

## ABEYWICKREMA

v.

## PATHIRANA

SUPREME COURT

SHARVANANDA, A. C. J.; WANASUNDERA, J. AND RANASINGHE, J.,

S.C. REFERENCE No. 3/83. ELECTION PETITION No. 5/1983.

DECEMBER 14, 1983.

*Election Petition – Articles 57(1) and 58(1) of the Constitution – Delegation of powers of appointment, transfer, dismissal and disciplinary control of Public Officers by Public Service Commission or Committee thereof – Article 55 (5) of the Constitution – Jurisdiction of Election Court to decide questions regarding validity of acceptance of letter of resignation of a Public Officer – Reference to Supreme Court in terms of Article 125 (1) of the Constitution.*

At the hearing of the Election Petition against the 1st respondent, a preliminary objection was raised by his Counsel that the Election Court had no jurisdiction to inquire into the validity of the acceptance of the letter of resignation of 12.4.1983 from his post of Principal, Galaboda Aturuwella Maha Vidyalaya, Induruwa, under the Department of Education of the Government of Sri Lanka, submitted by the 1st respondent to the Regional Director of Education, Galle, " by reason of Article 55 (5) of the Constitution."

The contention of the petitioner was that the Regional Director was not competent and had no legal authority to accept the 1st respondent's letter of resignation and terminate his services as Principal as he had not been delegated the requisite powers by the Public Service Commission or by a Committee thereof under Article 58 (1) read with Article 57 (1) of the Constitution.

The Election Judge acting in terms of Article 125 (1) of the Constitution referred the following question to the Supreme Court for determination :

"Is the acceptance of a resignation of a public officer, an order or decision which, by reason of the provisions of paragraph (5) of Article 55 of the Constitution of the Democratic Socialist Republic of Sri Lanka, cannot be inquired into, pronounced upon or in any manner called in question in the exercise of the jurisdiction of the Court of Appeal to try Election Petitions ?"

Held—

The provisions of Article 55 (5) may be invoked or applied only when the order or decision in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a Public Officer is made, inter alia, by a "Public Officer" to whom the Public Service Commission or any Committee thereof has delegated, in terms of

Article 58 (1) of the Constitution, the powers of appointment, transfer, dismissal or disciplinary control of any category of Public Officers. The burden of establishing that there has been no such express delegation to the Regional Director of Education, Galle, is on the petitioner. If the petitioner establishes that there has been no express delegation, then the 1st respondent may lead evidence that there has been an implied delegation of the powers referred to in Article 58 (1).

To decide the question, there must be a record of the findings of fact by the Election Judge as to whether there had been any express or implied delegation by the Public Service Commission or by a Committee thereof of all or any of the powers referred to in Article 58 (1) of the Constitution to the Regional Director and whether he had legal authority to accept the 1st respondent's letter of resignation and terminate his services.

The record is sent back for the Election Judge to record his findings of fact on the question of delegation. If the delegation is found to be express the question ends there, if implied, the finding must be referred by the Election Judge to the Supreme Court for a determination whether such implied delegation satisfies the requirements of "delegation" envisaged in Article 58 (1) and whether Article 55 (5) could be invoked in the circumstances of this case. (The petitioner was reserved the liberty to contend that "resignation" does not come within the scope of Article 55 (5) and that implied delegation is not sufficient to satisfy the constitutional requirement of Article 58(1).)

REFERENCE by Election Judge to the Supreme Court under Article 125 (1) of the Constitution.

*K. N. Choksy, S.A., with Neville de Jacolyn Seneviratne, L. C. Seneviratne, Daya Peipola, Lakshman Perera, Miss. I. R. Rajapakse and Nihal Fernando for petitioner.*

*H. L. de Silva, S.A., with K. Shanmugalingam and M. S. A. Hassan for 1st respondent.*

*M. S. Aziz, D.S.G., with Prasanthalal de Alwis S.C., as amicus curiae.*

*Cur. adv. vult.*

January 10, 1984.

**SHARVANANDA, A.C.J.**—read the following order of the Court :

At the hearing of the Election Petition against the 1st respondent, one of the preliminary objections raised by his counsel was "that the election court had no jurisdiction to inquire into the validity of the acceptance of the letter of resignation submitted by the 1st respondent to the Regional Director of Education, Galle, by reason of Article 55 (5) of the Constitution". With reference to his objection he submitted that since it raised a question relating to the interpretation of a provision of the Constitution it had to be referred to the Supreme Court in terms of Article 125(1) of the Constitution. Counsel for the petitioner and the Senior State Counsel protested against this reference on the ground, inter alia, that Article 55 (5) of the Constitution had no application to the question involved in the

proceedings. Justice G. P. S. de Silva, the Election Judge, has however referred to this Court, the following question, in terms of Article 125 (1) of the Constitution :

"Is the acceptance of a resignation of a public officer, an order or decision which, by reason of the provisions of paragraph (5) of Article 55 of the Constitution of the Democratic Socialist Republic of Sri Lanka, cannot be inquired into, pronounced upon or in any manner called in question in the exercise of the jurisdiction of the Court of Appeal to try Election Petitions ?"

We have heard counsel for the 1st respondent and for the petitioner and, in terms of Article 125 (1), we make the following determination on the question referred to us by the Election Judge.

In our view, the provisions of Article 55 (5) may be invoked or applied only when the order or decision in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a Public Officer is made inter alia, by a "Public Officer" to whom the Public Service Commission or any Committee thereof has delegated, in terms of Article 58 (1) of the Constitution, the powers of appointment, transfer, dismissal or disciplinary control of any category of Public Officers.

According to the scheme of Chapter IX of the Constitution (Articles 54 – 61), the appointment, transfer, dismissal and disciplinary control of Public Officers are vested in the first instance in the Cabinet of Ministers. The Cabinet of Ministers is however authorised to delegate such powers to the Public Service Commission subject to the limitation that it cannot do so in respect of Heads of Departments. The Cabinet is further authorised, notwithstanding any delegation to the Public Service Commission, to delegate to any Minister its power of transfer, in respect of such categories of officers as may be specified, and upon such delegation the Public Service Commission or any Committee thereof cannot exercise such power of transfer, in respect of such categories of officers – vide article 55 (1), (2) and (3).

Article 57 (1) provides that whenever the Cabinet of Ministers so directs the Chairman of the Public Service Commission, shall appoint a Committee of the Public Service Commission to exercise the powers of the Commission in respect of such category of Public Officers as are specified in such direction.

Article 58 (1) further provides that the Public Service Commission or any Committee thereof may delegate to a Public Officer, subject to such conditions as may be prescribed by the Cabinet of Ministers, its power of appointment, transfer, dismissal or disciplinary control of any category of Public Officers.

It is the case of the petitioner that the Regional Director of Education, Galle, who, it is alleged, accepted the resignation, was not legally competent to accept the letter of resignation submitted by the 1st respondent to him as he was not a Public Officer, to whom, in terms of Article 58 (1) of the Constitution, the Public Service Commission or any Committee thereof had delegated its power of appointment, transfer, etc., and that hence the Regional Director of Education, Galle, had no legal authority to accept the 1st respondent's letter of resignation dated 12.4.83 and terminate his contract of service as Principal of Galaboda Aturuwella Maha Vidyalaya, Induruwa, under the Department of Education of the Government of Sri Lanka.

Mr. H. L. de Silva, Counsel for the 1st respondent contended that the delegation of the powers referred to in Article 58 (1), may either be express or implied and that in the absence of express delegation, where the Regional Director had under colour of office, been in the habit of accepting letters of resignation from Public Officers working under him and where such acceptance had not been rejected or disowned by the Ministry or the Department of Education, but had been acquiesced in, then the conclusion may, in the circumstances be drawn, that there had been implied delegation of the powers to the Regional Director and that the Regional Director had implied authority to accept the letter of resignation.

In our judgment the burden of establishing that the powers referred to in Article 58 (1) of the Constitution had not been expressly delegated to the Regional Director of Education, Galle, rests on the petitioner and if he established that there was no express delegation of the relevant powers to the Regional Director, then the 1st respondent may lead evidence to establish that there had been an implied delegation of the powers referred to in Article 58 (1) by the Public Service Commission or the Committee thereof to the Regional Director, so as to make the exercise of such power by the Regional Director, valid and binding.

Mr. Choksy, Counsel for the petitioner has submitted that implied delegation will not be sufficient to meet the requirements of "delegation" under Article 58 (1) of the Constitution. In our view, to enable this Court to give a final pronouncement on the hypothetical submission of Counsel, it will be necessary to have a record of the finding of fact by the Election Judge whether there had been any express or implied delegation by the Public Service Commission or any Committee thereof, to the Regional Director of Education, Galle, of all or any of the powers referred to in Article 58 (1) of the Constitution and whether the said Regional Director had legal authority to accept the 1st respondent's letter of resignation and terminate his services.

Hence we direct that the record be returned to the Election Judge, for him to record his findings, whether there had been an express or implied delegation to the Regional Director of Education, Galle, of the relevant powers in terms of Article 58 (1) of the Constitution. If he finds that there is express delegation the question ends there, but if he finds that there is no such express delegation then he shall proceed to record his findings, whether there has been implied delegation of such powers and if he does come to the conclusion that there has been such an implied delegation he shall refer that finding to this Court to make a determination, whether such delegation of power is envisaged by Article 58 (1) and whether Article 55 (5) could be invoked in the circumstances of this case. In the argument of that reference, liberty is reserved to the petitioner to contend that "resignation" does not come within the scope of Article 55 (5) and that implied delegation is not sufficient to satisfy the constitutional requirement of Article 58 (1).

Since the Election Petition has to be heard and disposed of without delay, we direct the Election Judge to hear and conclude the Election Petition and give his determination on the various issues arising on the Election Petition and only thereafter to transmit his answer to the question referred to above, to this Court. If the Election Petition can be determined independently of the application of Article 55 (5) of the Constitution, the Election Judge may make his determination and order on the petition along with his findings referred to above.

*Case sent back for Election Judge's findings as directed.*