

1953

Present : H. A. de Silva J.

K. RAMALINGAM, Petitioner, and V. KUMARASWAMY,
Respondent

Election Petition No. 16 (Chavakachcheri)—Inquiry into objection raised by the Respondent.

Election Petition—Presentation of petition—Gazette notification as mode of giving notice to respondent—Conditions precedent—Appointment of agent—Significance of Registrar's register—Ceylon (Parliamentary Elections) Order in Council, 1946, Schedule 3, Rules 9, 10, 11, 15, 17, 34, 35.

¹ (1950) 51 N. L. R. 360.

² (1936) 25 C. A. R. 167.

³ (1932) 23 C. A. R. 173.

Under Rule 15 of Schedule 3 of the Parliamentary Elections Order in Council of 1946, a notice published in the *Government Gazette* can be availed of by the petitioner as notice of the presentation of his election petition only if before the publication no appointment of an agent or address had been given to the Registrar of the Supreme Court by the respondent in terms of Rule 10.

A person who has been returned as a Member may nominate an agent under Rule 10 even after an election petition has been filed against him. The words "at any time" in Rule 10 cannot be limited to a period before the filing of the petition.

The register which is required to be kept by the Registrar under Rule 11 is not the only source of information regarding the appointment of agents. The question whether or not an agent has been appointed by a party to an election petition does not depend on the Registrar's observance or non-observance of the duties cast upon him by Rule 11.

Failure to give due notice of the presentation of an election petition is a fatal irregularity.

ELECTION petition No. 16 (Chavakachcheri). Inquiry into preliminary objection raised by the respondent.

C. S. Barr Kumarakulasinghe, with *G. T. Samarawickreme*, *A. Vythilingam*, and *Izzadeen Mohamed*, for the petitioner.

H. V. Perera, Q.C., with *E. B. Wikramanayake, Q.C.*, *H. Wanigatunga*, *J. A. P. Cherubim* and *T. B. Dissanayake*, for the respondent.

Cur. adv. vult.

May 13, 1953. H. A. DE SILVA J.—

The petitioner on the 21st day of June, 1952, filed his petition and prayed that it might be determined that the respondent was not duly elected or returned as a Member of Parliament for the Chavakachcheri electorate and that his election was void.

The said election was held on the 26th of May, 1952, and its result was published in the *Government Gazette Extraordinary* No. 10,404 dated 31st May, 1952. The petition was filed on the last day on which a petition in law could have been filed for this purpose. The Registrar, Supreme Court, upon whom certain duties are imposed by the Ceylon (Parliamentary Elections) Order in Council of 1946, has received the petition on the 21st June, 1952, and has opened a Journal to facilitate reference to the various documents filed in the case and also to the various steps taken although the Order in Council does not specifically impose that task on him.

The Registrar, Supreme Court, Mr. Clarence de Silva, who gave evidence in this case stated the procedure adopted by him in the matter of election petitions. On the 24th July, 1952, the petitioner filed an application to amend his petition under article 83 (2) of the Order in Council. On the 2nd of August, 1952, the Agent for the Respondent filed a petition and affidavit and statement of objections of the respondent and moved that no further proceedings be had on the petition dated 21st June, 1952, and that it be rejected or dismissed.

These two matters came up before me on the 9th of March, 1953, when I made order that the application of the respondent should be disposed of before the application of the petitioner to amend his petition was considered for the reasons given in my order. Accordingly the matter of the respondent's application was considered. Some evidence was led both by the respondent and by the petitioner as it was found necessary by the respective parties to place some facts for the adjudication of matters that were in issue at this preliminary inquiry.

The respondent placed before Court the evidence of Messrs. Clarence de Silva, Registrar, Supreme Court, N. Navaratnam, Deputy Registrar, Supreme Court, L. A. M. Weerasinghe, a clerk of the Supreme Court Registry. The petitioner's counsel called the following witnesses :—Messrs. V. Navaratnam, Proctor, C. B. Wijesoma, a peon in the General Post Office, A. E. Gunadasa, postman of the General Post Office, Mr. K. Ariyaratnam, Postmaster, Chavakachcheri, Victor Perera of the Department of the Superintendent of Telecommunications (Traffic), Colombo, and D. E. Jayasuriya.

The point that comes up for consideration is whether or not the notice of the presentation of the petition has been given by the petitioner to the respondent as required by law. It was conceded at this inquiry that the last day on which the notice of the presentation of the petition should have been given was on the 1st July, 1952. Mr. V. Navaratnam, Proctor, has been appointed by the petitioner as his Agent in terms of Rule 9 in the third schedule to the Order. The address of the petitioner's Agent, Mr. V. Navaratnam, has been given, vide P2. Mr. V. Navaratnam in terms of rule 35 in the third schedule to the Order has informed the Registrar of his appointment as Agent. It is common ground that the notice of the presentation of this petition has not been personally served on the respondent. The contention of the respondent is that the notice of the presentation has not been given either to the respondent or to his Agent as required by law. On the other hand the petitioner contended that the notice of the presentation of the petition has been duly served as required by law.

I may, at the very outset, state that the evidence led through the postal peons and the postmaster of Chavakachcheri is irrelevant for the determination of the issue that arises in this case. All that that evidence shows is that an attempt has been made to serve the notice of presentation on the respondent through the post within time, that is within the 1st of July, 1952. Long after the 1st of July, attempts have been made to serve the notice of presentation of the petition through the post on the respondent's Agent, Mr. Amirthalingam, Proctor. The publications in daily papers have been referred to in the evidence. I think all those attempts, which have proved abortive do not help the petitioner in any manner. A similar attempt was considered by my brother Swan in *Election Petition No. 6 of 1952, Kalutara*¹. There this Court held that the respondent was under no obligation, legal or moral, to stay at home to receive those notices. So therefore, I do not propose hereafter to refer to that aspect of the evidence that has been led in this case by the petitioner.

¹ (1953) 54 N. L. R. 400.

The simple question that calls for decision is, has the petitioner given notice of the presentation of the petition according to law? I think the various rules in schedule three of the Order in Council are clear enough, and leaves no room for ambiguity to justify a voyage of exploration to ascertain what the meaning of the relevant rules are.

I shall at this stage refer to the relevant rules which I propose to reproduce here. Rule 9 makes provision for the petitioner to leave at the office of the Registrar a writing signed by him giving the name of some person entitled to practise as a Proctor of the Supreme Court whom he authorizes to act as his Agent or stating that he acts for himself as the case may be, and in either case giving an address within the city of Colombo at which notices may be left; and if no such writing be left or address given then all notices may be given by leaving the same at the office of the Registrar.

The petitioner has done his part of the duty imposed upon him by rule 9 when he presented the petition. Rule 9 reads thus: "With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing . . . &c.". The wording of Rule 9 shows that it is obligatory on the petitioner either to name an agent with his address or name himself as acting for himself with an address. If he fails to do so any party to the suit would only be liable to leave any notices at the office of the Registrar, and to do nothing else if any notices were required to be served on the petitioner. The rules that need consideration in this case are 10 and 15. Rule 10 runs thus: "Any person returned as a Member may at any time, after he is returned, send or leave at the office of the Registrar a writing, signed by him on his behalf, appointing a person entitled to practise as a proctor of the Supreme Court to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within the city of Colombo at which notices addressed to him may be left, and if no such writing be left or address given, all notices and proceedings may be given or served by leaving the same at the office of the Registrar. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force".

Rule 15 runs thus:

"Notice of the presentation of a petition, accompanied by a copy thereof, shall within ten days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the agent, appointed by the respondent under rule 10 or by posting the same in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or if no agent has been appointed, nor such address given, by a notice published in the *Government Gazette* stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar".

It is abundantly clear from the wording of Rule 15 that Rule 10 and Rule 9 should be read together in order that the requirements of Rule 15 may be complied with. Rule 15 sets out the manner in which notice of the presentation of a petition should be effected. Now let me analyse Rule 15.

(1) The petitioner has to serve notice of the presentation of his petition accompanied by a copy thereof within 10 days of the presentation of the petition. Now that can be done in any manner provided that the petition was served within 10 days on the respondent.

(2) Such service may be effected either by delivering the notice and copy aforesaid to the Agent appointed by the respondent under Rule 10 or by posting the same in a Registered letter to the address given under Rule 10 at such time that in the ordinary course of post, the letter would be delivered within the time above mentioned.

Now this is a mode of service contemplated where under Rule 10 the respondent has appointed an Agent and given his address or given his (respondent's) own address. Thus it is clear that where the respondent has made an appointment under Rule 10, the petitioner would have the option of serving the notice by posting the same in a registered letter to the address given under Rule 10, and it is immaterial, if that procedure is followed, whether or not the person to whose address the petitioner was authorized to send the letter by post received it or not. The respondent or his Agent in that event cannot be heard to say that he did not receive the notice so sent by registered post. Another form of notice is contemplated in Rule 15 under certain contingencies, that is, where the respondent has not appointed an Agent or given an address as provided in Rule 10. That mode of service is by publication of a notice in the *Government Gazette* giving the necessary information as contemplated in Rule 15. The giving of notice by publication in the *Government Gazette* is *not* an alternative method to the two earlier methods referred to by me of giving notice of the presentation of the petition. In this case a notice of the presentation of the notice was published in the *Gazette* which appeared on the 27th June, 1952. It is the sufficiency of this notice that is in issue in this matter.

The facts placed before me by the respondent with regard to his compliance with Rule 10 are these. On the 25th June, 1952, two documents were lodged at the Registry by the respondent and his Agent Mr. Amirthalingam, Proctor, vide R2 and R3. R3 is the appointment by the respondent of Mr. A. Amirthalingam, Proctor, Supreme Court, of 21, Upatissa Road, Bambalapitiya, under Rule 10. This is dated 25th June, 1952. Under the same date, namely 25th June, 1952, Mr. Amirthalingam lodged with the Registrar a notice in terms of Rule 35 of the third schedule giving notice that he had been appointed by the respondent as his Agent in terms of Rule 10.

The evidence led in this case by the petitioner, namely that of the Deputy Registrar Mr. N. Navaratnam, and of the clerk of the Registry Mr. Weerasinghe, clearly establishes the fact that R2 and R3 were

lodged at the Supreme Court Registry on the 25th June, 1952. Mr. Weerasinghe who has been assigned the duties of attending to Election Petitions, and who has done this type of work for the last twenty-two years at the Registry, has said in no uncertain terms that R2 and R3 were received by him at the office between 9 and 9.30 a.m. on the 25th of June, 1952. The Deputy Registrar, Supreme Court, in his evidence has stated that he initialled R2 and put the date 25th June, 1952, in the afternoon of that day. According to the routine of work in the office it may not be possible for the Deputy Registrar Mr. N. Navaratnam to have handled R2 and R3 immediately they were tendered. It is the clerk who is in charge of this work who attends forthwith to papers lodged at the office. Mr. Weerasinghe has also in his evidence stated that as soon as R2 and R3 were handed over to him he journalized the receipt of these documents. But the evidence of Mr. Deputy Registrar Navaratnam shows that he signed this entry in the Journal only on the 1st of July, 1952. That is a matter which does not alter the position as regards the respondent in any manner. That is an administrative act done by an officer of the Registry. The fact of the signing of the minute in the Journal by the Deputy Registrar on the 1st of July is utilised to prove that as a matter of fact this appointment by the respondent was not made on the 25th June, 1952. Mr. V. Navaratnam, Proctor, has given evidence himself. He stated that he paid a visit to the Registry among his other visits on the 25th June, 1952, at about 10.30 a.m. and that he inspected the Register maintained by the Registrar under Rule 11, and that he found no entry in the said Register to show that an appointment under Rule 10 had been made. So that the question of fact that I have got to decide is whether the appointment by the respondent of his Agent with the address was lodged at the Registry on the 25th June, 1952.

Mr. Proctor Navaratnam says in his evidence that on the day the petition was filed, that is, 21st June, 1952, there was no appointment made by the respondent. I may mention that the 21st June was a Saturday. He again went to the Registry on the 23rd June and he found no appointment entered in the Register. The 24th June was a public holiday. So that his visits to the Registry before the 25th June, 1952, would not have availed him to find out if an appointment had been made because the respondent's case is that the appointment was made only on the 25th June, 1952. The crucial visit, if I may say so, was the one made on the 25th June to the Registry. He says that he went to the Registry at 10.30 a.m. and not finding on an examination of the Register an appointment by the respondent noted in it, he went to the Government Printing Press at about 11 a.m. and handed over two notices, one in respect of the Jaffna Election and one in respect of the Chavakachcheri Election for publication in the *Government Gazette*. This notice could have appeared only on the 27th June, 1952. The times at which he went to the Registry and to the Government Printing Press as deposed to by Mr. Proctor Navaratnam are obviously wrong. It may be that he is making a mistake or his recollection of the times is at fault. Mr. D. E. Jayasooriya was called by the petitioner's counsel. He is a clerk in the Government Printing Press. He was the person who

received these two notices handed in by Proctor Navaratnam for publication. His evidence shows that Proctor Navaratnam was very keen on inserting the time at which he handed the notices to him at the Government Printing Press. Mr. Proctor Navaratnam himself put down the time as 10.05 a.m. Mr. Jayasooriya says that it took him from the Government Printing Press to come to the Court twenty minutes riding on a bicycle. He also said that it would take one about seven minutes to come from the Court to the Government Printing Press by car. What was Mr. Proctor Navaratnam's object in noting the time at which the notice was handed in at the Government Press? Was it to protect himself against a possible appointment being filed by the respondent at a relevant time or was it to protect himself against a possible failure on the part of the Government Printer to publish this notice in the next issue of the *Government Gazette*, the next issue being on the 27th of June? The Financial Regulations provide that if a notice was to appear in the *Government Gazette* published on a Friday that notice had to be handed in by 12 noon on the previous Wednesday. Proctor Navaratnam was undoubtedly very keen on getting this notice published in the *Government Gazette* that appeared on the 27th June, 1952. Friday was the normal day on which the ordinary Gazette is published. We are not concerned with the practice followed with regard to a publication in a Gazette Extraordinary. As I said before, the 21st June was a Saturday. The notice of the presentation of the petition had to be given in the various methods enumerated in Rule 15 within ten days of the date of the presentation of the petition. Thus the 1st of July was the last day. Between the 21st of June and the 1st of July, there was only one Friday, and if one had to avail oneself of the publication of notice in the *Government Gazette*, that had to be done in the Publication on Friday the 27th of June, unless, of course, one took steps to have the notice published in a Gazette Extraordinary. Proctor Navaratnam in his evidence has stated that on any of his visits to the Registry after the 21st June, 1952, and before the 2nd of July, he did not inquire either from the Registrar or the Deputy-Registrar, or the subject clerk whether an appointment had been made. He further says that he did not go to the Registry on the 1st July. The dates on which he went to the Registry after the 21st of June, were, 23rd, 25th, 28th June. He said that on these occasions he did not speak to Mr. Weerasinghe. On one or two occasions he remembers to have seen Mr. Weerasinghe at the typewriter or at his table but did not speak to him. On the 23rd Mr. Weerasinghe was there. On the 28th of June, Mr. Weerasinghe may have been there. Proctor Navaratnam does not remember to have seen Mr. Weerasinghe on the 25th June, 1952. He does not seem to have spoken to Mr. Weerasinghe on this occasion although he had seen him there sometimes. Proctor Navaratnam does not appear to have referred to the Journal of the record either. He has contented himself by inspecting the Register maintained under rule 11 by the Registrar, Supreme Court. He appears to have found the entry in the Register R5 for the first time only on the 2nd of July. The Register R5 only contains the name of the petitioner's Agent and address, the respondent's name and address and the respondent's Agent's name and address. There are no other particulars such as either the

d,te on which the appointment was made or on which date the appointment was lodged at the Registry. Mr. Weerasinghe has stated on oath that he made the Journal entry and entry in the Register of Agents as soon as the appointment was filed on the 25th June, between 9 and 9.30 a.m.

There is variance about the date of one of Proctor Navaratnam's visits in his evidence and that of the Deputy Registrar, Navaratnam. Whereas Proctor Navaratnam says he went on the 2nd July, 1952, to the Registry after the 28th June, and spoke to Mr. Navaratnam, Deputy Registrar, the latter says that it was on the 1st July that Proctor Navaratnam came and spoke to him and not on the 2nd July. The Deputy Registrar remembers this occasion on account of a certain conversation that he had with Proctor Navaratnam. It would appear that this minute in the Journal under date 25th June, 1952, was actually signed by the Deputy Registrar only on the 1st July, 1952, about ten minutes before Proctor Navaratnam came and saw him on the 1st July. Mr. Deputy Registrar Navaratnam had signed the Journal entry under date 25th June, 1952, but had not put down the date on which he signed. Mr. Proctor Navaratnam when he came ten minutes later drew the Deputy Registrar's attention to this minute and at the former's request the latter put down 1st July, 1952, as the date on which he had signed that minute. That was the reason why the Deputy Registrar says he remembers Proctor Navaratnam's visit as being on the 1st July and not on the 2nd July, 1952. Whatever that may be, Mr. Proctor Navaratnam appears to have had a conversation with the Deputy Registrar either on the 1st or 2nd of July. If it was the 2nd July, then Proctor Navaratnam could have done nothing because the final date for the giving of notice of the presentation of the petition was 1st July. It was a moot point if Mr. Proctor Navaratnam went to the Registry on the 1st of July, and finding the appointment of an Agent by the respondent had been made, and if a letter had been sent by registered cover addressed to the Agent of the respondent, whether that letter was posted in time within the meaning of Rule 15. Mr. Proctor Navaratnam has been a Proctor for 17 years. He himself had contested a seat at the last General Election and he was defeated and he lost the deposit. Having been quite accustomed to the practice and procedure in Courts of Law, it seems rather strange why Mr. Proctor Navaratnam refrained from speaking to the Registrar or one of his Deputies or the subject clerk in charge of election matters, or any other clerk in the office in order to obtain information on a matter of such grave importance. He knew that the notice of the presentation of a petition had to be done within a certain limited time. The petitioner's Counsel seems to lay great store upon Rule 11 in the third schedule to the Order. Now Rule 11 runs thus,

“ The Registrar shall cause to be kept a book at this office in which shall be entered all addresses and the names of agents given under either of the two last preceding rules, which book shall be open to inspection by any person during his office hours. ”

This is an imperative provision which the Registrar has to obey. It is argued by learned counsel for the petitioner that in order to ascertain

whether or not an agent had been appointed by a party one is under no obligation to go to sources other than this Register of Agents. It is argued by learned Counsel for the respondent that the respondent is not concerned with the observance or non-observance of any rule or rules by the Registrar. Rule 11 is merely an administrative provision. What a party to an election petition does or does not do is in no way dependent on the Registrar's observance or not of the duties cast upon him by this order. He contends that if the Registrar under Rule 17 fails to make out the Election Petition list and carry out the other requirements of that rule, does it necessarily follow that the petitioner should in any manner be penalised, such as having his petition dismissed? Rule 17 runs thus,

“The Registrar shall make out the election petition list. In it he shall insert the names of the agents of the petitioners and respondents appointed under rule 9 and rule 10 respectively, and the addresses to which notices may be sent, if any. The list may be inspected at the office of the Registrar at any time during office hours, and shall be affixed for that purpose upon a notice board appropriated to proceedings under the Order, and headed ‘The Ceylon (Parliamentary Elections) Order in Council 1946’.”

He further submits that the respondent has discharged his duty imposed upon him under rule 10 the moment he lodged in the Registry the appointment under rule 10 together with the agent's notice under rule 35.

On the 25th June, 1952, the respondent and his agent have complied with both rules 10 and 35 in the third schedule to the Order when they filed the appointment and the notice. Mr. Weerasinghe is definite and unequivocal as to the date and the time on which the appointment was lodged at the Registry. Deputy Registrar Navaratnam has supported him at least to the extent that he saw this appointment and initialled it on the 25th June, 1952, in the afternoon.

Upon the evidence placed before me I hold the following fact to be proved.

The appointment of the Agent by respondent R2 together with the notice by his Agent R3 was lodged at the Registry between 9 and 9.30 a.m. on the 25th June, 1952, and that Mr. Weerasinghe the subject clerk received same on behalf of the Registrar on that date at that time.

I wish to make a few further observations on what the evidence led in the case has revealed. The evidence shows that the Deputy Registrar, Mr. Navaratnam, signed the Journal under date 25th June, 1952, on the 1st July, 1952. There is no procedure in this Order in Council for the maintenance of a Journal, but it appears to have been done as a matter of practice and for facilitating references. So that on which date the Deputy Registrar signed this particular Journal is immaterial except perhaps for the purpose of determining the credence that can be attached to the evidence of Mr. Weerasinghe. This too does not arise

in view of the admission made by the Deputy Registrar that he put his initials on to R2 and dated it 25th June, 1952, on the same day. Mr. Proctor Navaratnam states that on the 28th June he again referred up the register of Agents and found no appointment had been made and on the advice of counsel he sent three registered letters, P5, P6, and P7 to the respondent personally to the various addresses, which letters have not been delivered to him. If on the 27th of June the *Government Gazette* publication appeared at a time when according to Proctor Navaratnam he was not able to find in the register the name and address of an Agent, what was the necessity for sending registered letters to the respondent on the 28th of June? All that was needed on the part of the petitioner or his Agent was vigilance, especially when one realises the serious consequences that follow a non-compliance with the requirements of the Election Law. A circumspect lawyer who goes to the Registry would take all measures necessary to obtain the information needed for whatever steps he may have to take according to law. It is hardly necessary for me to discuss the question of law in the abstract as to the effect of the giving of the notice of appointment and address of the respondent's Agent on a date subsequent to the publication of the notice of the presentation of the petition in the *Gazette* as the facts in this case as found by me show that the appointment by the respondent of his agent was made and lodged at the Registry two days before the notice appeared in the *Gazette*.

The learned Counsel for the petitioner has sought to put the following construction to the words in Rule 10. He argues that the words "any person returned as a Member may at any time, after he is returned," must be deemed to be limited to a period before the filing of the petition, and that the appointment under Rule 10 by a Member made after a petition is filed does not entitle the respondent to claim that notice of the presentation of the petition should be given as prescribed in Rule 15. He sought to place a limitation to the words "at any time" which would have the effect of saying that a Member may nominate an Agent under rule 10 only up to the date immediately before the presentation of a petition. He thus argues that the words "at any time" in the context of Rule 10 means and must be construed to mean only up to 20th June, 1952. In this case the petition was filed on 21st June, 1952. He sought assistance for this argument in the following words contained in Rule 10, "to act as his Agent in case there should be a petition against him". His contention is that words "in case there should be a petition against him" mean up to the point of time when a petition is filed against him. The words "in case" in Rule 10 mean, as was pointed out by learned counsel for the respondent, "if, in the event that or lest". If the words "in case" were omitted and the other words that can be used are inserted in their place the sentence would run thus: "to act as his Agent in the event that there should be a petition against him". If the words "at any time" in Rule 10 must be limited to a period before the filing of the petition, the question that would naturally arise is, if the respondent wanted to file an appointment of an Agent after the petition is filed against him, under what section can he do so? Mr. Kumarakulasinghe argued that the only section under which an

Agent can be appointed by the respondent in that eventuality would be rule 34, which reads thus,

“ Any person who is on the roll of proctors of the Supreme Court may act as agent for any party to an election petition ”. In the margin of that page against Rule 34 the following words appear “ Proctor may act as Agent under these rules. ”

In my opinion Rule 34 is a general provision which lays down who may act as agent. Rule 35 lays down the duties of an agent immediately upon his appointment as such, that is, to leave written notice of his appointment at the office of the Registrar. It is a well known rule of construction that a general provision in a statute does not control or limit a specific provision contained in the same statute. It must be remembered that the placing of a notice with the Government Printer on a particular day for publication in the *Gazette* is not a material date. What is material is the date on which the notice of the presentation appears in the *Government Gazette*.

In this case, as I have already observed, the notice of the presentation appeared in the *Gazette* only on 27th June, 1952. The evidence is that the *Gazette* was out only by 4.30 p.m. on Friday, 27th June, 1952, so that the question of the exact time at which the appointment was lodged at the Registry is immaterial. But I have already held that this appointment was lodged between 9 and 9.30 a.m. on 25th June, 1952.

An analysis of Rule 15 shows clearly and unequivocally that the notice given in the *Government Gazette* publication can be availed of by the petitioner as notice of the presentation of the petition only if before the publication no appointment of an Agent or address had been given to the Registry by the respondent. In this case that contingency has not arisen because on 25th June, 1952, the appointment had been lodged at the Registry by the respondent. There was always the method of posting a letter by registered post to the address given under rule 10.

Various English authorities have been submitted to me by Counsel at the argument, but I find that those authorities do not help me in determining this matter. I was referred to *Aron v. Senanayake*¹ where Akbar, S.P.J., held that failure to give notice of the presentation of an election petition and of the nature of the proposed security in the manner required by rule 18 of the Election Petition Rules of the Ceylon (State Council Elections) Order in Council, 1931, is a fatal irregularity. The rule 18 therein referred to is more or less identical with Rule 15 in schedule three of the Order in Council of 1946, with the relevant modifications.

I therefore hold that the notice of the presentation of the petition was not served on the respondent as required by Rule 15, and that the notice published in the *Government Gazette* on 27th June, 1952, was not sufficient notice of the presentation of the petition to the respondent.

The petition of the petitioner is therefore dismissed with costs to the respondent.

Petition dismissed.

¹ (1936) 33 N. L. R. 133.