

1966 *Present : H. N. G. Fernando, S.P.J., Tambiah, J., and Abeyesundere, J.*

W. A. HEMADASA and 2 others, Appellants, and
J. L. SIRISENA, Respondent

*Election Petition Appeal No. 4 of 1966—Electoral
District No. 101 (Bingiriya)*

Election petition—Corrupt practice of undue influence—Words uttered at a religious assembly—Meaning of expression “religious assembly”—Ceylon (Parliamentary Elections) Order in Council, 1946, s. 56 (2) (a) (c).

Section 56 (2) (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by Act No. 10 of 1964, reads as follows :—

“ Every person who, at any time during the period commencing on the day of nomination at any election and ending on the day following the date of the poll at such election, utters at any religious assembly any words for the purpose of influencing the result of such election or inducing any elector to vote or refrain from voting for any candidate at such election shall be guilty of the offence of undue influence.”

Held, that a gathering of persons becomes a religious assembly only when they are actually attending any religious proceedings. The expression “any religious assembly” occurring in the Section does not include a gathering of persons who are awaiting the commencement of any religious proceedings at any place or who, having attended such proceedings, are in recess during an adjournment of such proceedings or are lingering at such place after the conclusion of such proceedings.

APPEAL from the judgment of the Election Judge in Election Petition No. 25 of 1965—Electoral District No. 101 (Bingiriya).

The following is an extract from the judgment of the Election Judge (MANICAVASAGAR, J.) :—

“ The charge of undue influence on which the petitioners rely is made under Section 56 (2) (a) of the Order-in-Council, 1946.

“ The petitioners claim that between Nomination day and polling day words were uttered at religious assemblies, for the purpose of influencing the result of the election by the persons named in the particulars, and such person was either an agent of the respondent or one who acted with his knowledge or consent.

“ The evidence of the several witnesses in regard to the period of time, and the words used was not contradicted nor were they seriously

challenged. The only matters on which witnesses were questioned and submissions made were whether the words were used at a religious ceremony and whether the speaker was an agent of the respondent.

“ On the former issue Counsel for respondent submits that the words should have been made to persons actually participating in a ceremony or religious worship : words used on such an occasion would certainly be within the ambit of Section 56 (2) (a), but to confine it to only such an occasion would be to give the Section too narrow an interpretation. Mr. Shinya's argument, on the contrary, gives the Section a much wider scope : he submits that the word “ at ” in the phrase “ at a religious assembly ” gives the clue as to the persons, the place and occasion which the Legislature sought to protect : he submits that the Section would catch up persons who have reached the venue for a religious purpose, even though they have not assembled for that purpose. I think this interpretation goes beyond the bounds of reasonable interpretation of the provision : it would bring within its ambit a group of persons who are together in the compound of a church or temple, either before or after participating in the business which brought them to the venue. To this extent I do not agree with his submission : I think he has cast the net too wide ; these words connote a congregation of persons, who have in fact assembled for the religious purpose. The words should be spoken after the persons had assembled for the purpose for which they had come, and before they disperse : an assembly should have come into existence.

“ The object of this provision which was introduced in 1959 was to prevent the exploitation of religion for political purposes : to catch up cases where Ministers of religion who took the opportunity of the occasion to advise their flock who had assembled for a religious purpose how they should cast their votes. I do not think it really relevant to consider the intention of the Legislature : the words are plain enough and apply to words spoken at a religious assembly for the purpose mentioned in the Section : applying the construction I have placed, my view is that the petitioners have failed to establish that the several utterances to which the witnesses referred, except one, were spoken at a religious assembly. ”

Hanan Ismail, with *Dharmasiri Senanayake* and *K. Sivananthan*, for the appellants.

K. C. Nadarajah, with *B. J. Fernando* and *Ananda Paranavitana*, for the respondent.

September 22, 1966. ABEYESUNDERE, J.—

The appeal of the appellants was heard and dismissed by us. We now give the reasons.

The question of law to be determined on the appeal is whether the evidence led at the trial of the election petition affords legal proof of the allegation of the appellants that in connection with the election there were instances of the commission of the corrupt practice of undue influence under section 56 (2) of the Ceylon (Parliamentary Elections) Order in Council 1946, hereinafter referred to as the Order in Council.

It was argued by counsel for the appellants that the expression "any religious assembly" occurring in section 56 (2) (a) of the Order in Council includes a gathering of persons who are awaiting the commencement of any religious proceedings at any place or who having attended such proceedings are in recess during an adjournment of such proceedings or are lingering at such place after the conclusion of such proceedings. We do not accept counsel's interpretation of the aforesaid expression because in our view it is only when actually attending any religious proceedings that a gathering of persons becomes a religious assembly.

The first alleged instance of undue influence is an utterance by Bhikku Saranatissa of Bunnapola Temple on the occasion of the laying of a foundation stone for the construction of an "avasa" at Paranagama Temple in Udabeddewa. The two witnesses who gave evidence were agreed that the utterance of Bhikku Saranatissa was before the commencement of the ceremony of laying the foundation stone. One of those witnesses stated that such ceremony started about half an hour after the utterance was made. The learned Election Judge has held not only that there was no religious assembly when the utterance of Bhikku Saranatissa was made but also that the occasion of laying the foundation stone was not a religious occasion because the "avasa" to be constructed was a building for the residence of Buddhist monks. As Bhikku Saranatissa's utterance was made before the commencement of the ceremony of laying the foundation stone, we hold that the persons to whom the utterance was made were then not attending any religious proceedings and therefore were not a religious assembly. Consequently we hold that the evidence does not in law establish that Bhikku Saranatissa committed the offence of undue influence under section 56 (2) (a) of the Order in Council. We do not uphold the finding of the learned Election Judge that the occasion of laying the foundation stone for constructing an "avasa" is not a religious occasion. There is no witness competent to speak on the religious affairs of Buddhists who has testified that the laying of a foundation stone for the construction of an "avasa" is not a religious affair of Buddhists.

The appellants have made allegations of undue influence relating to certain incidents at the Bhavana Centre at Dummalasuriya and the Bhavana Centre at Bowatta. Those Centres are used for meditation and religious discussion by Buddhists. According to the evidence, persons

coming from a distance to attend religious proceedings at the Bhavana Centres arrive there on the evening of the day immediately preceding the day on which such proceedings are held. There is the evidence that—

- (a) on the night before a certain day set apart for meditation there were about fifty or sixty persons at the Bhavana Centre at Dummalasuriya and a physician called Karunaratna came there about 7.30 p.m. and asked those persons to vote for the elephant which was the symbol allotted to the respondent ;
- (b) on the following day religious proceedings commenced at the Bhavana Centre at Dummalasuriya at about 6 or 6.30 a.m., there was an interval for meals and rest from about 10.30 or 11 a.m. to about 2.30 p.m., after the interval the persons who remained reassembled for religious discourse, and during the interval a person called Bandappu distributed leaflets and asked those present to do as they were instructed by the Vedhamahathmaya, the reference being to what the physician Karunaratna had told them on the previous night ;
- (c) some devotees arrived at the Bhavana Centre at Bowatta on the night preceding a certain day on which religious proceedings were held at that Centre and a person called Karunasena had come there that night and asked those present to give their votes to save the country from the Marxists ; and
- (d) during the interval from 11 a.m. to 1 p.m. for meals and rest on the day on which the religious proceedings were held at the Bhavana Centre at Bowatta the aforesaid Karunasena reminded those present that the country should be saved from the Marxists.

The learned Election Judge has held that there was no religious assembly before the commencement of the religious proceedings and during the interval. When Karunaratna at the Bhavana Centre at Dummalasuriya and Karunasena at the Bhavana Centre at Bowatta addressed the persons present on the night preceding the day on which the religious proceedings were held, they did not address a religious assembly because those persons were then not attending any religious proceedings. The assembly that participated in the religious proceedings ceased to be a religious assembly during the interval for meals and rest. Therefore when Bandappu at the Bhavana Centre at Dummalasuriya and Karunasena at the Bhavana Centre at Bowatta addressed the persons present during the interval, they did not address a religious assembly. We hold that the evidence does not in law establish that Karunaratna, Bandappu, or Karunasena committed the offence of undue influence under section 56 (2) (a) of the Order in Council.

The last alleged instance of undue influence relates to an incident in the premises of Munnakulama Temple. The evidence is that at about 7 p.m. on a certain day there was a cinematographic film show in the open at a place between the school hall and the "legumge", that several places of

historical and religious interest in Ceylon and India were shown, that after the show was over Bhikku Saranatissa, the High Priest of Munna-kulama Temple, addressed those present and asked them to vote for the elephant and see that the respondent was sent to Parliament. The learned Election Judge has held that there was no utterance at a religious assembly within the meaning of section 56 (2) (a) of the Order in Council and that there was no public meeting held at a place of worship within the meaning of section 56 (2) (c) of the Order in Council. The persons present at the cinematographic film show of places of historical and religious interest in Ceylon and India were not attending any religious proceedings and were therefore not a religious assembly. There is no evidence that the ground between the school hall and the "legunge" was used by Buddhists as a place of worship and therefore it cannot be said that those who assembled there for the cinematographic film show were having a public meeting at a place of worship. We hold that the evidence does not in law establish that the gathering of people whom Bhikku Saranatissa addressed after the cinematographic film show was a religious assembly within the meaning of section 56 (2) (a) of the Order in Council or that those people were having a public meeting at a place of worship within the meaning of section 56 (2) (c) of the Order in Council.

H. N. G. FERNANDO, S.P.J.—I agree.

TAMBIAH, J.—I agree.

Appeal dismissed.
