

1954

Present : de Silva J.

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

Election Petition No. 17 of 1952, Kankasanturai

Parliamentary election—Agency—Principles applicable—Proof of agency—Election offences—Degree of proof required.

In Parliamentary elections the relationship between a candidate and his agent is similar to that between master and servant. A candidate is liable for the corrupt acts of his agent, provided they were done within the scope of his authority, even though the candidate may have taken the precaution of warning the agent against such acts.

Agency may arise not only by express appointment but also may be implied from circumstances. But before the Court can infer agency from surrounding circumstances it must be satisfied that that is the only inference which can be drawn from the facts proved. The mere non-interference by a candidate with persons who on their own work for him is not sufficient to saddle him with the consequences of the corrupt acts of which he was ignorant.

Election offences must be strictly proved. The degree of proof required is the same as in a criminal charge.

ELECTION petition, Kankasanturai.

D. S. Jayawickreme, with T. K. Curtis, G. T. Samarawickreme, Neville Samarakoon, K. Rajaratnam, G. Barr-Kumarakulasingham and G. Caudappa, for the petitioner.

E. G. Wikramanayake, Q.C., with N. Nadarasa, T. W. Rajaratnam and S. Pasupathy, for the respondent.

Cur. adv. vult.

July 3, 1954. DE SILVA J.—

In these proceedings Mr. Chelvanayakam, the Petitioner, seeks to have the election of Mr. Natesan, the Respondent, as Member of Parliament for the Kankasanturai constituency at the general election held in May, 1952, declared void. The nomination of candidates was on April 28, 1952, and the election was held on May 30, 1952. The counting of votes and the declaration of the results took place on the following day. It was found that the Respondent had secured 15,337 votes as against 11,571 votes obtained by the Petitioner. The Respondent was, therefore, declared elected by a majority of 3,666 votes. The total number of voters in the electorate was 38,434. The result of the election was published in the *Government Gazette* No. 10,405 dated 2nd June, 1952. The grounds on which the election is sought to be declared void are set out in paragraphs 3, 4, 5, 6 and 7 of the amended petition dated October 24, 1952, filed by the Petitioner. These paragraphs read as follows :

“3. Your Petitioner states that before and during the said election the said Respondent his agents and/or other persons with his knowledge and/or consent did make and publish false statements of fact

in relation to the personal character and conduct of the Petitioner for the purpose of affecting the return of the Petitioner and that thereby a corrupt practice has been committed within the meaning of Section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council 1946.

4. Your Petitioner further states that the Respondent himself his agents and/or other persons with his knowledge and/or consent did print publish distribute and/or post up or cause to be printed published distributed and/or posted up advertisements hand-bills placards and posters which referred to the said election and which did not bear upon their face the names and addresses of their printers and/or publishers and thereby committed a corrupt practice within the meaning of Section 58 (1) (c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

5. Your Petitioner further states that the corrupt practice of "undue influence" as defined by Section 56 of the Ceylon (Parliamentary Elections) Order in Council 1946 was committed in connection with the said election by the Respondent, his agents and/or by other persons with his knowledge and/or consent.

6. Your Petitioner further states that the Respondent himself his agents and other persons with his knowledge and/or consent did hire and/or borrow and/or use for the purpose of conveyance of electors to and from the poll vehicles which they knew that the owners thereof were prohibited by Sub-Section 3 of Section 67 of the Ceylon (Parliamentary Elections) Order in Council 1946 from letting lending or employing for the said purpose and thereby committed an illegal practice in connection with the said election.

7. The Petitioner further states that the Respondent abovenamed was guilty of a corrupt practice under Article 58 (1) (f) of the Ceylon (Parliamentary Elections) Order in Council in that being a candidate and his own election agent he knowingly made declaration as to the election expenses required by Section 70 falsely."

Out of the 5 charges set out in the amended petition, some of the particulars of the charge set out in paragraph 6 relating to the use of prohibited vehicles were struck out, of mutual consent of parties, during the course of the trial, while the remainder were struck out by order of Court as there was not sufficient evidence in support of them. The trial, therefore, related to the remaining 4 charges.

A brief survey of the political history of the Kankasanturai constituency during a period of about 16 years immediately preceding this election and the part played by the Petitioner and the Respondent in the political and the social life of the country, with particular reference to the Jaffna Peninsula, is helpful in understanding some issues of fact which arise in this case. [His Lordship then made the proposed survey, and continued :—]

As the question of agency looms large in this case, it is necessary to consider the principles which govern the law of agency in Parliamentary

elections. According to the ordinary law of agency, a person is not liable for the actions of a person whom he has not authorized, or even for the acts done outside the scope of the agent's authority. The election judges in England considered long ago that the ordinary law of agency was quite inadequate for the preservation of the purity and the freedom of elections. As democratic form of government is based on the authority of Parliament, it is obvious how necessary it is that the election of members of that body should be free from fraud and corruption. In order to achieve this object, it became necessary to give an extended meaning to the ordinary law of agency in the matter of elections, and the English election tribunals unhesitatingly did so. According to this extended meaning, a candidate "is responsible for the act of that agent in committing corruption, though he himself not only did not intend it or authorise it but even *bona fide* did his best to hinder it"—*Taunton Case*¹. In elections the relationship between a candidate and his agent has been likened to that existing between the master and servant. A master is liable for the negligent act of his servant done within the scope of his employment, even though he may have taken the precaution of warning the servant against such negligence. In the *Boston Case*² Grove J. stated, "but with regard to election law, the matter goes a great deal farther, because a number of persons are employed for the purpose of promoting an election, who are not only not authorized to do corrupt acts, but who are expressly enjoined to abstain from doing them, nevertheless the law says, that if a man chooses to allow a number of people to go about canvassing for him, generally to support his candidature, to issue placards, to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good". A candidate, however, is liable for the corrupt acts of his agent, provided they were done within the scope of his authority. If a person is an agent of a candidate for a particular transaction only, the candidate would not be liable if that agent commits a corrupt act quite unrelated to the work entrusted to him. If, however, a person were appointed agent for canvassing generally and in the course of such canvassing he were to commit the acts of bribery or treating, the candidate would be liable. In the *Harwich Case*³ Lush J. said, "If a person were appointed or accepted as agent for canvassing generally, and he were to bribe or treat any voter, the candidate would lose his seat. But if he was employed or accepted to canvass a particular class, as if a master were asked to canvass his workmen, and he went out of his way and bribed a person who was not his workman, the candidate would not be responsible, because this was not within the scope of his authority".

Agency may arise by express appointment or it may be implied from circumstances. In the instant case there are no express appointments of agents. The Petitioner seeks to establish agency of certain persons from the surrounding circumstances. In the absence of express appointments as agents, the burden is cast on the Court to decide on circumstantial evidence whether or not the relationship between the candidate and another amounts to agency according to election law. If an act or a

¹ 1 O. M. & H. 181, at p. 182.

² 2 O. M. & H. 161, at p. 167.

³ 3 O. M. & H. 61, at p. 70.

series of acts of a person relating to the election points to the irresistible conclusion that such person was engaged in the promotion of the candidature of the respondent to the latter's knowledge, or if the respondent subsequently having been made aware of such services accepted the same, the Court must not hesitate to draw the inference that the relationship between the parties amounted to agency. However, that evidence being circumstantial, the Court must be satisfied that that is the only inference which can be drawn from the facts proved. It has been held that the mere non-interference by a candidate with persons who on their own work for him is not sufficient to saddle him with the consequences of the corrupt acts of which he was ignorant—*Wigan Case* ¹.

While it is true that the penal provisions of election law should be rigorously enforced in the public interest, it is equally essential that the election offences, the consequences of which are obviously very serious and far reaching, must be strictly proved. The degree of proof required is the same as in a criminal charge. In dealing with this matter, Martin B. said in the *Westminster Case* ²—“The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified when I am about to apply such a law in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well intentioned man by the act of a third person”. In the case of *Aluwihare v. Nanayakkara* ³ Basnayako J. stated, “The standard of proof required of a petitioner must therefore be higher than that required in a civil case, where a party must prove his case by a preponderance of evidence, and not lower than that required in the case of a criminal charge, viz., proof beyond reasonable doubt”.

The concept of agency in election law is not capable of being precisely encompassed within the limits of a definition. Even if it was possible to do so, English Courts have deliberately refrained from doing it. In fact one Judge went so far as to say that it was dangerous to hazard a definition of agency in election law as unscrupulous candidates might devise a method of concealing illegal practices. Each case must be decided on the set of facts on which it is sought to establish agency. It is in the light of the principles referred to above that I proceed to consider the evidence on the various charges sought to be established.

I shall now proceed to deal with the specific charges in the order they appear in the amended election petition. [His Lordship then examined the evidence at length and, after holding that none of the charges was proved, concluded as follows :—]

All the charges therefore fail, and I accordingly determine the Respondent, Mr. S. Natesan, was duly elected as Member for the Kankesan-turai Electoral District.

¹ 4 O. M. & H. 10.

² 1 O. M. & H. 88 at pages 95 and 96.

³ 50 N. L. R. 529 at p. 533.

I hold that no corrupt or illegal practice which has to be reported in terms of Section 82 of the (Parliamentary Elections) Order Council of 1946, as amended by Act No. 19 of 1948, has been proved to have been committed.

This has been a very protracted trial which took 79 days. As many as 79 witnesses, 63 for the Petitioner and 16 for the Respondent, were examined. Although there were only 5 charges in the amended election petition, yet under each charge several specific cases of the offence involved in it were disclosed. The expenses incurred by the Respondent in resisting these charges must indeed have been very heavy. The Counsel's fees, batta of witnesses, most of whom had to come down from Jaffna, and the cost of obtaining certified copies of documents, translations, &c., must necessarily have involved heavy expenditure. In fixing costs those matters have to be taken into consideration.

I dismiss the election petition and order the Petitioner to pay as costs to the Respondent a sum of Rs. 40,000.

Before I conclude, it is my duty to acknowledge the great assistance given to the Court by Counsel—seniors and juniors alike—of both parties who conducted the case with great dignity and uniform courtesy.

Petition dismissed.
