

[IN REVISION.]

1939

*Present : Soertsz A.C.J.*PELPOLA *v.* GOONESINGHE.500—*M. C. Colombo, 3.*

Costs—Objection to voter's qualification—Order for costs—Basis of taxation—Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, s. 25.

Where costs are awarded under section 25 of the Municipal Council (Constitution) Ordinance, No. 6 of 1935, it is desirable that the Court awarding costs should either fix the amount or indicate some principle for their assessment.

The fees actually paid to Counsel in the Municipal Court and in appeal should be allowed.

THIS was an application for revision of a bill of costs in the Municipal Court of Colombo.

N. Nadarajah (with him *S. Mahadeva*), for petitioner.

C. V. Ranawake (with him *D. D. Athulathmudali*), for respondent.

Cur. adv. vult.

May 16, 1939. SOERTSZ A.C.J.—

This is a matter arising out of the taxation of the costs allowed by this Court to an objector who successfully objected to the qualification of the respondent, both in the Municipal Court and in this Court.

The order was that the respondent do pay to the petitioner the costs of the inquiry and of the appeal.

There is no special provision of law dealing with the taxation of costs in a matter of this kind, nor did the order of this Court fix costs or indicate any principle for their assessment. In this connection, I would venture to say that this is a matter for the attention of the Legislature, and that in the meantime, it is desirable that orders for costs in these cases should either fix a definite sum, or should, at least, indicate some principle for their assessment. In this instance, the petitioner presented to the Registrar a bill for Rs. 1,132.01. The Registrar disallowed items aggregating Rs. 803.53 and taxed the bill at Rs. 328.48. He treated the case as if it arose in the Court of Requests. This was quite an arbitrary method. The petitioner contends that it should have been treated as a case falling within the highest District Court class, an equally arbitrary view.

Parties, through Counsel appearing for them at the argument before me, desired that I should examine the bill and fix such a sum for costs as I consider fair. Here again an element of arbitrariness is introduced, but there does not seem to be any other way out of the difficulty, and in view of the request made by Counsel, I address myself to this task.

In my opinion, the amounts shown to have been actually paid to Counsel in the Municipal Court and on appeal should have been allowed in their entirety. The certificates of the Counsel appearing in both Courts are affixed to the bill and show that a sum of Rs. 220.50 and

Rs. 388.50 were paid to Counsel in the Municipal and Appeal Courts respectively. The Registrar has nilled Rs. 147 in one case and Rs. 304.50 in the other. Matters of this kind which involve the civic rights and duties of persons are of great importance to the parties concerned and also to the city, and I do not think it can be said that parties are acting extravagantly if they desire to be well represented by Counsel on occasions when those rights and duties are in question. There was nothing to debar them from being so represented. It would have been different if the Legislature had fixed the costs recoverable. In such a contingency, if parties chose to incur heavier costs than those allowed by law, the excess expenditure was their affair. I, therefore, add Rs. 451.50 to the sum allowed by the Registrar.

I am also of opinion that the sum of Rs. 6.20 on account of stamps and for certified copies should not have been nilled. I add that sum too. That makes Rs. 457.70 which must be added to the sum of Rs. 328.48.

I, therefore, fix the costs payable in both Courts at Rs. 786.18, and make no order for costs of this application.

Appeal allowed.