

1965

Present : Abeyesundere, J.

D. E. WIJESEKERE and another, Petitioners, and K. D. D. PERERA,
Respondent

Election Petition No. 1 of 1965—Electoral District No. 27 (Bandaragama)

*Election petition—Quantum of security for costs—Computation of number of “charges”
—Difference between “charges” and “grounds”—Parliamentary Election
Petition Rules, 1946, Rules 4 (1) (b), 12 (2) (3)—Ceylon (Parliamentary
Elections) Order in Council, 1946, s. 77, Schedule III.*

In an election petition challenging the validity of the election of a Member of Parliament, an allegation of “other misconduct” in a paragraph of the petition includes all other forms of misconduct not already specified in the earlier paragraphs. In such a case, the expression “other misconduct” constitutes by itself at least two charges (one of corrupt practice and the other of illegal practice) within the meaning of Rule 12 (2) of the Parliamentary Election Petition Rules, 1946, for the purpose of determining the amount of security that must be deposited.

The charges within the meaning of Rule 12 (2) are only those of the grounds set out in section 77 of the Ceylon (Parliamentary Elections) Order in Council which fall within the category of the corrupt or illegal practices specified or included in that section.

¹ (1931) 33 N.L.R. 117.

ELECTION Petition No. 1 of 1965—Electoral District No. 27
(Bandaragama).

A. C. Gooneratne, Q.C., with H. D. Thambiah, Ranjit Gooneratne and U. H. Rodrigo, for the Petitioner.

Colvin R. de Silva, with K. Shinya, Hannan Ismail and Miss Manouri de Silva, for the Respondent.

October 1, 1965. ABEYESUNDERE, J.—

Don Edin Wijesekere and Ponsuge Bartholis Thisera, hereinafter referred to as the petitioners, have presented to the Supreme Court an election petition, hereinafter referred to as the election petition No. 1, against the election of Kongahakankanamge Don David Perera as Member of Parliament for the Electoral District of Bandaragama at the General Election held on the 22nd of March, 1965, hereinafter referred to as the respondent.

It is alleged by the respondent that the number of charges within the meaning of rule 12 (2) of the Parliamentary Election Petition Rules, 1946, disclosed in the election petition No. 1 is more than three and that therefore the sum of Rs. 5,000 deposited by the petitioners as security is inadequate under the said rule 12 (2). Consequently the respondent has applied under rule 12 (3) of the said Rules for the dismissal of the election petition No. 1.

The said rule 12 (2) provides that the security shall be to an amount of not less than Rs. 5,000 and that if the number of charges in the election petition exceeds three, additional security to an amount of Rs. 2,000 shall be given in respect of each charge in excess of the first three. In order to determine the number of charges disclosed in the election petition No. 1 it is necessary to ascertain the meaning of the expression "charges" occurring in the said rule 12 (2). The expression "charges" occurred in a rule of 1931 which is similar to the said rule 12 (2), and that rule of 1931 was considered by the Supreme Court in the case of *Tillakewardane v. Obeyesekere*¹, and the expression "charges" occurring in that rule was interpreted to mean "the various forms of misconduct coming under the description of corrupt and illegal practices". The said rule 12 (2) is identical in its terms with the aforesaid rule of 1931. A bench of three judges of the Supreme Court considered the said rule 12 (2) in the case of *Perera v. Jayewardene*², and in interpreting the expression "charges" occurring in that rule approved the interpretation given to that expression by the Supreme Court in the aforesaid case of *Tillakewardane v. Obeyesekere*.

¹ (1931) 33 N. L. R. 65.

² (1947) 49 N. L. R. 1.

I do not agree with the view that all the grounds specified in section 77 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, are charges within the meaning of the said rule 12 (2). In the set of rules in which the said rule 12 (2) occurs the expression "grounds" occurs in one place and the expression "charges" occurs in another. In rule 4 (1) (b) the expression "grounds" is used and in rule 12 (2) the expression "charges" is used. Two different expressions were thus used in order to convey two different meanings. It appears to me that the reason for using the expression "charges" in the said rule 12 (2) instead of the expression "grounds" occurring in the said section 77 is that the legislature intended to limit the matters for which additional security should be provided and thereby to limit the amount of the additional security. The charges within the meaning of the said rule 12 (2) are only those of the grounds set out in the said section 77 which fall within the category of the corrupt or illegal practices specified or included in that section.

It was contended on behalf of the respondent that the expression "other misconduct" occurring in paragraph 5 of the election petition No. 1 includes two charges, namely, the charge of corrupt practice and the charge of illegal practice. The corrupt practice that is specified or included in the said section 77 is a misconduct and so is the illegal practice specified or included in that section. The expression "other misconduct" therefore undoubtedly includes both such corrupt practice and such illegal practice as aforesaid. It was argued on behalf of the petitioners that the expression "other misconduct" occurring in the said paragraph 5 was intended to indicate only one other form of misconduct. In my view the expression "other misconduct" occurring in that paragraph is intended to include all other forms of misconduct not already specified in the election petition No. 1.

As the expression "other misconduct" occurring in the said paragraph 5 includes two charges, one of corrupt practice and the other of illegal practice, there are at least two charges disclosed in that paragraph. When those charges are added to the charge disclosed in paragraph 3 and the charge disclosed in paragraph 4 of the election petition No. 1, that petition discloses at least four charges. I therefore hold that the sum of Rs. 5,000 deposited by the petitioners is inadequate security under rule 12 of the Parliamentary Election Petitions Rules, 1946. Consequently the application for the dismissal of the election petition No. 1 made by the respondent must succeed. I dismiss the election petition No. 1 with costs. The petitioners shall pay the respondent as costs of the inquiry into the application made by the respondent the sum of Rs. 787 which is agreed upon by the counsel for the petitioners and the counsel for the respondent.

Election petition dismissed.