

1954

Present : ROSE C.J., GUNASEKARA J. and FERNANDO A.J.

M. J. ABEYWARDENE, Petitioner, and C. A. DHARMAPALA,
Respondent

Election Petition Appeal—Hakmana Election Petition, No. 19 of 1953

Parliamentary Election—Corrupt practice—Publication of documents—Omission to state name and address of publisher—"Inadvertence"—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 58 (1) (c), 73A—Amending Act No. 28 of 1953, ss. 3, 4.

The petitioner sought to unseat the respondent on the ground that he had published or caused to be published certain pamphlets and hand-bills which did not bear upon their face the name and address of the publisher. The evidence disclosed that the respondent, who was his own election agent, entrusted the publicity side of his campaign to a committee of supporters whose names and addresses were published to the electorate in a document. In regard to the impugned documents, while there was no express reference to any publisher as such, there appeared an entry from which it could reasonably be inferred that the documents were sponsored by the committee. Moreover, the omissions in question afforded no material benefit to the respondent.

Held, that the omissions complained of were of a trivial nature and arose from inadvertence within the meaning of section 73A of the Parliamentary Elections Order in Council.

APPEAL in Hakmana Election Petition No. 19 of 1953.

S. Nadesan, Q.C., with *A. K. Premadasa* and *J. Senathirajah*, for the petitioner appellant.

G. E. Chitty, with *Walter Jayawardene*, *R. A. Kannangara*, *A. S. Vanigasooriyar* and *Carl Jayasinghe*, for the respondent.

Cur. adv. vult.

September 20, 1954. ROSE C.J.—

The petitioner sought to unseat the respondent on the grounds that he had been guilty of intimidation, bribery, exercise of undue influence, making false statements of fact about the rival candidates, and the printing or causing to be printed various hand-bills and pamphlets, which did not bear upon their face the name and address of the printer and publisher. At an early stage of the proceedings before the learned Election Judge the charges of intimidation and undue influence were abandoned and the matter was contested upon the remaining allegations.

In appeal learned counsel for the appellant did not press the issues as to bribery and the making of false statements of fact about the candidates, the only issue remaining for our consideration being that relating to the publication of pamphlets and hand-bills.

Amongst the matters complained of by the petitioner were a number of bucket lamps, constructed of paper and card-board, which were designed for the illumination of private houses and temples during the Wesak celebrations which took place some two or three weeks before the polling day. These lamps, it was stated in evidence, were manufactured by the

Matarā Merchants Limited, and bore the imprint of that press, but there was no reference to any publisher or to any person on whose behalf the bucket lamps were ordered. Upon the lamps were inscribed the slogan "a vote for the elephant is a vote for Dharma". The elephant was the chosen symbol in the election campaign for the respondent and the slogan itself is a harmless pun upon the respondent's name.

The remaining documents complained of, which took the form of handbills and pamphlets, were printed either by the Indra Press or Matarā Merchants Limited, and the learned Election Judge found that in every case the imprint of one or other of those presses was present. In addition while there was no express reference to any publisher as such, there appeared an entry relating to "The committee for the success of Mr. Dharmapala" from which the learned Election Judge held, and we see no reason to dissent from his view, that it could reasonably be inferred that the documents in question were sponsored by the committee.

Section 58 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946 (as amended, with retrospective effect from January 1, 1952, by Section 3 of Act No. 26 of 1953) reads as follows:—

"(a)

(b)

(c) being a candidate or election agent, prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher,

(d)

(e)

(f)

shall be guilty of a corrupt practice"

Section 4 of the Ceylon (Parliamentary Elections) (Amendment) Act, No. 26 of 1953, reads as follows:—

"The following new section is hereby inserted immediately after section 73 of the Principal Order and shall have effect as section 73A of that Order:—

73A. Upon the trial of an election petition respecting an election under this Order, a candidate or an election agent shall not be found by the election judge to have committed a corrupt practice referred to in Section 58 (1) (c), in relation to any advertisement, handbill, placard or poster, if the candidate or election agent satisfies the judge that the omission of the names and addresses referred to in section 58 (1) (c), or any such name or address, as the case may be, arose from inadvertence or from some other reasonable cause of a like nature and did not arise from any want of good faith."

The learned Election Judge found that the omissions in question were due to inadvertence, or to some other reasonable cause of a like nature. As regards the facts relating to these matters, the Judge has found that the

respondent, who was his own election agent, entrusted the publicity side of his campaign to a committee of supporters whose names and addresses were published to the electorate in a document R9. This committee were given some general instructions by the respondent to the effect that they should in their pamphlets and hand-bills disclose the source from which they emanated. It also appears that the respondent advised them to consult a Proctor. Apart from that general instruction, the respondent would seem not to have concerned himself with the contents or form of the documents produced by his committee except that it appears on one occasion that he was shown some completed pamphlets, after they had been distributed in the electorate, and had expressed no displeasure.

It is further to be noted that the omissions complained of by the petitioner afforded no material benefit to the respondent. The bucket lamps and the pamphlets and documents in question were not of a defamatory nature and the expenditure in connection with their production was properly included in the respondent's return of election expenses. Moreover, I consider that the references to the Indra and Matara Merchants presses afforded sufficient identification for all the practical purposes contemplated by the Elections Order-in-Council. Further, the references in the various pamphlets and hand-bills to the "Dharmapala Committee" could, in my view, reasonably have been held to have afforded a sufficient indication to the electors not only that it was the committee that had published the documents on which their name appeared but also, having regard to the document R9 to which I have previously referred, of the identity of the persons forming the committee.

In effect, therefore, there had been a substantial compliance with the requirements of the Order-in-Council and the omissions—if omissions there were—were clearly of a most trivial nature, which afforded no material benefit to the respondent. That being so, it seems to us that the learned Election Judge was fully entitled on the material available to him to be satisfied that the omissions complained of were due to the inadvertence of the relevant persons, that is to say, the candidate himself and the committee who conducted his publicity campaign, and did not arise from any want of good faith.

Having regard to the basis on which the learned Election Judge came to his conclusion on this part of the case, it seems to me to be unnecessary to consider the further point which was argued before us by learned counsel for the respondent, that having regard to the course of dealings between the respondent and his committee, it could not reasonably be held that the respondent had either printed or caused to be printed the allegedly offending documents.

For these reasons the appeal is dismissed with costs.

GUNASEKARA J.—I agree.

FERNANDO A.J.—I agree.

Appeal dismissed.