

1971

Present : Wijayatilake, J.

A. THIRUNAVAKARASU, Petitioner, and K. THURAIRATNAM
and 2 others, Respondents

Election Petition No. 5 of 1970—Electoral District No. 82 (Point Pedro)

Parliamentary election—Election petition—Police reports of an election meeting—Whether Court can compel issue of certified copies—Evidence Ordinance, ss. 35, 123, 145 (1)—Public Documents Ordinance (Cap. 15)—Civil Courts (Special Provisions) Act No. 43 of 1961, s. 2—Ceylon (Parliamentary Elections) Order in Council (Cap. 381), s. 78 (3).

In an election petition filed under the Ceylon (Parliamentary Elections) Order in Council, the petitioner is not entitled to obtain from the Court a directive to the Inspector-General of Police to furnish him with certified copies of the police reports of an election meeting, if the object of the petitioner's application for the certified copies is to contradict, under section 145 (1) of the Evidence Ordinance, a witness who had made the reports.

INTERLOCUTORY order in Election Petition No. 5 of 1970—
Electoral District No. 82 (Point Pedro).

K. C. Nadarajah, with M. Sivasithamparam, H. L. de Silva, C. Motilal Nehru, A. Sivanandan and G. G. Ponnambalam (Jnr.), for the petitioner.

N. Satyendra, for the 1st respondent.

S. C. Chandrasenan, for the 2nd respondent.

Cur. adv. vult.

March 20, 1971. WIJAYATILAKE, J.—

The Proctor for the Petitioner by his motion dated 14th March, 1971, has, *inter alia*, moved for a directive to the Inspector-General of Police, to furnish him with certified copies of the reports of an election meeting held in support of the first Respondent at Customs Beach, Velvettiturai held on 9th May, 1970. In this connection he has drawn my attention to witness No. 1, S. Pasenthiran, P.C. 2139, in the list of witnesses filed by the first Respondent. It would appear that it is this witness who had made a report of the proceedings of the meeting held on 9th May, 1970, referred to above.

Learned Counsel for the Petitioner submits that the object of his application is to discredit this witness under Section 145 (1) of the Evidence Ordinance, and that application is therefore made under the

provisions of Public Documents Ordinance (Chapter 15). He further relies on the Civil Courts (Special Provisions) Act, No. 43 of 1961 and the judgment of Basnayake C.J. in the *Hewaheta Election Petition case*¹, and the order made by Sirimane J. in the *Attanagalla Election Petition Case* (Election Petition No. 37 of 1965).

Learned Counsel for the respondent submits that under our Election Law there is no provision to permit copies of Police reports of election meetings. He has drawn my attention as for the procedure in England to Rogers on Elections—Volume II—20th Edition—Page 203, according to which there is no power to order inspection and discovery of documents. See also Simonds—Volume 14—Page 280. Section 78 (3) of the Ceylon (Parliamentary Elections) Order in Council provides that the Election Judge shall have the same powers, jurisdiction and authority as are possessed and exercised by the Judge of a District Court in the trial of a civil action for the purpose of summoning or compelling the attendance of witnesses at the trial of an election petition. Mr. Satyendra further submits that unlike in the *Attanagalla Election Petition Case* referred to above, in the instant case, the petitioner has failed to list the Inspector-General of Police to produce the Police reports in question. Furthermore, he submits that the motion is far too belated as this petition was filed as far back as 18th June, 1970. Counsel for the petitioner relies strongly on the order made by Sirimane J. in the *Attanagalla Election Petition* but he concedes that a list of witnesses was filed in that case and on the motion to produce certain Police reports the learned Judge granted the application without giving any reasons as apparently there was no objection.

I am unable to agree with the submission made by Counsel that this motion can be allowed under Section 2 of the Civil Courts (Special Provisions) Act, No. 43 of 1961, as in the instant case we are not concerned with a complaint or a statement made to a Police Officer. A report of a speech at an election meeting would clearly not come into that category.

In the *Hewaheta Election Case* Basnayake, C.J. dealt with the production of a Police record under Section 123 of the Evidence Ordinance. In a more recent case, the *Rattota Election Petition*²—69 N.L.R. page 361—H. N. G. Fernando, C.J., held that even the original record of an election meeting was not admissible under Section 35 of the Evidence Ordinance in proof of any statement mentioned in the reports. In my view this decision appears to be more in point in the context of the present application.

¹ (1964) 66 N. L. R. 97.

² (1966) 69 N. L. R. 361.

The object of the motion being to discredit a witness under Section 145, in any event this application would not arise at this stage. I might also mention that the first Respondent has noticed the A.S.P. to produce the Meeting report Information Book and it is available in Court.

I am also inclined to agree with Mr. Satyendra that in election proceedings it is incumbent on the petitioner to take all steps which are within his power with expedition to enable the respondent to meet the allegations set out in the petition and it would be highly unsatisfactory to wait till the trial commences to take the respondent by surprise when no reason whatever has been advanced for the delay.

I would accordingly refuse the motion.

Application refused.