

1948

Present : Nagalingam J.

DON ALEXANDER, Petitioner, and LEO FERNANDO,
Respondent.

Election Petition No. 12 of 1947, Buttala.

Election petition—Application to withdraw—Lack of funds—Matter affecting electorate—Investigation necessary before permission to withdraw—Witnesses and documents—Affidavits.

An election petition is a matter in which not only the petitioner but the whole electorate has an interest. Where, therefore, serious charges have been made against the respondent, it is necessary that some investigation should be made as regards the charges before the petition can be permitted to be withdrawn.

APPPLICATION to withdraw the petition questioning the return of the Member of Parliament for the Buttala Electoral District.

D. S. Jayawickreme, for the petitioner.

D. W. Fernando, for the respondent.

Cur. adv. vult.

March 15, 1948. NAGALINGAM J.—

This is an application to withdraw the petition presented by the petitioner questioning the return of the respondent as Member of Parliament for the Buttala Electoral District. The petitioner himself was one of the candidates who contested the election, and the petitioner duly deposited by way of security, as required by the rules framed under the Order in Council, a sum of Rs. 5,000 as security for respondent's costs.

The ground upon which the petitioner bases his application to withdraw the petition is that "he is unable to bear the excessive expenditure involved in proceeding with the petition". One would have expected the petitioner to have considered the financial aspect of the piece of litigation upon which he was embarking before he ventured out, and having regard to the facts that the petitioner himself was a candidate and therefore a man of at least some education and of ordinary prudence and that he has deposited the necessary security, it would be difficult to feel convinced that the ground put forward by him as the reason for withdrawing the petition is a sound one. Counsel for the petitioner, probably in anticipation, amplified at the inquiry the reason given by the petitioner by his statement that certain persons had promised pecuniary assistance to the petitioner for prosecuting the petition but that they had now failed to give him the promised assistance and that the petitioner therefore finds himself in the position of having to bear the expenses of the inquiry, which he can ill afford to do.

There is no evidence before me as regards the petitioner's worth or who were the persons who promised him financial assistance, and in the absence of this information I do not think it can be said that the petitioner has made out an adequate ground for permitting him to withdraw the petition. In the *Devonport Election Petition Case*¹ I find that the Court direct full affidavits to be filed in regard to the grounds set out for the withdrawal of the petition. The report itself does not bring this point out clearly but the reference to that case in *Rogers*² deals more fully with this aspect of the question. I therefore direct that the petitioner should file an affidavit setting out his worth, the names and addresses of the persons who promised him financial assistance and the extent of such assistance offered by every such person.

Nor do I think that the filing of such an affidavit can by itself be regarded as entirely satisfactory for the disposal of this application; for once an election petition is presented, the matter ceases to be one exclusively between the petitioner and the respondent. In fact it becomes a matter in which the whole electorate, not to say the whole country

¹ 1886) 54 *Law Times Reports* 733. ² *Elections* : Vol. II, (20th ed.) p. 185.

has an interest, and any order disposing of the application should therefore be made from the larger standpoint of the State. There were three grounds relied upon by the petitioner as furnishing grounds for avoiding the election of the respondent :—

- (1) General intimidation,
- (2) Undue influence, and
- (3) Contracts with the Crown.

At the Bar, Counsel for the petitioner expressly submitted that the petitioner was forced to withdraw the petition out of sheer necessity owing to lack of funds and not because he was not in a position to prove the charges. Though the Electorate was given an opportunity by public advertisement in the newspapers of the date of the hearing of this application with a view to enable any member thereof, if so minded, to proceed with the application, no one in fact has availed himself of the opportunity. and the position is that certain serious charges have been made against a candidate returned as duly elected, which have not in the slightest degree received any investigation. In these circumstances it becomes necessary that some investigation should be made as regards the charges framed against the respondent before the petition can be permitted to be withdrawn.

I would therefore direct further that the petitioner should, in the affidavit I have already directed him to file, also set out under each of the three grounds of general intimidation, undue influence and contracts with the Crown the information he has in regard to specific acts relied upon by him in support of these charges, the witnesses in support and documents. This affidavit should be filed on or before April 12, 1948, and copies of the affidavit should be served both on the respondent and on the Attorney-General, the latter of whom would investigate the charges, and particularly the last charge, in so far as it lies in his power, and appear as *amicus curiae* at the further hearing. I adjourn the further hearing of this inquiry for May 10, 1948.

Hearing adjourned.
