

1965

Present : Sirimane, J.

K. M. D. PAMUNUWA, Petitioner, and C. P. DE SILVA,
Respondent

Election Petition No. 40 of 1965—Electoral District No. 118
(Minneriya)

Election petition—Deposit by candidate—Objection relating to it—Stage at which such objection should be taken—Ceylon (Parliamentary Elections) Order in Council (Cap. 381), ss. 28E (3), 28F (1), 29 (1), 31 (1) (d), 31 (2), 31 (3), 31 (4), 32, 77 (b).

Any objection relating to the failure of a candidate, or some person on his behalf, to deposit the necessary sum of money as required by section 29 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, must be taken before the Returning Officer in terms of section 31 (1) (d), and cannot be permitted thereafter by way of an election petition.

ELECTION Petition No. 40 of 1965—Electoral District No. 118
(Minneriya).

E. R. S. R. Coomaraswamy, with Hannan Ismail, Harischandra Mendis, Nihal Jayawickrema, V. Nanayakkara and S. S. Sahabandu, for the Petitioner.

C. Thiagalingam, Q.C., with D. M. Weerasinghe, Neville Samarakoon, A. H. de Silva, T. Parathalingam, R. R. Nalliah and K. Jayasekera, for the Respondent.

Cur. adv. vult.

October 14, 1965. SIRIMANE, J.—

The Petitioner by his petition dated April 19, 1965, challenged the election of the Respondent as member for the Electoral District of Minneriya on the grounds of general intimidation, general treating and on an alleged failure to make a deposit as required by Section 29 (1) of the Ceylon (Parliamentary Elections) Order in Council (Chapter 381). The charges of general intimidation and general treating were withdrawn before the date of hearing, and the sole ground on which the election was challenged was the alleged failure to make the required deposit.

The charge as stated in paragraph 3 of the petition is as follows :—

“ Your Petitioner says that the Respondent failed duly to deposit or cause to be deposited the necessary sum of money in terms of Section 29 (1) but was nevertheless treated as a candidate and declared elected and accordingly there was such non-compliance with the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946, relating to elections as conform to the requirements of Section 77 (B) of the said Order in Council. ”

Counsel for the Respondent has taken two preliminary objections, namely :

- (1) that the alleged failure to duly deposit the necessary sum of money in terms of Section 29 (1) is not an allowable objection that may be taken by way of an election petition, as no objection to such failure had been made to the Returning Officer in terms of Section 31 (1),
- (2) that para. 3 of the election petition does not allege that the alleged failure to make the necessary deposit affected the result of the election.

It is necessary to set out the relevant portions of three sections in Chapter 381 :—

Section 29 (1) :

“ A Candidate at any election or some person on his behalf shall deposit or cause to be deposited with the Returning Officer or with some person authorised by the Returning Officer in that behalf, between the date of the publication of the proclamation or notice referred to in Section 27 and one o'clock in the afternoon of the day of nomination :

- (a) where such candidate was the official candidate of a recognised party for the purpose of elections, the sum of two hundred and fifty rupees in legal tender, or
- (b) where such candidate is not the official candidate of any such party, the sum of one thousand rupees in legal tender and if he fails to do so he shall be deemed to have withdrawn his candidature under Section 33 ”

Section 28 E3 :

“ In this order the expression official candidate of a recognised party for the purpose of elections means a candidate of that party in respect of whom there is for the time being in force a valid certificate of official candidature for the purpose of Sections 29 and 35 in relation to such elections. ”

Section 28 F (1) :

“ Where an election is due to be held in any electoral district an authorised agent of any recognised party may

- (a) “ validly issue under his hand to the Returning Officer for that district a certificate in respect of only one candidate of that party to such election to the effect that such candidate is the official candidate of that party at such election. ”

It can be seen from these sections that the official candidate of a recognised party need not be a member of the party.

Though it is not strictly relevant for the purposes of the legal argument, it was stated at the Bar and not denied, that the Respondent had obtained a certificate (which was available in Court) issued by the authorised agent of a recognised party and made a deposit as required by Section 29 (1) (a).

In answer to me learned Counsel for the Petitioner said that he proposed to lead evidence to show that the Respondent had held himself out to be a member of some other party which was not a recognised party and hence the deposit was inadequate. These are not matters, in my opinion, with which a Court can concern itself. However that may be, I shall assume for the purposes of the argument that a deposit was not made as required by Section 29. Section 31 sets out the objections that may be raised to a nomination paper. One such objection is :—

31 (1) D “ that the provisions of Section 29 have not been observed .”

Section 31 (2) which in my opinion is very relevant to this argument reads as follows :—

“ No objection to a nomination paper shall be allowed unless it is made to the Returning Officer between 12 noon and 1.30 o'clock in the afternoon on the day of the nomination. ”

It is admitted that no objection was in fact taken to the nomination before the Returning Officer.

I am attracted by the argument of Mr. Thiagalingam that although part 4 of Chapter 381 is headed “ Elections ”, the scheme of the Order in Council is to deal with

- (a) Nominations ;
- (b) Elections properly so called.

Any objection to the deposit relating to a nomination may be taken before the Returning Officer. If such an objection is taken (and one must always remember, that the inadequacy of the deposit is such an objection) two results may follow :—

- (a) the objection may be disallowed ; in which case (in terms of Section 31 (4)) the decision of the Returning Officer is final ; or
- (b) it may be allowed, and a candidate thus prevented from going to the polls. In such a case Section 31 (4) provides that the decision is subject to reversal by an election petition.

It seems to me that an objection which may have been taken before the Returning Officer can be made the subject matter of an election petition only in the circumstances set out in Section 31 (4). If no objection is taken the very salutary provisions of Section 31 (2) (supra) would apply.

Mr. Coomaraswamy argued that because the opening words of Section 31 are “ Objections *may* be made to a nomination paper on all or any of the following grounds” that it was not obligatory on anyone to raise objections before the Returning Officer. The word “ *may* ” is used in that Section, in my view, because it is an “ enabling ” Section. A person may or may not raise the objections set out therein. If he chooses not to do so, then, in my view the provisions of sub-section (2) prevent him from exercising that right thereafter. I am unable to agree with Mr. Coomaraswamy’s submission that Section 31 (2) merely limits the time within which objection may be taken before the Returning Officer and is no bar to the same objection being taken elsewhere. If that submission is correct no objection need ever be taken to a nomination paper under Section 31 ; but the same objections as set out therein may be taken against a successful candidate after his nomination paper has been accepted without protest, and after an Election has been fought and won.

Mr. Coomaraswamy also argued that the deposit is not a part of the nomination paper. The Section itself (Section 31) enumerates the failure to comply with the provisions of Section 29 as an objection which may be taken to a “ nomination paper ”. In these circumstances the words “ nomination paper ” should not be given a restricted meaning and the deposit must be considered to be part of the nomination paper.

Mr. Coomaraswamy next submitted that the Petitioner could not have taken these objections before the Returning Officer as Section 32 specifies the persons entitled to be present at nomination and these are the candidates, their respective proposers and seconders and one other person elected by each candidate. That may be unfortunate ; but it may very well be that the Legislature advisedly did not think it prudent or practical to permit every one of thousands of voters in an electorate to scrutinise nomination papers and to raise objections such as those set out in Section 31. The Legislature appears to have left these technicalities to be dealt with by those most concerned with them. But if such objections are not raised by those who might have done so, there is an end to the matter.

At this point it may be observed that the Returning Officer himself would know whether a certificate of official candidature is in order and whether a deposit has been duly made.

Mr. Thiagalingam has pointed to the provision in Section 31 (3) that the Returning Officer may himself lodge an objection, which is in contrast to the provisions of the corresponding Section in the Local Authorities Elections Ordinance, Section 12 (3)—Chapter 262.

I am of the view that the first preliminary objection is entitled to succeed.

In regard to the second, the objection is that it has not been pleaded that the alleged non-compliance with Section 29 "affected the result of the election". In the concluding part of para. 3 the Petitioner has stated that there was "such non-compliance . . . as conformed to the requirements of Section 77 (B) . . .", so that it has been pleaded, though indirectly perhaps, that the non-compliance affected the result of the election. In the case of *Mohamed Mihular v. Nalliah*¹ Hearne J. said at page 253 :—

"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."

I am in respectful agreement with that view and the second objection fails.

As stated earlier, I am of the view that any objection relating to a non-compliance with the provisions of Section 29 (1) must be taken before the Returning Officer, and if not so taken cannot be permitted thereafter.

The first preliminary objection is upheld and the petition is dismissed with costs.

Election petition dismissed.

