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CHAPTER 13

SENATE (DISPUTED APPOINTMENTS AND DISPUTED VACANCIES)

An Act to provide for the determination of questions as to membership of the Senate and for matters connected therewith and incidental thereto. 1964-14.
L.N. 168/
1967.

[9th April, 1964] Commence-
ment.

1. This Act may be cited as the Senate (Disputed Appointments and Disputed Vacancies) Act. Short title.

PART I—PRELIMINARY

2. For the purposes of this Act, the expression—
- “constituency” has the same meaning as in section 2 of the Representation of the People Act; Interpretation.
Cap. 12.
- “costs” includes charges and expenses;
- “election” means an election for a constituency under the Representation of the People Act;
- “elector”, in relation to an election, means any person whose name is for the time being on the register to be used at that election;
- “Registrar” means the Registrar under the Registration Office Act. Cap. 33.

PART II—DISPUTED SENATE APPOINTMENTS

3. (1) Subject to Part V of the Constitution, any question whether any person has been validly appointed as a Senator shall be referred to and determined by the High Court in accordance with the provisions of this Part. Method of questioning appointment to the Senate.
L.N. 168/1967.
- (2) Every such reference shall be by a petition (in this Act referred to as a Senate appointment petition).

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Presentation and service of Senate appointment petition.

4. (1) A Senate appointment petition may be presented by any one person or more than one person who on the date of the appointment of the person to whom the petition relates was entitled to vote as an elector at an election.

(2) The person whose appointment is complained of is in this Act referred to as the respondent.

(3) The petition shall be in the prescribed form, state the prescribed matters and be signed by the petitioner or by all the petitioners if more than one and shall be presented to the High Court.

(4) The petition shall be presented by delivering it to the Registrar or otherwise dealing with it in the prescribed manner.

(5) The Registrar shall send a copy of the petition to the Director of Public Prosecutions and to such other persons as may be prescribed and shall cause a copy of the petition to be published in the *Official Gazette*.

(6) The petition shall be served as nearly as may be in the manner in which a writ or summons is served or in such other manner as may be prescribed.

Time for presentation of Senate appointment petition.

5. A Senate appointment petition shall be presented within twenty-one days after the date of the appointment to which the petition relates.

Security for costs.

6. (1) At the time of presenting a Senate appointment petition or within three days afterwards, the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

(2) The security shall be an amount of one thousand dollars and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.

Notice of presentation and security and copy of petition to be served on respondent.

7. Within seven clear days after the presentation of the petition, the petitioner shall, in the prescribed manner, serve on the respondent a notice of the presentation of the petition and of the nature of the proposed security and a copy of the petition.

8. (1) Within five days after service of the notice of the presentation of the petition, the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the recognisance. Objection to surety.

(2) An objection to a recognisance shall be decided in the prescribed manner.

(3) If the objection is allowed, the petitioner may, within five days of the allowance thereof, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the Registrar, make the security sufficient.

(4) If no security is given as required by this section or any objection is allowed and not removed as aforesaid, no further proceeding shall be had on the petition.

9. On the expiration of the time limited for objections, or, after objection made, on the objection being disallowed or removed whichever last happens, the petition shall be at issue. Petition at issue.

10. The place of trial of a Senate appointment petition shall be such place within the Island as a Judge may think fit. Place of trial.

11. (1) A shorthand writer who shall be an Official Reporter of the Senate, or his deputy, shall attend every trial of a Senate appointment petition and shall be sworn by the Registrar or his deputy faithfully and truly to take down the evidence given at the trial and from time to time as occasion requires to transcribe that evidence or cause it to be transcribed. Attendance and payment of shorthand writer.

(2) Such shorthand writer shall take down the evidence and from time to time transcribe it or cause it to be transcribed and a transcript of the notes of the evidence taken down by him shall accompany any certificate given by a Judge pursuant to section 14 or section 25.

(3) The remuneration and allowances, if any, of such shorthand writer shall be fixed by the Registrar and shall be defrayed out of such moneys as may be provided by Parliament.

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Trial of
petition.

12. (1) A Senate appointment petition shall be tried in open court without a jury, and notice of the time and place of trial shall be given in the prescribed manner not less than fourteen days before the day of trial.

(2) A Judge may in his discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.

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1967.

(3) The trial of a Senate appointment petition shall be proceeded with notwithstanding the prorogation of Parliament.

Witnesses.

13. (1) With respect to a Senate appointment petition, witnesses shall be summoned, sworn and examined in the same manner as nearly as circumstances admit as in an action tried in the High Court.

(2) The reasonable expenses incurred by any person in appearing to give evidence at the trial of a Senate appointment petition according to the docket of fees allowed to witnesses on the trial of actions in the High Court may be allowed to such person by a Judge or the Registrar.

Conclusion
of trial of
Senate
appointment
petition.

14. At the conclusion of the trial of a Senate appointment petition, the High Court shall determine whether the person whose appointment was questioned was validly appointed or not and shall forthwith certify in writing the determination to the Governor-General and to the President and the determination so certified shall be final to all intents and purposes.

Senate
appointment
petition
treated as
vacancy
petition.

15. Notwithstanding that it has been determined and certified that the person to whom the petition relates was validly appointed, the High Court may, if satisfied that since the date of the appointment circumstances have arisen by reason of which such person has vacated this seat, proceed under subsection (1) of section 25 as if the petition were a vacancy petition.

16. (1) A Senate appointment petition may only be withdrawn if all the petitioners serve notice in writing on the Registrar that they consent to the withdrawal of the petition. Withdrawal
of petition.

(2) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

(3) Notice of the withdrawal of a petition shall as soon as practicable be published by the Registrar in the *Official Gazette*.

(4) If a petition is withdrawn any person who might have been a petitioner in respect of the appointment to which the petition relates may within seven days of the publication of the notice referred to in subsection (2) apply in the prescribed manner to a Judge to be substituted as a petitioner, and the Judge may, if he thinks fit, substitute him accordingly.

(5) Security to the same amount as would be required in the case of a new petition and subject to the like conditions shall be given on behalf of such substituted petitioner before he proceeds with his petition and within five days after the order of substitution.

(6) A substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7) If no person is substituted as a petitioner pursuant to this section or if no security is within the time provided by subsection (5) given by or on behalf of a substituted petitioner the Registrar shall report the withdrawal to the President.

17. (1) A Senate appointment petition shall be abated if the respondent dies or by the death of a sole petitioner or of the survivor of several petitioners. Abatement
of petition.

(2) The abatement of a petition shall not affect the liability of the petitioner or any other person to the payment of costs incurred in respect of any proceeding taken prior to the abatement.

(3) On the abatement of a petition under this section the prescribed notice thereof shall be given; and any person who might have been a petitioner in respect of the appointment to which the petition relates may, within the prescribed time after

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notice is given, apply in the prescribed manner to a Judge to be substituted as a petitioner, and the Judge may, if he thinks fit, substitute him accordingly.

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Costs of
petition.

18. (1) All costs of and incidental to the presentation of a Senate appointment petition and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the High Court may determine, and in particular any costs which in the opinion of the High Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of the petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.

(2) If a petitioner neglects or refuses for six months after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of a Judge, such sum shall be deemed to be a judgment debt of a magistrate's court in its civil jurisdiction and may be recovered accordingly from every person who under this Act entered into a recognisance relating to the petition.

PART III—DISPUTED SENATE VACANCIES

Method of
questioning
Senate
vacancies.
L.N. 168/
1967.

19. (1) Subject to Part V of the Constitution, any question whether any Senator has vacated his seat or is required, under subsection (3) of section 39 of the Constitution, to cease to perform any of his functions as a Senator shall be referred to and determined by the High Court in accordance with the provisions of this Part.

(2) Every such reference shall be by a petition (in this Act referred to as a Senate vacancy petition) presented to the High Court by—

(i) authority of a resolution of the Senate; or

(ii) any person who on the date of the presentation of the petition is entitled to vote as an elector at an election.

(3) For the purposes of this Part in the case of a petition presented by authority of a resolution of the Senate, the nominal petitioner shall be the Clerk of the Senate.

20. (1) A Senate vacancy petition presented to the High Court shall be in the prescribed form, state the prescribed matters and be signed by such persons as may be prescribed.

Contents,
delivery and
service of
Senate
vacancy
petition.

(2) The petition shall be delivered to the Registrar and the Registrar shall cause a copy of it to be published in the *Official Gazette*.

(3) The petition shall be served as nearly as may be in the manner in which a writ or summons is served or in such other manner as may be prescribed.

21. (1) Where a Senate vacancy petition has been presented to the High Court otherwise than by authority of a resolution, the petitioner shall, at the time of delivering the petition to the Registrar or within three days afterwards, give security for all costs which may become payable by him to any witness summoned on his behalf or to any party to the petition.

Security for
costs.

(2) The security shall be an amount of one thousand dollars and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by deposit of money, or partly in one way and partly in the other.

22. Within seven clear days after delivery of a Senate vacancy petition, the petitioner shall, in the prescribed manner, serve notice of the presentation of the petition, and of the nature of the proposed security, if security is required, and a copy of the petition upon—

Service of
vacancy
petition.

- (a) the person whose seat is the subject-matter of the petition;
- (b) the Director of Public Prosecutions; and
- (c) such other persons as may be prescribed.

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Parties to
vacancy
petition.

23. (1) The parties to a Senate vacancy petition shall be—

- (a) the petitioner;
- (b) the person whose seat is the subject-matter of the petition; and
- (c) such other person as, in the opinion of a Judge, is interested in the determination of the question referred and whom the Judge directs may be heard upon the hearing of the reference.

(2) The High Court shall hear the Director of Public Prosecutions or other representative appointed by him whether or not he is a party to the petition and shall have the power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his representative may consider material.

Application
of provisions.

24. Subject to such modifications and adaptations as may be necessary for the purpose, the following provisions of this Act shall, so far as they are applicable, have effect in relation to proceedings on a Senate vacancy petition presented in the High Court—

- (a) section 8 (except that in subsection (4) thereof the reference to section 8 shall be deemed to be a reference to section 21);
- (b) sections 9, 10, 11, 12, 13 and 18.

Determina-
tion of
Senate
vacancy
petition.

25. (1) At the conclusion of the hearing of a Senate vacancy petition the High Court shall determine whether or not the member whose seat is the subject-matter of the petition has vacated his seat, and shall forthwith certify in writing the determination as in section 14.

(2) The certified determination of a Senate vacancy petition by the High Court shall be final to all intents and purposes.

PART IV—MISCELLANEOUS

Service of
notices.

26. (1) Any summons, notice or document required to be served on any person with reference to any proceeding under this Act for the purpose of causing him to appear before the

High Court may be served by delivering it to that person, or by sending it by post by a registered letter to his last known place of abode in the Island, or in such other manner as a Judge may direct.

(2) In proving service by post under this section it shall be sufficient to prove that the letter was pre-paid, properly addressed and registered with the Post Office.

27. Subject to this Act, the Rules of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the High Court shall in principle and so far as practicable apply to costs of petitions and other proceedings under this Act. Costs.

28. The Judicial Advisory Council may make rules prescribing anything required or authorised by this Act to be prescribed and generally for the purposes of this Act. Rules of procedure.

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