination paper; or

- (e) where the signature of the Secretary in the case of a recognized political party or of the group leader in the case of an independent group does not appear on the nomination paper or where such signature has not been attested as required by subsection (5) of Section 28."

When objections were raised to the acceptance of the nomination paper in question, the Returning Officer was confronted with two matters. The first is a question of fact and the second is one of law. The question of fact is whether the nomination paper had been signed by the Secretary of the recognized political party as required by Section 28(5). If the answer is in the negative, then the question of law arises, should the nomination paper be rejected.

It is clear from the provisions that are reproduced above, that both Sections 28(5) and 31(1) are couched in mandatory terms. Section 28(5) states that each nomination paper "shall" be signed by the Secretary of the recognized political party or the group leader of an independent group and Section 31(1) provides that if the signature does not appear as required, the nomination paper "shall" be rejected. The Returning Officer, in this instance was confronted with a nomination paper which had a blank in the place where the signature of the Secretary of the recognized political party should appear and he rejected the nomination paper as required by Section 31(1)(e). This is a straight-forward course of action based on giving the words of the statute their ordinary and natural meaning being the first and most elementary rule of interpretation.

On the other hand, the Court of Appeal held that the Returning Officer should not insist on a "strict compliance" of the Sections referred to, but should take into consideration a "broader concept" of whether there had been "substantial compliance" with the statutory requirements. Further it had been observed by the Court of Appeal that it is necessary to ascertain whether the Secretary of the political party "had in some way conveyed his ratification of the authenticity of the names and the ages of the youth candidates. Whether the authenticity and the genuineness of the contents of the nomination paper were signified affirmatively by the 1st Petitioner" (the Secretary). At a later point in the judgment, the Court of Appeal had posed the same question in slightly different

terms, as follows; “Therefore the important matter that had to be ascertained was whether the Secretary of the political party/group leader had knowledge and authenticated the contents of P3” (marked X3c in this appeal). On this line of reasoning the Court of Appeal has concluded that “it is manifest in all the circumstances of the case” that the Secretary “had full knowledge of the contents and authenticated P3” (the nomination paper).

The requirement in Section 28(5) is for the Secretary of a recognized political party or a group leader (in the case of an independent group) to sign each nomination paper. The question which arises as noted above is whether the required signature appears at the place where it should be. The Court of Appeal has relied on three matters to infer that the Secretary had knowledge and authenticated the contents of the nomination paper. These matters are :-

1. that the Secretary has deposed in an affidavit filed in Court that his initials appear in several places where there are corrections in the nomination paper.
2. that the rubber seal bearing his name and designation has been placed beneath the place set apart for the signature.
3. that the nomination paper has been “duly attested and certified by the Justice of the Peace”

In this process of reasoning the Court of Appeal has veered to the view that there has been substantial compliance with the requirement in Section 28(5). Therefore, it is necessary to examine the question of substantial compliance, although I am inclined to the view that such a question should never have engaged the attention of any Court, given the very clear and unambiguous provisions contained in the relevant sections reproduced above.

The question whether substantial compliance with a requirement in a statute is permitted as distinct from proper or what may be termed as strict compliance, should be examined on two basic premises. They are, firstly the significance of the requirement in the scheme of the relevant provisions in the statute and, secondly the sanction which attaches to a non-compliance of the requirement.

In examining the significance of the mandatory provision in Section 28(5) that the Secretary of the recognized political party or the group leader, shall sign each nomination paper delivered to the Returning Officer, it is necessary to consider albeit briefly, the electoral process in the light of what existed before. The Local Authorities Elections Ordinance was enacted in 1946 and provided the system of elections in respect of all local authorities, ranging from Village Committees to Municipal Councils, that had been established decades before the grant of independence. This followed the well established tradition of effective governance at the grass root level which existed under the indigenous monarchical system of government. The Ordinance provided a simple electoral process for all local authorities based on what was commonly known as the "ward system". The area of each local authority was divided into smaller units known as wards and the election was in respect of each such ward. Candidates were nominated by a proposer and seconder, being voters of the electoral area. In many instances votes were counted in the ward itself and the result was declared then and there, establishing a clearly defined and versatile link between the voter being a resident of the ward and his ward member. By Law, No. 24 of 1977, this system was done away with. The ward system which existed for decades was replaced by a system in which the entire local authority became one electoral area. Instead of nomination by a proposer and seconder within a ward, groups of candidates are nominated by recognized political parties or leaders of independent groups. Thus the link between a recognized political party and the candidate which was at a minimum in the system which existed in the past, was entrenched and made firm. Candidates who were previously proposed and seconded by voters at the grass root level became groups nominated by recognized political parties or leaders of independent groups. This pervasive link between a recognized political party and its groups of candidates is manifested by the signature of the Secretary of the party. It is for this reason that a specific place is provided in the nomination form for the signature of the Secretary, beneath the name of the candidates and with a preceding certification that the youth candidates are below the stipulated age. The significance of the requirement is brought to a zenith by the provision in Section 28(5) that the signature should be attested by a Justice of the

Peace or by a Notary Public. Therefore in relation to the first premise to be examined as to the significance of the requirement, it has to be concluded that it is necessary for the Secretary of the recognised political party or group leader to sign each nomination paper in order to establish the vital and pervasive link between the recognized political party and the candidates or the group leader and the candidates, as the case may be. This requirement is unquestionably of the highest significance in the scheme of the relevant provisions in the statute.

Moving to the second premise which relates to the sanction attaching to the non compliance of the requirement for the Secretary of the recognized political party or the group leader to sign the nomination paper, it is seen that Section 31(1)(e), places a firm sanction by mandating a rejection of the nomination in the event of non compliance. Thus the significance of the requirement is matched by the severity of the sanction which attaches to non compliance. When examined in the scheme of the relevant provisions of the statute, I have to conclude that the requirement in Section 28(5) is mandatory and calls for proper compliance.

Be that as it may, the three matters, relied on by the Court of Appeal as constituting substantial compliance do not bear scrutiny.

Firstly, the Court of Appeal has acted on an affidavit filed by the Secretary of the recognized political party in Court, in which he has stated that initials appearing as against corrections in the nomination paper have been placed by him. The Court of Appeal makes a point that this affidavit has not been contradicted and has faulted the Returning Officer for not acting on the basis of these initials. I have to note that this is an erroneous premise. The affidavit is a subsequent emanation and was not there when the nomination process took place before the Returning Officer. He had the nomination paper and the objections that were taken and he made his order on these documents. That is the record on the basis of which the Court may consider exercising the power of judicial review if the Returning Officer had acted in excess of his authority. By importing the contents of documents which did not and could not have formed part of the record of the officer vested with jurisdiction, the Court of Appeal has distorted the process of judicial review. I have to deal with this matter further since learned Counsel for the respondent

has also relied heavily, on these "initials". It has even been contended that since the law does not specify where the signature of the Secretary should be placed and, the initials appear on the nomination paper, the Returning Officer cannot reject the nomination paper in terms of Section 31(1)(e). This contention cannot be accepted, for two reasons.

Firstly, the Court of Appeal and learned Counsel have failed to take into account the purpose in initialing documents reduced to writing. A person signing a document places his initials as against corrections in the document to denote that they were there at the time he signed the document. If the signature denoting the making of the document is not there what earthly use is there of these initials? The second contention, that the law does not specify the place where the signature of the Secretary should appear, is equally erroneous. Section 28(5) provides that each nomination paper shall be signed by the Secretary of the recognized political party and "shall be attested by a Justice of the Peace or by a Notary Public." The attestation is the confirmation by the Justice of the Peace or the Notary Public that the document (nomination paper) was made by the Secretary who signed it in his presence. Therefore the place where the signature should appear has to be in relation to the attestation. This is made abundantly clear in the Form of Nomination in the First Schedule to the Ordinance (being the same as X3c) in which the place for the signature of the Secretary is clearly denoted immediately above the attestation. That is the place which the Returning Officer should look at to ascertain whether the nomination paper has been signed by the Secretary as required by Section 28(5). The Returning Officer cannot and should not venture to glean a signature from initials scattered in several places in the nomination paper.

The next matter relied on by the Court of Appeal to infer that the Secretary had "knowledge and authenticated the contents of the nomination paper" is that the Justice of the Peace "duly attested and certified the nomination paper." I have noted above the purpose of the requirement for attestation. It is a certification that the nomination paper was completed and signed by the Secretary in the presence of the Justice of the Peace. In the absence of the signature of the Secretary the attestation is meaningless.

Finally I have to deal with the rubber seal bearing the name and designation of the Secretary which has been placed beneath the space for the signature. The Court of Appeal has made a point of the Secretary's "personal seal" being placed by him on the basis of the affidavit filed in Court. This amounts to, as noted above, an improper admission of evidence in a proceeding for judicial review. Counsel contended that this seal should be taken as a mark placed by the Secretary and should therefore be taken as compliance with the requirement. Several judgments have been cited which deal with a signature of a person engraved in facsimile and of marks used by persons, in place of signatures. These judgments are irrelevant to the question at issue. A perusal of X3c shows that the rubber seal has been placed below the space for the signature of the Secretary. It does not contain a signature engraved in facsimile. It contains only the name and designation of the Secretary in print. It is plain to see that it was not intended to pass off for the signature of the Secretary. It was intended to be descriptive of the signature by giving in print his name and designation. But unfortunately the signature was not placed and the description in the rubber seal, like the other matters referred to above, become meaningless.

In the case of *Mayappan vs Manchanayake*,⁽¹⁾ Sansoni, J. (as he then was) considered the validity of a cheque endorsed by a partnership in an action for recovery of money from the partners. The endorsement bore the rubber stamp of the partnership, but not the signatures of the partners. It was held that the endorsement in question is invalid. Sansoni, J. made a general observation, relevant to the facts of this appeal, as follows (at p.533) -

"As a matter of language, giving the words their ordinary meaning, when a document is required to be signed, or when a person's signature is required on a document, the person's name should be written by hand with a pen or pencil."

I would add that the signature placed in this manner represents the person who writes it and denotes his act. Counsel contended that the findings of Sansoni, J., should be restricted in its application to bills of exchange and cannot be extended to the provision we are called upon to examine. This contention cannot be accepted. It has to be borne in mind that the significance of the signature in relation to the provisions in question is higher than in rela-

tion to a bill of exchange. The signature in a bill of exchange does not require attestation whereas section 28(5) requires the signature to be attested by a Justice of the Peace or a Notary Public. With no amount of ingenuity could it be contended that it is the placing of the rubber seal which the Justice of the Peace attested.

For the reasons stated above the appeal is allowed with costs in both courts payable by the 1st Petitioner Respondent. The appropriate authority should now take action according to law to continue with the process of the election to the Akuressa Pradeseeeya Sabhawa.

ISMAIL, J. - I agree.

WEERASURIYA, J. - I agree.

Appeal allowed.