

1948

*Present : Windham J.*

PELPOLA, Petitioner, and R. S. S. GUNAWARDENA,  
Respondent.

IN THE MATTER OF THE ELECTION FOR THE GAMPOLA  
ELECTORAL DISTRICT.

*Election Petition No. 11 of 1947.*

*Election Petition—General intimidation—Threats of violence—Local acts—Result affected—Parliamentary Elections Order in Council, 1946, section 77 (a).*

To establish a charge of general intimidation it is only necessary for the petitioner to show that, having regard to the majority obtained, and the strength of the polling, the result may reasonably be supposed to have been affected.

**E**LECTION petition, Gampola Electoral District.

*E. F. N. Gratiaen, K.C., with C. S. Barr Kumarakulasingham, B. H. Aluwihare and A. I. Rajasingham, for the petitioner.*

*U. A. Jayasundera, with Stanley de Zoysa, S. P. C. Fernando, G. Samarawickreme, S. E. J. Fernando and D. Wimalaratne, for the respondent.*

*Cur. adv. vult.*

March 12, 1948. WINDHAM J.—

This petition is presented against the return of the respondent, the Honourable Mr. Ratnakirti Senarat Serasinghe Gunawardena as Member for the Gampola Electoral District, at an election held on September

18, 1947. The election was a straight fight between the respondent and the petitioner, Mr. Richard Stanley Pelpola, and resulted in victory for the respondent by the comparatively narrow margin of 387 votes. The respondent bears office in the House of Representatives as Minister without Portfolio, and Chief Government Whip.

The grounds for avoiding the election, as set out in the petition, are two. The first ground is general intimidation, the particulars being that on polling day, at a number of places in the electorate, but mainly at a place called Uduwella, certain groups of persons intimidated other groups from going to the polling station, by use and threats of force, with the result that the majority of electors were or may have been prevented from electing the candidate whom they preferred. The second ground is based on the same incidents as form the subject-matter of the first ground, but considered as acts of undue influence committed against individuals by other individuals alleged to be agents of the respondent.

The following evidence in support of the charge of general intimidation was led by Mr. Gratiaen for the petitioner. First, the officer who was in charge of the Uduwella polling station produced his official return for that station, showing that of the 1,427 registered voters for this polling station, only 541 voted. It also showed that of these 541 voters, only 147 recorded their votes during the six-hour period from 10 A.M. until 4 P.M., whereas 168 of them recorded their votes during the final hour from 4 P.M. to 5 P.M. This evidence is strongly corroborative of that which followed, namely, the evidence of S. Paramanathan, who was President of the Ceylon Indian Congress Labour Union Committee of Mossville estate.

This witness states that on the morning of polling day, September 18, he went with a number of Indian labourers to vote at the Uduwella polling station. At a point on the road near a bakery, which they had to pass in order to reach the polling station, they were stopped by a party of about 30 Sinhalese villagers, who asked them where they were going. On being told that they were going to vote, these villagers said that Tamils had no votes there, and one of them, who carried a club, added—“If you dare to vote, our master has instructed us to assault you”. One of the villagers then pushed one of the Indian labourers. In brief, the labourers were unable to pass and to reach the polling station for fear of further assaults, and they were obliged to return to their estate. This witness, Paramanathan, then sent a telegram to the District President of his committee complaining of the obstruction, the result of which was that in due course the police arrived at about 4.30 P.M. There had been no police in this area until then, owing to its being still badly affected and isolated by the recent floods, from which Gampola had suffered perhaps more severely than any other locality in Ceylon. Upon the arrival of the police, some 300 of the Mossville estate labourers felt brave enough to accompany them to the polling station. On the way there, the police invited labourers from the neighbouring Craighead estate to accompany them also to the station. Some of these latter accepted the invitation, but others refused through fear. The witness saw villagers at the bakery throwing stones and preventing labourers from proceeding to the polling station. Some of them returned to their

estates through fear. Eventually, only 150 labourers went the whole way to the polling station, the remainder turning back through fear in spite of their police escort. And of these 150, only 50 were able to register their votes before 5 P.M., when the polling station closed.

None of this evidence was challenged by Mr. Jayasundera for the respondent, and I accept it in its entirety. There was also produced on behalf of the petitioner the official police report of the Police Inspector Corea, upon the above incidents, which entirely bears out the evidence of the witness Paramanathan. Upon the latter leaving the witness box, Mr. Jayasundera stated that he had been instructed by his client, the respondent not to contest the issue of general intimidation. The respondent took this decision after having received into his possession for the first time, only the night before, a number of police reports which convinced him that it would not be right for him to contest the charge. At the same time the respondent stated, through his counsel, that he entirely dissociated himself from the acts of these intimidators, about whom he knew nothing, and none of whom were his agents. He was deeply grieved that there had been a denial of the free exercise of the vote in his constituency, and he wished to retain no benefit which might have been a result of it. Mr. Gratiaen thereupon stated that he proposed to offer no further evidence on the charge of general intimidation, and none at all on the charges of undue influence.

The decision which the respondent has arrived at redounds to his credit, and does honour to the highest principles of legal integrity and parliamentary democracy. It is to be hoped that the course which he has adopted will put to shame those ill advised and politically immature persons who committed the acts of intimidation, which have defeated their own ends. Before, however, finding in favour of the petitioner on the charge of general intimidation, it is necessary, notwithstanding the course taken by the respondent, to examine whether the charge has been made out on the evidence and in law, since no election can be declared void by mere consent of the parties to a petition, the whole electorate being the persons really concerned.

In the present case, there can be no doubt to my mind that the petitioner, upon the uncontradicted evidence led by him, has established his case under section 77 (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, namely that by reason of general intimidation the majority of electors were or may have been prevented from electing the candidate whom they preferred. The respondent, it will be recalled, was elected by a majority of only 387 votes. Counsel for the petitioner has stated in his opening address, and his statement is not challenged by the respondent, that of the 32,734 voters in the whole electorate, some 8,375 (over one quarter) were Indian estate labourers, against whom, as a body, the acts of intimidation in the electorate were clearly directed by certain misguided Sinhalese persons. The witness Paramanathan stated that the Indian Congress Committee of his estate, at least, had decided to support the petitioner in the election, and that all the labourers had decided to vote for him. It is not unreasonable to suppose that the Indian labourers on the neighbouring estates (including those of Craighead, who were proved to have been similarly molested), had

likewise decided to vote for the petitioner, bearing in mind that, as yet, the tendency in Ceylon is to vote according to communal or other allegiance rather than to individual conscience. Only 541 out of 1,427 voters recorded their votes at the Uduwella polling station,—an unusually low proportion, and clearly attributable to the acts of intimidation, as is shown by the fact that more persons voted between the hours of 4 and 5 P.M. (when the police arrived and escorted labourers to the polls) than during the six hours from 10 A.M. to 4 P.M., when the intimidators had a free hand. Had 400 more persons voted, and cast their votes for the petitioner, the latter would have won the election. These facts are amply sufficient to support a finding of general intimidation under section 77 (a) of the Order in Council. To establish such a charge, where the general intimidation consists, as here, of local acts or threats of violence, it is only necessary for the petitioner to show that, having regard to the majority obtained, and the strength of the polling, the result may reasonably be supposed to have been affected. On the figures and in the circumstances disclosed in the present case, it is at the very least reasonable to suppose that the result of the election may have been affected by the acts of intimidation against the Indian estate labourers.

The petitioner accordingly succeeds in his charge of general intimidation under section 77 (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, with the result that the election, in September, 1947, of the respondent as member for the Gampola Electoral District, is declared void. No evidence was led in support of the second charge, namely, acts of undue influence by agents of the respondent, and this charge is accordingly struck out. The respondent will therefore not be subject to any of the incapacities set out in section 58 (2) of the Order in Council. By consent of both parties I fix the costs payable by the respondent to the petitioner at the sum of Rs. 2,000.

*Election declared void.*

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