

1953

Present : Swan J.

S. J. V. CHELVANAYAKAM, Petitioner, and S. NATESAN,
Respondent

Election Petition 17 of 1952, Kankesanthurai

Election Petition—Particulars relating to certain charges—What particulars should be given and when they should be given—Scope of Rule 5 of Schedule 3 of Ceylon (Parliamentary Elections) Order in Council, 1946.

Where the date of trial of an election petition has been fixed, the election judge is entitled to specify a particular date for the filing of particulars.

Where the petitioner relies upon a false statement made by the respondent to a particular individual or group of known individuals regarding the petitioner's character and conduct, he may be ordered to give the name or names of such

individual or individuals and their addresses, occupations and numbers (if any) on the electoral register. The names of the witnesses, however, need not be stated. (Rule 5 of Schedule 3 of the Parliamentary Elections Order in Council, 1946.) Similar particulars should also be given where the petitioner relies on charges of undue influence or distribution of improper advertisements or handbills to any particular individual or group of known individuals. Where posting of placards and posters is alleged, the petitioner may be directed to give, where possible, the places of posting.

With regard to the charge of hiring, borrowing and using prohibited vehicles for the conveyance of voters, the petitioner must furnish *inter alia* the details of each trip, namely the starting-point and the destination and, if known, the number of persons conveyed, their names, addresses, occupations and numbers on the electoral register, and, if known, the amounts paid and to whom they were paid.

With regard to the charge of making a false return concerning election expenses, the petitioner cannot be compelled to state the names, &c. of the witnesses to be called to prove each alleged omitted or impugned item of expense.

APPPLICATION to furnish particulars regarding certain charges in Election Petition, Kankesanthurai.

C. S. Barr-Kumarakulasinghe, with G. T. Samarawickreme, T. W. Rajaratnam and G. Candappa, for the petitioner.

E. G. Wikramanayake, Q.C., with G. E. Chitty, C. C. Rasaratnam and N. Nadarasa, for the respondent.

Cur. adv. vult.

September 9, 1953. SWAN J.—

This inquiry has arisen out of an application by the respondent for particulars of the charges. The original petition had only four charges, namely :—

- (1) making and publishing false statements of fact in relation to the character and conduct of the petitioner ;
- (2) printing, publishing, distributing and posting advertisements, handbills, placards and posters not bearing upon their faces the names and addresses of the printers and publishers ;
- (3) undue influence *and*
- (4) hiring, borrowing and using prohibited vehicles for the conveyance of voters.

The petition was filed on 23.6.52. On 16.7.52 the agent of the respondent asked for full particulars of the charges. Before this application could be dealt with the petitioner moved to amend the petition by the addition of a further charge, namely the corrupt practice of the making of a false return regarding election expenses. This application to amend the petition was, despite strenuous opposition, allowed by me in my capacity as a Judge of the Supreme Court. (See proceedings of 26.9.52 and order dated 21.10.52).

Thereafter the additional security necessitated by the added charge was duly deposited and a copy of the amended petition filed. On 17.1.53 I was appointed the Election Judge. On 16.2.53 the agent for the petitioner moved that the case be fixed for trial and also applied for summons on certain witnesses to produce certain documents on a day to be fixed by Court before the date of trial. The trial was fixed for 21.9.53. The application for summons was inquired into on 20.2.53 and disallowed on 31.3.53.

On 4.8.53 the agent for the respondent referring to his application of 16.7.52 moved the Court that the petitioner be required to furnish full particulars of the added charge as well. On 20.8.53 a motion was filed to amend the previous two applications; and the "full" particulars which the respondent demanded are set out in detail in the second motion of 20.8.53 (marked 42 in the record).

It was this matter which came up for consideration on 2.9.53. Opposing counsel were agreed as to certain particulars. It is upon those particulars asked for by the respondent and which counsel for the petitioner refused or was reluctant to give that I am called upon to make an order.

Rule 5 sets out that :—“ Evidence need not be stated in the petition, but the Judge may, upon application in writing by a respondent, order such particulars as may be necessary to *prevent surprise and unnecessary expense and to ensure a fair and effectual trial* upon such terms as to costs or otherwise as may be ordered. ”

Mr. Wikremanayake submits that the wording of the rule implies that the particulars should convey to the respondent a summary of what the petitioner's case will be. His contention seems to be that as the rule does not require "evidence" to be stated in the petition it follows that "evidence" should be supplied in the particulars. With this contention I cannot agree. Our Rule 5 is the same as Rule 6 in England, and it has never been even contended, far less held that the particulars must contain a *gist* or *summary* of the petitioner's case. One must realize they are *particulars* of the charges, not an outline of how the petitioner proposes to prove them. But the particulars must be sufficient to secure the three-fold object of :—

- (1) preventing surprise;
- (2) saving unnecessary expense *and*
- (3) securing a fair and effectual trial.

Mr. Barr-Kumarakulasinghe seems to think that the particulars should not be *full* but the barest minimum. He has an obsession that if too many particulars are furnished it will give the respondent an opportunity of getting at the petitioner's witnesses. That is an unworthy suggestion to make because it casts an unwarranted aspersion on both the respondent as well as the petitioner's witnesses—that the latter are

corruptible and the former is capable of bribing and corrupting them. I do not think an election court would tolerate such a suggestion when it considers what particulars should be given and when they should be given. Mr. Barr-Kumarakulasinghe wanted me to make order that the particulars should be filed so many days before the trial so that if the trial had to be postponed the date of filing particulars would also be postponed. Undoubtedly the practice in England is to order particulars to be furnished a given number of days before the trial. But where the date of trial is fixed I see no reason why a particular date should not be specified for the filing of particulars. That would avoid any dispute or controversy as to the computation of time.

In this particular case I thought, taking into consideration the number of charges involved, that three or four weeks before the trial should be allowed, and I fixed December 4, 1953, as the particular date having regard to the Christmas Vacation.

I shall now deal with the particulars upon which counsel could not agree. With regard to the first charge, namely the making and publishing of false statements in relation to the character and conduct of the petitioner, the respondent demands, in addition to what the petitioner has agreed to give, the names, addresses, occupations and numbers (if any) on the electoral register of the persons to whom each such act of publication was made; the names, addresses, occupations and numbers (if any) on the electoral register of the persons in whose presence each such separate act of publication was made and the names, addresses, occupations and numbers (if any) on the electoral register of the witnesses to be called to prove each such separate act of publication.

Where the petitioner relies upon a false statement made to a particular individual or group of known individuals I consider it necessary that the respondent should be given the name or names of such individual or individuals and their addresses, occupations and numbers (if any) on the electoral register. I do not however think that the petitioner should also state the names of the persons in whose presence the false statement was made or the names of the witnesses to be called to prove each such act. That would not fall within the ambit and meaning of the term "particulars of the charges". It would be in the nature of what evidence the petitioner proposes to lead to establish the charges. That the petitioner would not be entitled to know until the trial begins and the petitioner's case is opened.

With regard to the second charge, namely the printing, publishing, distributing and posting of advertisements, handbills, placards and posters I would make a similar order as above, namely that where the petitioner relies on the distribution of advertisements or handbills to any particular individual or group of known individuals he should give their names, addresses, occupations and numbers (if any) on the electoral register. With regard to the posting of placards and posters I direct the petitioner to give, where possible, the places of posting.

With regard to the third charge I direct the petitioner to give the necessary particulars to identify the person or persons upon whom any act of alleged undue influence was exercised, that is their names, addresses and occupations with their numbers on the electoral register.

With regard to the fourth charge, namely the charge of hiring, borrowing and using prohibited vehicles the petitioner must furnish, in addition to the particulars agreed upon, details of each trip, namely the starting-point and the destination and, if known, the number of persons conveyed, their names, addresses, occupations and numbers on the electoral register, and, if known, the amounts paid and to whom they were paid. I do not think that the petitioner can be required to state the witnesses he will be calling to prove each of the alleged illegal acts specified in this charge.

As regards the fifth charge I refuse the respondent's application to compel the petitioner to state the names, &c. of the witnesses to be called to prove each alleged omitted or impugned item of expense.

These particulars will be furnished along with the agreed particulars on or before 4.12.53. The costs of this inquiry will be costs in the cause.

Particulars to be furnished regarding certain charges.