

[IN THE PRIVY COUNCIL]

1944 *Present*: Lord Russell of Killowen, Lord Wright, Lord Goddard,
Sir Madhavan Nair, Sir John Beaumont.

GOONESINHA, Appellant, and THE HONOURABLE O. L. DE
KRETSER, Respondent

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Certiorari*.

Election Court—Extension of Jurisdiction of Supreme Court—Power of Supreme Court to issue writ of Certiorari to Election Court—Courts Ordinance, s. 42.

Cognisance of election petitions is an extension of or addition to the ordinary jurisdiction of the Supreme Court and a writ of *certiorari* cannot be granted to bring up any order made in the exercise of that jurisdiction.

A PPEAL from a judgment of the Supreme Court by Special leave to appeal to His Majesty in Council.

Cur. adv. vult.

December 20, 1944. Lord Goddard.—

On April 26, 1941, a by-election was held for the return of a member of the Ceylon State Council for the Electorate of Colombo North. The successful candidate was a Mr. de Silva, and the present appellant, who takes an active part in political and municipal affairs in Colombo, was one of his prominent supporters. Subsequently, a petition was presented to

the Supreme Court of Ceylon, under the Ceylon (State Council Elections) Order in Council, 1931, asking that the election might be declared void and alleging general intimidation, treating, and undue influence. In two instances undue influence on electors to cause them to vote for Mr. de Silva was alleged to have been exercised by the appellant, and in his judgment which was delivered on December 22, 1941, the Election Judge, who is the present respondent, found both these charges proved. The learned Judge thereupon ordered that notice should at once be given to the appellant in terms of Article 79 (2) of the Order in Council to show cause why he should not be reported to His Excellency the Governor as having been guilty of a corrupt practice. The offence of undue influence, as defined by Article 53 of the Order in Council is by Article 55 declared to be a corrupt practice. The combined effect of Article 55 (1) and Article 79 (3) is that a person reported for a corrupt practice is rendered incapable of voting or being elected to the State Council for a period of seven years. The notice given to the appellant to show cause referred to only one of the cases found proved against him. On appearing to show cause the appellant, who had given evidence on the trial of the petition, desired to call nine witnesses, whose names he had previously given, with the object of proving that he was not guilty of the offence specified in the notice which the Election Judge had found proved. The learned Judge refused to hear these witnesses, on the ground that he could not be asked to reverse the findings which he had already made on the trial of the petition. He held that as by Article 78 of the Order in Council his determination as to the validity of the election was final it followed that his finding that a person had committed a corrupt or illegal practice must necessarily be final also, and he reported the appellant. The appellant then moved the Supreme Court for a mandate in the nature of a writ of *certiorari* to bring up what was called the Order by which he was reported, though it would perhaps be more accurate to call it simply the report, and have it quashed. On June 1, 1942, the Chief Justice of Ceylon delivered judgment refusing to issue the mandate, holding that the Election Court in Ceylon was a Superior Court to which no writ in the nature of *certiorari* would lie. Against his refusal the Supreme Court gave the appellant leave to appeal to His Majesty in Council.

Their Lordships are of opinion that the judgment of the learned Chief Justice is plainly right. By Article 75 of the Order in Council every election petition is to be tried by the Chief Justice or a Judge of the Supreme Court nominated by him, and the Chief Justice or the nominated Judge are referred to in the Order as the Election Judge. By clause 5 of this Article it is provided that unless otherwise ordered by the Chief Justice all interlocutory matters in connection with a petition may be dealt with and decided by any Judge of the Supreme Court. Article 76 provides that an election petition may be presented to the Supreme Court by one or more of certain classes of persons. These two sections alone would appear to show quite clearly that an election petition is a proceeding in the Supreme Court, and a reference to the rules of procedure which are enacted in the Sixth Schedule to the Order confirms, if confirmation were necessary, this view. Rule 4 gives the form a petition is to take and its heading is "In the Supreme Court of Ceylon". Rule 29 deals with the withdrawal

of a petition which cannot be done without the leave of the Judge, that is the Election Judge. Sub-Rule 2 of this Rule prescribes the affidavits which are to be filed on such an application, but provides that a Judge of the Supreme Court, and not only the Election Judge, may on special grounds dispense with the affidavit of any particular person. Again Rule 37 provides that the petition is not to abate because a respondent dies, resigns, or gives notice to the Court that he does not intend to oppose the petition, and provision is made as to how and when notice is to be given to the Court. While the Ordinance constituting the Supreme Court does not confer upon it original, but only appellate jurisdiction in civil cases, their Lordships are of opinion that cognisance of election petitions is a special jurisdiction conferred upon the Supreme Court by the Order in Council, and that is abundantly clear from the provisions to which they have referred. It is well settled, and Counsel did not seek to argue to the contrary, that a Court having jurisdiction to issue a writ of *certiorari* will not and cannot issue it to bring up an order made by a Judge of that Court. Nor will a Superior Court issue the writ directed to another Superior Court—*Reg. v. Justices of the Central Criminal Court*¹, and if the Election Judge is to be regarded as a special or independent tribunal his court would, in their Lordships' opinion, be a Superior Court. Considering that the Court is held before a Judge of the Supreme Court from whose decision there is no appeal, it could not be otherwise. But their Lordships are of opinion that the true view is that cognisance of these petitions is an extension of, or addition to, the ordinary jurisdiction of the Supreme Court and consequently *certiorari* cannot be granted to bring up any order made in the exercise of that jurisdiction. As the appellant's motion was rightly rejected it is unnecessary to consider the other matters raised in the appeal and their Lordships will humbly advise His Majesty that it should be dismissed with costs.

Appeal dismissed.
