

1944

*Present: Hearne J.*MOHAMED MIHULAR *v.* NALLIAH *et al.*IN THE MATTER OF THE BY-ELECTION FOR TRINCOMALEE-
BATTICALOA ELECTORAL DISTRICT.

Election petition—Charge of bribery—Several acts alleged—Sufficiency of security—Payment of cash to Financial Secretary—Failure to give particulars of charge—Deletion of charge—Ceylon (State Council Elections) Order in Council, 1931, Articles 13 (1), 74 (b).

Where, in an election petition, the corrupt practice of bribery is alleged, for purposes of security it would constitute one charge, although several acts of bribery are specified in the charge.

Payment of security in cash to the Financial Secretary, is sufficient compliance with the requirements of articles 13 (1) of the Order in Council.

Where non-compliance with the provisions of the Order in Council is alleged in that the election was not conducted in accordance with the principles laid down in such provisions it is not necessary to state in the petition that such non-compliance affected the result of the election.

Where particulars of the charge of bribery given by the petition are grossly insufficient the petitioner should not be allowed to proceed with the charge.

THIS was an election petition praying that the election of the first respondent, as Member for the Trincomalee-Batticaloa Electoral District, be declared void.

The respondent took certain preliminary objections with regard to (a) the conduct of the election (b) the sufficiency of security and (c) the failure of the petitioner to give particulars of the charges.

H. V. Perera, K.C. (with J. E. M. Obeyesekere and Dodwell Gunawardana), for the petitioner.

N. Nadarajah, K.C. (with him C. S. Barr H. Kumarakulasingam and H. Wanigatunge), for first respondent.

R. R. Crosette-Thambiah, C.C., for second respondent.

March 22, 1944. HEARNE J.—

Cur. adv. vult.

A. N. M. Mohamed Mihular of Galbokke, one of the candidates at the election for the Trincomalee-Batticaloa Electoral District held on November 20, 1943, filed a petition praying that the election of the first respondent be declared void. The grounds on which the petition was based are—

- (a) that although the colour allotted to the candidate A. Canagasingham, under Article 32 (1) of the said Ceylon (State Council Elections) Order in Council was blue, the ballot boxes of the said A. Canagasingham were coloured a shade resembling green in breach of Article 37 (2) of the said Order in Council. The colour allotted to the petitioner was green;
- (b) that the notice required to be affixed in accordance with Article 37 (3) of the said Order in Council did not show the colours with which the ballot boxes of the respective candidates were coloured in breach of the said Article 37 (3) of the said Order in Council;
- (c) that the corrupt practice of bribery as defined in Article 54 of the said Order in Council was committed in connection with the said election by the first respondent or with his knowledge or consent or by an agent or agents of the first respondent.

In view of the allegations in (a) and (b) the Returning Officer was made second respondent.

An objection was taken to the insufficiency of the security. It was argued that, having regard to the wording of (c), at least two charges of bribery were alleged and that with (a) and (b) the petition contained four charges. In these circumstances a tender of the minimum security of Rs. 5,000 was a non-compliance with the provisions of Rule 12 of the Sixth Schedule.

In my opinion by the word "charges" in Rule 12 (2) is meant "the various forms of misconduct coming under the description of corrupt and illegal practices: for example, whatever may be the number of acts of bribery sought to be proved against a respondent the charge to be laid against him is one of bribery"—*Tillekewardene v. Obeyesekere*¹. That also represents the view which appears to be implicit in the case of *Silva v. Kularatne*². The objection is overruled.

Another objection was that, assuming there were only three charges, the security should have been doubled as there are two respondents. I do not see how the number of respondents can affect the question of the number of charges and in consequence the quantum of the security. No ingenuity can make three charges more than three.

¹ 33 N. L. R. 65 at 67.

² 44 N. L. R. at 21.

Again it was argued that although payment of the security in cash had been made to the Financial Secretary it was not vested in the Chief Justice as the provisions of Rule 13 (1) require. It is, I think, clear that in depositing the security with the Financial Secretary the petitioner did all that he was required to do. Upon his doing so, there was an automatic vesting in the Chief Justice by operation of law. For the purpose of convenience the money is payable to the Financial Secretary, but he is not at liberty to dispose of it in any way that he chooses. His custody is declared by law to be that of the Chief Justice.

Objection was also taken to the averments in 3 (a) and 3 (c) in that, as it was argued, "they are insufficient to disclose a proper subject for inquiry". Article 74 enacts that "the election of a candidate shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, viz.:

. . . . (b) non-compliance with the provisions of this Order relating to elections if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election".

The view was pressed in argument that the petition should have set out that "such non-compliance affected the result of the election".

I do not think it was necessary to do so. The petitioner set out the alleged breaches of Article 37 of which he complained. Relief was asked under Article 74 (b) and that relief will be granted subject to a finding by the Election Judge that "non-compliance affected the result of the election". It is a matter which is placed in the hands of the Judge upon a review of all the evidence and, in my opinion, need not be specifically pleaded.

I now come to the last formal objection that was taken by Council for the first respondent.

An order was made on March 14 requiring the petitioner to give full particulars setting out (a) the names of all persons, with their addresses, their occupations and their numbers on the voters lists who are alleged to have committed the corrupt practice of bribery, (b) the names of all voters, with their addresses and occupations and their numbers on the voters lists who were bribed or whom it was attempted to bribe, (c) when and where the alleged bribery took place, (d) the nature of the alleged bribery, (e) the names of all witnesses with their addresses and occupations who were relied on to prove the said charges.

On March 18 the petitioner filed an affidavit in which he stated, *inter alia*, that he received notice on March 15 that he could not comply with the order on the same day, and that "in any event he apprehended that if the particulars were furnished now and considerably prior to the hearing of the petition itself his witnesses may be tampered with".

It is to be noted that even if the petitioner could not comply with the order requiring particulars on March 15 no attempt was made to comply with it on any subsequent day. Further, the petitioner had no reason to think and was given no reason to think that if he furnished particulars on March 15 he would be giving them "considerably prior to the hearing of the petition".

When the petition was before the Court on March 20, I gave instructions for the particulars to be furnished on the same day and they were forthcoming in little more than an hour. The order was not unreasonable. The petition had been filed on December 16, 1943, and I assumed, as in the event I was justified in assuming, that the petitioner's proctor must have been given instructions in accordance with which the "particulars" could be supplied in a short space of time.

It would appear that the instructions that were given were of a most meagre nature. The so-called particulars were that "one Kannamuthu Saravanamuthu, agent of the first respondent (his address, occupation, &c., are not stated), obtained two ballot papers from a known person, in regard to whom no details are furnished except that he is 'of Karayakantive', and an unknown person on November 20, 1943, at Kannankuda, Batticaloa, for valuable consideration". The names of three witnesses are mentioned. The address of one is not given. The other two are police officers. I was left to assume that "if their names were given they would be tampered with".

If I regarded the above as a compliance with the order for particulars in regard to the charge of bribery under Article 54, it would be tantamount to acquiescence in an attempt by the petitioner to flout that order. On the application of Counsel for the first respondent I have no hesitation in rejecting the particulars given as being grossly insufficient. The petitioner may now proceed with his petition on the grounds set out in 3 (a) and 3 (b) only. Whether he elects to do so or not, the parties, that is to say, the petitioner and the first and second respondents will bear their own costs of the hearing of the preliminary objections.

