

1956

Present : Weerasooriya, J.

K. K. N. M. PUNCHI BANDA, Petitioner, and K. M. P.
RAJARATNE, Respondent

Election Petition No. 3 of 1956

*Election for the Welimada Electoral District No. 78 holden
on 7th April, 1956*

*Election petition—Who may present petition—Mistake in entry of petitioner's name
in register of voters—Effect thereof—Illegal practice—Effect of conviction prior
to year 1956—Ceylon (Parliamentary Elections) Order in Council, 1916,
ss. 58 (1) (c and f), 68A, 68B, 70, 72, 77, 79.*

¹ (1910) 13 N. L. R. 187.

(i) In this election petition presented by a voter under section 79 of the Ceylon (Parliamentary Elections) Order in Council, 1946, the petitioner's name as appearing in the register of voters was in every respect identical with his name as given in the caption to the election petition except for the last two letters of the last word of the name which consisted of six words. There was no doubt, however, on the evidence led at the inquiry, that the entry in question in the register of voters related to the petitioner and to no other person.

Held, that the election petition could not be rejected on the ground of a preliminary objection taken on behalf of the respondent that the petitioner was not a person who had a right to vote at the election.

(ii) By Section 16 of the Ceylon Parliamentary Elections (Amendment) Act, No. 16 of 1956—

“ Where a person is at the commencement of this Act subject to the incapacity of being elected as a Member of Parliament by reason of his conviction of a corrupt practice under paragraph (c) or paragraph (f) of sub-section (1) of section 58 of the Order in Council prior to its amendment by section 15 of this Act , such incapacity shall cease on the date of the commencement of this Act notwithstanding anything to the contrary in the Order in Council.

Held, that the Section was intended to apply to those persons only whose incapacity proceeded from their having been found guilty of a corrupt practice. The Section, therefore, was not applicable to a person whose incapacity, on the date of the commencement of the amending Act, proceeded from a conviction for an illegal practice within the meaning of sections 70 and 72 of the principal Act of 1946.

ELECTION petition questioning the validity of the election and return of the respondent as the member for Electoral District No. 78 (Welimada) at the Parliamentary election held for that electoral district on the 7th April, 1956.

Issadeen Mohamad, with Sunil K. Rodrigo, H. D. Thambiah and Nanda K. Rodrigo, for the petitioner.

A. B. Perera, with J. C. Thurairatnam, W. Wimalachandra and P. Gunasekera, for the respondent.

Cur. adv. vult.

October 1, 1956. WEERASOÖRIYA, J.—

The petitioner Kosgaha Kumbura Navasiya Mudiyanselege Punchi Banda has filed this petition questioning the validity of the election and return of the respondent as the member for Electoral District No. 78 (Welimada) at the Parliamentary election held for that electoral district on the 7th April, 1956, on the ground that by reason of his conviction of an illegal practice the respondent was, in terms of S. 72 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, (hereinafter referred to as the Order in Council) disqualified at the time of the said election and return from being elected as a member of Parliament.

It would appear that at a previous Parliamentary election for the same electoral district held on the 4th July, 1952, the respondent was an unsuccessful candidate. At that election the respondent was his own election agent and he failed to transmit to the returning officer a return of his election expenses as required by S. 70 of the Order in Council. In respect of that omission he was tried on an indictment in Case No. 5193 of the District Court of Badulla on a charge of having committed an illegal practice and was found guilty of the charge on the 26th August, 1955, and sentenced to pay a fine of Rs. 100. An appeal filed against the conviction and sentence was rejected by the Supreme Court. Formal evidence in proof of this conviction was adduced by the petitioner and not challenged by the respondent.

Paragraph 1 of the petition avers as the ground entitling the petitioner to present this petition in terms of S. 79 of the Order in Council that he is a person who had a right to vote and voted at the election to which it relates. At the trial a preliminary objection was taken by counsel for the respondent that the petitioner was not a person who had a right to vote at the election in question, but as this was a matter which formed part of the case to be established by the petitioner before he became entitled to the relief claimed by him, counsel for the respondent agreed that the trial might be proceeded with and the point raised by him decided along with the substantial question of the disqualification of the respondent.

The register of electors in operation for the 1956 Parliamentary elections is the document P6. At page 248 of it in entry No. 285 appears the name Kosgahakumbura Navasiya Mudiyanclage Punchibandara as one of the electors in Palugama Town. The same name appears in entry No. 272 at page 181 of the register R1 on which the 1952 Parliamentary elections were held. That name is in every respect identical with the petitioner's name as given in the caption to the petition except for the last two letters of the last word. The question that arises is whether the said entry No. 285 in P6 does not relate to the petitioner but relates to some other person.

The petitioner is the Chairman of the Village Committee of Udapalata and prior to his election as Chairman he was for several years its Vice-Chairman. He stated in evidence that although his name is as given in the caption to the petition, he is sometimes referred to as Punchi Bandara by way of respect. He concedes, however, that Punchi Bandara may also in certain cases denote a different name from Punchi Banda. While in view of the variation further inquiry is called for and the burden is on the petitioner to establish that entry No. 285 at page 248 of P6 relates to him, there is, apart from the evidence of the petitioner himself, the evidence of the Village Headman of Palugama and Proctor Ratnayake, both of whom claim to know the petitioner for a considerable period, that they have heard him occasionally addressed or referred to as Punchi Bandara, being a respectful variation of the name Punchi Banda. It was conceded by learned counsel for the respondent that the question whether the said entry No. 285 in P6 relates to the petitioner or not is one of fact. He submitted, however, that the entry relates to an entirely

different person from the petitioner. But no evidence was adduced on behalf of the respondent to contradict the evidence of the Village Headman or Proctor Ratnayake or to show that there is a person other than the respondent to whom the entry may relate. In the absence of such evidence learned counsel for the respondent restricted himself to a criticism of the evidence of the petitioner, in particular, and of the Village Headman of Palugama as unworthy of credit. The petitioner stated that there was no other person in Palugama Town who bore the identical name as himself but he admitted that outside the town area of Palugama there was one other person having the same name who had left the locality some three years ago and has since been resident in Gal-Oya. This admission, however, little avails the respondent since the entry referred to can relate only to a person who is a resident within the Palugama Town area and it is the petitioner's evidence that he has throughout been residing within that area. The petitioner also stated under cross-examination that his name appeared as a voter in the register on which the 1947 Parliamentary elections were conducted and that he exercised his right to vote on that occasion, but he was contradicted on this point by the production of the register R2 according to which his name (or the name as given in entry No. 285 at page 248 of P6) does not appear as an elector in the Palugama Town area. Counsel for the respondent drew attention to this evidence of the petitioner as indicative of his general unreliability as a witness. The Village Headman of Palugama stated that in connection with the compilation of the registers P6 and R1 he visited the various households in the Palugama Town and other areas within his jurisdiction and drew up lists of the several occupiers constituting each household. While granting that for any official purpose he would not have referred to the petitioner as Punchi Bandara he said that he may have inadvertently entered the petitioner's name in that form in these lists although he did not undertake to be definite about it as he had no clear recollection of the matter. Learned counsel for the respondent stressed the improbability that the petitioner's name would have been so entered by the Village Headman in these lists and that it is more likely, therefore, that entry No. 285 at page 248 of P6 and entry No. 272 at page 181 of R1 relate to a person other than the petitioner.

Having given careful consideration to these and the other submissions made by counsel for the respondent in this connection, I hold on the evidence before me that entry No. 285 at page 248 of P6 relates to the petitioner and that he is, therefore, competent to present this petition.

I shall now deal with the next and only other question for determination in these proceedings, namely, whether the respondent was by reason of his conviction on the 26th August, 1955, for an illegal practice incapable of being elected as a member of Parliament at the time of his election and return as the member for Electoral District No. 78 (Welimada) at the 1956 Parliamentary elections. S. 72 (1) of the Order in Council provides that one of the disqualifications consequent on a person being convicted by a District Court of an illegal practice is that he shall be incapable for a period of three years from the date of his conviction of being elected as a member of Parliament, which expression is defined

in S. 3 (1) of the same Order in Council as meaning a member of the House of Representatives. P8 is a copy of the *Ceylon Government Gazette* containing a notification dated the 10th April, 1956, in terms of S. 50 of the Order in Council that the respondent had been elected as a member of the House of Representatives for Electoral District No. 78 (Welimada). This notification refers to a proclamation dated the 18th February, 1956, and published in the *Ceylon Government Gazette* of that date by which the Governor-General dissolved the existing Parliament and summoned a new Parliament to meet on the 19th April, 1956, and also, *inter alia*, fixed certain dates for the general election of members of Parliament. The date of the respondent's election, according to the evidence, was the 7th April, 1956. It is, therefore, clear that if S. 72 (1) of the Order in Council applies to this case the respondent was at that date incapable of being elected as a member of the House of Representatives.

Learned counsel for the respondent argued, however, that in view of certain provisions of the Ceylon Parliamentary Elections (Amendment) Act, No. 16 of 1956 (hereinafter referred to as the amending Act) the disqualification in S. 72 (1) of the Order in Council cannot be said to have attached to the respondent consequent on his conviction of the illegal practice in the District Court case against him.

The preamble to the amending Act refers to certain recommendations of a Select Committee appointed to report on amendments to the Order in Council and to the need to give effect to some of them and also to terminate the incapacity to which any person was subject on the date of the commencement of the amending Act (the 16th February, 1956) "by reason of an act or omission which before that date was a corrupt practice and which on or after that date will be an illegal practice".

The amending Act provided, *inter alia*, for the repeal of paragraphs (c) and (f) of S. 58 (1) of the Order in Council and also introduced two new sections, 68A and 68B, into the Order in Council; and the effect of these provisions (to put the matter shortly) was that a candidate or election agent who, prior to the 16th February, 1956, would have been guilty of a corrupt practice in regard to any act or omission as specified in paragraphs (c) and (f) of S. 58 (1) of the Order in Council would, subsequent to that date, have been guilty of only an illegal practice and punishable accordingly. It may be stated here that the period of disqualification from being elected as a member of the House of Representatives in the case of a person convicted of a corrupt practice is seven years whereas in the case of a person convicted of an illegal practice it is only three years.

It was stated from the Bar by counsel for both parties that at the time when the amending Act was introduced as a bill in Parliament one E. L. Senanayake had, in proceedings in which his election as the member of Parliament for Kandy at the 1952 Parliamentary elections was challenged, been found guilty by the report of an election Judge of corrupt practices under paragraphs (c) and (f) of S. 58 (1) of the Order in Council, and the finding had been affirmed in appeal. Senanayake was a member of the United National Party and had been put forward

as the party candidate at the 1952 elections. Counsel also stated that under the relevant provisions of the Order in Council the finding of the election Judge had the same effect as a conviction by a District Court of the corrupt practices involved in the finding and consequently at the time referred to Senanayake was under the incapacity that such a conviction entailed and would have remained in that state of incapacity for a further considerable period and certainly during the next general election of a new Parliament that was then expected to take place shortly.

S. 16 of the amending Act provides for the termination of any existing incapacity in any person arising out of the commission by him, prior to the commencement of the operation of that Act, of a corrupt practice under paragraphs (c) or (f) of S. 58 (1) of the Order in Council as it then stood. The effect of S. 16 was undoubtedly to relieve Senanayake of the incapacity under which he lay and make him eligible thereafter for election as a member of Parliament.

The argument of learned counsel for the respondent that S. 72 (1) of the Order in Council does not operate so as to render the respondent incapable of being elected as a member of Parliament for a period of three years consequent on his conviction for an illegal practice is based almost entirely on S. 16 of the amending Act and, paradoxically as it were, S. 16 seems to be the very section which also destroys his argument. According to learned counsel the provisions of S. 16 and, indeed, all the other provisions of the amending Act are of general applicability and are not to be construed in favour of a particular individual only. If S. 16 is construed as not applicable to the respondent who was the only other person besides Senanayake who at the time of the coming into operation of the amending Act was known to be under the same incapacity though for the shorter period of three years, consequent on his conviction of an illegal practice, it would lead to injustice and absurdity which the legislature could never have intended and such a construction should, therefore (in counsel's submission), be avoided.

Learned counsel conceded that on a plain reading of the language used in S. 16 of the amending Act the respondent would appear not to come within the benefit of it. But he contended that this was a case where such additional words as may be necessary should be read into its provisions so as to extend the provisions to the case of a person who at the time of the commencement of the operation of the amending Act was under incapacity consequent on his conviction of an *illegal practice*.

As stated in the case of *The King v. Eltridge*¹ a Court of Law may in construing a particular statute "reject words, transpose them, or even imply words if this be necessary to give effect to the intention and meaning of the legislature; and this is to be ascertained from a careful consideration of the entire statute". Maxwell in his treatise on the Interpretation of Statutes² deals with the same matter under a chapter which is headed "Exceptional Construction" and in a passage which reads as follows:—

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the

¹ (1909) 2 K. B. D. 21 at 28.

² (10th edition) Chap. 9, 229.

apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a Statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense."

When one turns to S. 16 of the amending Act and compares its language with the wording in the preamble there is no room for the view that construing that section according to the ordinary meaning of the language used would lead to a manifest contradiction of the apparent purpose of the enactment or that it was the intention of the legislature that a person under incapacity as a result of a conviction of an illegal practice should come within the benefit of the section but that intention has been reduced to a nullity by the draftsman's unskilfulness in the choice of his words. In my opinion neither in the preamble nor in the section itself could it have been more plainly indicated that the section was intended to apply to only those persons whose incapacity proceeded from their having been found guilty of a corrupt practice. I find no difficulty, therefore, in holding that in terms of S. 72 (1) of the Order in Council the respondent was at the time of his election which is challenged in this petition incapable of being elected as a member of the House of Representatives, and that S. 16 of the amending Act is not inconsistent with such an interpretation.

S. 77 of the Order in Council provides that the election of a candidate as a member of Parliament shall be declared void if on an election petition it is proved to the satisfaction of the election Judge that the candidate was at the time of his election a person disqualified for election as a member of Parliament. I accordingly declare that the election of the respondent as the member for Electoral District No. 78 (Welimada) at the Parliamentary election held on the 7th April, 1956, was void. In regard to the relief in paragraph (b) of the prayer in the petition claiming the seat for one of the other candidates, counsel for the petitioner stated at the commencement of the trial that he was abandoning that claim. The respondent will pay the petitioner's costs of these proceedings which by agreement of counsel for both parties are fixed at three hundred guineas.

Election declared void.