DHAMMIKA YAPA
v.
BANDARANAYAKE AND OTHERS

SUPREME COURT.
L. H. DE ALWIS, J., O. S. M. SENEVIRATNE, J., AND H. A. G. DE SILVA, J.
S.C. 110/87.
NOVEMBER 16 AND 17, 1987.

Fundamental Rights – Arrest without a warrant and detention under Emergency Regulations – Freedom to practise profession – Freedom of movement – Mala fides – Articles 13(1) to (4) and 14(1)(g) and (h) of the Constitution – Regulations 17(1), 18(1), 19(2) and 54 of the Emergency Regulations – Section 32(1)(b) of the Code of Criminal Procedure Act.

One Mahinda Wijesekera, an attorney-at-law and Basnayake Nilame of the Vishnu Devale, Devinuwara, was arrested on a complaint made by Ronnie de Mel, Minister of Finance over the telephone to the 2nd respondent that Wijesekera had led a mob which attacked his house. Thereupon the 2nd respondent along with the 3rd respondent on 30.07.1987 arrested the said Wijesekera who was then detained under a detention order under Regulation 19(2) of the Emergency Regulations signed by the 1st respondent on 31.08.1987 and served on Wijesekera on 01.08.1987 at about 4.00 p.m. On 04.08.1987 another detention order dated 03.08.1987 issued by the 5th respondent under Regulation 17(1) of the Emergency Regulations was handed to him (Wijesekera).

Held:

(1) A Police Officer is empowered by s. 32(1)(*b*) of the Code of Criminal Procedure Act to arrest without a warrant a person against whom a reasonable complaint of the commission of a cognisable offence has been made. Offences under the Emergency Regulations are made cognisable by Regulation 18(1).

(2) In the circumstances of the violence that took place during this period the 2nd respondent was justified in giving credence to the Minister's complaint on the telephone made directly to him and in acting upon it. The complaint afforded reasonable ground for suspecting Wijesekera to have committed an offence under the Emergency Regulations and justified his arrest. Being an attorney-at-law Wijesekera would have asked why he was being arrested and been told why.

(3) The 1st respondent had issued the 1st detention order for the purpose of investigating the complaint made against Wijesekera.

(4) Regulation 17 under which the 2nd detention order was issued applies to the detention of a person with a view to preventing him, *inter alia* from acting in a manner prejudicial to the national security or to the maintenance of public order or essential services. A person already in detention can yet be detained under Regulation 17.

The first detention under Regulation 19(2) was for the purpose of investigation and its duration could be only for 90 days. But here, as there was material that the alleged offence was one of inciting people to acts of violence and the investigations revealed the possibility of his resorting to the commission of further acts of a similar nature if released, the more effective remedy was a detention order under Regulation 17. There is nothing to prevent a detention order under Regulation 17(1) from being made while a detention under Regulation 19(2) was in force, provided the circumstances justified it as in the present case.

(5) Such preventive detention under Regulation 17 is not punishment and is not ultra vires the Constitution.

(6) The allegation of mala fides by reason of defeat of the Minister's party on the votes of the District at the Referendum in 1982 and on account later of the defeat of the candidate supported by him at the election of the Basnayake Nilame of the Devinuwara Devala is in the former case too remote and in the latter in the face of the available material and statements recorded, inconclusive to support the allegation of mala fides.

Cases referred to:

1. *Nallanayagam v. Gunatillake [1987] 1 Sri LR 297.*
2. *Gunasekera v. De Fonseka (1972) 75 NLR 246.*
3. *Nanayakkara v. Henry Perera and others [1985] 2 Sri LR 14.*
4. *Vijaya Kumaranatunga v. G. V. P. Samarasinghe and others—Fundamental Rights Decisions of the Supreme Court vol. 2 p. 347.*
5. *Rex v. Halliday [1917] A.C. 260, 265, 269.*
6. *Gopalan v. State of Madras AIR [1950] S.C. 27.*
7. *Liversidge v. Anderson [1942] A.C. 206, 254; [1941] 3 All ER 338.*
8. *Hirdaramani v. Ramavah [1971] 75 NLR 67, 100.*

APPLICATION under Article 126 of the Constitution for violation of fundamental rights.

H. L. de Silva, P.C. with *R. K. W. Gunasekera, C. Dahanayake* and *Nimal S. de Silva* for petitioner.

Upawansa Yapa, D.S.G. with *Tony Fernando, S.C.* and *Miss Anusaya Shanmuganathan, S.C.* for respondent.

Cur. adv. vult.

December 17, 1987.

L. H. DE ALWIS, J.

This is an application made by D. D. Yapa, an Attorney-at-Law, on behalf of Mahinda Wijesekera, presently detained at the Magazine Prison, Borella,against the eight Respondents, under Article 126(2) of the Constitution, praying for the release of the said Mahinda Wijesekera, a declaration that the said Wijesekera's fundamental rights under Articles 13(1), 13(2), 13(4), 14(1), (g) and 14(1)(h) of the Constitution have been infringed and for compensation to the said Wijesekera in a sum of Rs. 300,000. Mr. Wijesekera, I understand has since been released, but this judgment was prepared when he was still in detention.

The facts relevant to this matter are briefly as follows:

Mahinda Wijesekera is an Attorney-at-Law practising in Matara and is the Basnayake Nilame of the Sri Vishnu Maha Devalaya, Devinuwara. According to the Petitioner, the 2nd and 3rd Respondents came to Wijesekera's house at about 7 a.m. on 30.7.87 and informed him that they had come to record a statement from him. They requested him to accompany them to the Police Station, Matara. He complied with their request and after they reached the Matara Police Station Wijesekera was held in custody there, and was not allowed to return home. He was not told the reason for his arrest.

On 1.8.1987, at about 4 p.m. the 3rd Respondent handed him a Detention Order (X) signed by the first Respondent on 31.7.87 in terms of Regulation 19(2) of the Emergency Regulations published in Government Gazette Extraordinary No. 462/2 of 18.7.1987.

On 4.8.1987 another Detention Order dated 3.8.1987 was issued by the 5th Respondent under Regulation 17(1) of the Emergency Regulations and handed to him.

Up to the date of the hearing of this application Wijesekera has been detained for a period of 109 days. He was not produced before a Magistrate in terms of article 13(2) of the Constitution and is prevented from practising his profession as an Attorney-at-Law in violation of Article 14(1)(g) nor allowed freedom of movement, in contravention of article 14(1)(h) of the Constitution.

The petitioner challenges (1) the legality of Wijesekera's arrest by the 2nd and 3rd respondents on 30.7.87, (2) the legality and validity of the Detention Order (marked X) made by the 1st respondent on 31.7.87, and (3) the legality and validity of the Detention Order made by the 5th respondent on 3.8.87 (1R5). The petitioner also assails the validity of the arrest and Detention Orders on the ground that they were made mala fide at the instance of Mr. Ronnie de Mel, the Minister of Finance. As mala fides is alleged in respect of all these acts I shall deal with it last.

In regard to (1) the petitioner attacks the lawfulness of Wijesekera's arrest on 30.7.87 by the 2nd and 3rd respondents on several grounds. Articles 13(1) of the Constitution states that–

> "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason of his arrest (vide *Nallanayagam v.Gunatillake and others* (1)).

Regulation 18(1) of the Emergency Regulations, which is procedure established by law, empowers any Police Officer to search, detain for purposes of such search, or arrest without warrant, any person who is committing or has committed or whom he has reasonable ground for suspecting to be concerned in or to be committing or to have committed, an offence under any Emergency Regulations. It was contended that the 2nd and 3rd respondents had no reasonable ground for suspecting Wijesekera to have committed an offence under the Emergency Regulations as they were merely acting on an oral statement made by Mr. Ronnie de Mel on the telephone to the 2nd respondent on 30.7.87. Learned Deputy Solicitor General on the other hand submitted that the complaint of Mr. de Mel on the telephone was sufficient to raise a reasonable suspicion that Wijesekera had committed such an offence.

Regulation 54 of the Emergency Regulations states that:

> "the powers of a Police Officer under any emergency regulation shall be in addition to and not in derogation of his powers under any other written law."

Under section 32(1)(b) of the Code of Criminal Prodecure act, a Police Officer is authorised to arrest without a warrant any person:

"who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned."

A Police Officer therefore is empowered to arrest without a warrant a person against whom a reasonable complaint of the commission of a cognizable offence has been made. Offences under the Emergency Regulations are made cognizable by Regulation 18(1).

Regulation 26(*f*) makes it an offence for any person to excite or attempt to excite or incite the inhabitants, or any section, class or group of them to use any form of physical force or violence, breaches of the peace disobedience of the law or obstruction of the execution of the law for the purpose thereby of inducing or compelling the Parliament or the government to alter any matter by law established or to do or forbear from doing any act or thing.

A great deal of publicity was given in the mass media at the time to the speeches made by the Minister of Finance, Mr. Ronnie de Mel, who strongly advocated support for the Indo-Sri Lanka Accord entered into between the President of Sri Lanka and Prime Minister of India. Mr. Rajiv Gandhi was about to visit this country in order to sign the Agreement on the evening of the 29th July 1987 and Mr. Ronnie de Mel played a prominent part in the ceremonies to welcome him. It was also common knowledge that at the same time there was considerable opposition by certain sections of the public to the Agreement, and some of the extremists were intending to resort to acts of violence in an effort to stall the signing of the agreement and to prevent its subsequent implementation in Parliament. It is in this background that the complaint of Mr. de Mel and the alleged conduct of Wijesekera must be viewed.

Mr. Ronnie de Mel, on receipt of certain information telephoned the 2nd Respondent to Matara on the 30.7.87 at 7.25 a.m., the day after the Accord was signed and informed him that a mob led by Mahinda Wijesekera had attacked his house and inquired whether Wijesekera had been taken into custody. It was admittedly in pursuance of this complaint 1R4, which the 2nd respondent recorded, that he along with the 3rd respondent went to Wijesekera's house on the morning of 30.7.87.

The question is whether the complaint was reasonable or the information credible or whether there was reasonable ground for the 2nd and 3rd respondents to have suspected Wijesekera to have committed an offence under the Emergency Regulations 26(*f*) which justified their arresting him on the 30th July 1987. It is true that Mr. de Mel was not a witness to the incident and had not divulged the source of his information. But Mr. de Mel is the Minister of Finance and it is inconceivable that as a responsible Cabinet Minister he would have made a frivolous complaint on the telephone to the 2nd respondent. It is also unlikely that a person in his position would have given credit to the information which he received, unless he was satisfied of the truthfulness and reliability of his informant. In these circumstances the 2nd respondent, was in my view, justified in giving credence to the Minister's complaint on the telephone and in acting upon it. That the 2nd respondent was not mistaken in the action he took is confirmed by the statements made later the same day by Priyantha (2R4) and Sirisunanda Thero (2R2). Priyantha stated that on the morning of the 29th July, he saw Mahinda Wijesekera come in a van and getting down from it in the midst of a crowd of about 200 to 300 persons at Dondra Town. Wijesekera then raised his hands and addressing the crowd in a loud voice said "Destroy the bungalow of the Finance Minister, also destroy the office, attack the C.W.E. and set fire to the library." So saying, he got into the van and went in the direction of Gandara, while the crowd started attacking the C.W.E. and the library. A part of the crowd went in the direction of the Minister's office, damaged it and set fire to the bungalow.

According to Sirisunanda Thero's statement (2R2) one Lionel came to the temple on the night of the 29th and telephoned the Finance Minister, Mr. Ronnie de Mel. He did not tell the priest who caused the damage to the Minister's bungalow, but said he would disclose their names at the appropriate time. He evidently had disclosed Wijesekera's name to the Minister because the latter had mentioned it on the telephone to the 2nd respondent.

The petitioner produced affidavits from several lawyers marked X2 to X9 to testify that Wijesekera was attending to his legal work in the precints of the Magistrate's court Matara, from about 9 a.m., till 11.30 a.m.,on the 29th July in order to controvert the evidence that Wijesekera was going about Dondra Town in his van that morning.

It is not the function of this court to test the credibility of the witnesses and decide what evidence to accept, unless the evidence against Wijesekera is so patently false and incredible that it must be rejected out of hand. The evaluation of the evidence is a matter for the trial court, before which, no doubt, Wijesekera will, in due course, be tried. In my view, the Minister's complaint was reasonable and credible enough to afford the 2nd and 3rd respondents a reasonable ground for suspecting Wijesekera to have committed an offence under the Emergency Regulations and to justify his arrest.

It was next contended that the arrest was illegal because the 2nd and 3rd respondents were merely carrying out the orders of the 1st respondent without themselves knowing the reason for it. In *Gunasekera v. de Fonseka* (2), it was held that where an Assistant Superintendent of Police had purported to arrest a person under Regulation 19 of the Emergency Regulations merely because he had orders to do so from his superior officer, the Superintendent of Police, and was not personally aware of the actual offence of which the person arrested was suspected by the Superintendent of Police, such arrest is liable to be declared to have been unlawful. A condition precedent for such arrest is that the officer who arrests should himself reasonably suspect that the person arrested had been concerned in some offence under the Emergency Regulations.

In the present case the 2nd respondent states quite categorically in his affidavit that he made the arrest, not on the orders of the 1st respondent but on the specific complaint made to him over the phone by Mr. Ronnie de Mel, and that is borne out by the complaint recorded by him (1R4) and his entry of the arrest made at the foot of 1R4.

It was next alleged that Wijesekera was not informed of the reason for his arrest by the 2nd and 3rd respondents. The 2nd respondent, Nizam, who was the Superintendent of Police, Matara, at the time, has filed an affidavit stating that he explained to Mr. Wijesekera in the presence of his wife, that he and the 3rd respondent, had come to take him into custody in connection with the damage caused to the house of Mr. Ronnie de Mel, Minister of Finance, at Devinuwara and to accompany them to the Police Station. He has made a contemporaneous entry in his Police note book to that effect at Wijesekera's house, an extract of which is produced marked 1R4. Wijesekera is an Attorney-at-Law and would have been well aware of

his legal rights, as is evidenced by his letter of 3.8.87 (X4) addressed to the 1st respondent. He must surely have asked why he was being arrested and been informed of the reason.

It was submitted that there is nothing in 1R4 to indicate that the 2nd respondent was acting under Regulation 18 of the Emergency Regulations. But the Emergency Regulations were in operation at the time, and as stated earlier, it was common knowledge that a spate of violence had spread throughout the country on the day the Peace Accord was signed. Wijesekera therefore would have known that he was being arrested for an offence under the Emergency Regulations, more so when he was informed by the 2nd respondent that he was being taken into custody in connection with the damage caused to the house of the Minister of Finance, Mr. Ronnie de Mel.

I am therefore of the view that Wijesekera's arrest was lawful and that he was informed of the reason for his arrest.

The petitioner contended that the Detention Order dated 31.7.87 could not be made under Regulation 19 because the arrest under Regulation 18 was illegal. But in view of my finding that the arrest was lawful, this submission must fail.

It was then submitted that the detention of Wijesekera under the Detention Order dated 31.7.87 (X) was not made for the purpose of investigation but was for a collateral purpose, namely, to prevent Wijesekera from officiating at the Annual Perahera in Devinuwara and was done mala fide at the instance of Mr. Ronnie de Mel.

In *Nanayakkara v. Henry Perera and others* (3) it was held by this Court that the detention of a person arrested without a warrant under Regulation 18 can be justified only if the detention is for search. The expression search, it was held, is synonymous with investigation. Colin Thome J. said–

> "It is manifest, therefore, that the detention of a person arrested without a warrant under Regulation 18 can be justified only if the detention is for further investigation. It would be unlawful to detain such a person for an unspecified and unknown purpose as this would be an infringement of Article 13(4) of the Constitution."

In the present case the 1st respondent who issued the Detention Order states in his affidavit that it was made for the purpose of investigating the complaint made against Wijesekera. In fact, the extracts from the Police Information Book indicate that further investigations were in fact conducted and that the statements of S. Wimalasiri (2R3), Justin Galapathi and Padmasiri (2R5) were recorded, though the latter two statements were recorded after the second Detention Order under Regulation 17(1) was made by the 5th respondent on Wijesekera and after he was removed to the Magazine Prison in Borella on the night of 3.8.1987.

It was next contended that a Detention Order under Regulation 17 could not be made when Wijesekera was already in custody under a Detention Order made under Regulation 19. Regulation 17 reads as follows:–

"(a) Where the Secretary to the Ministry of Defence is of opinion with respect to any person that, with a view to preventing such person–

(a) from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services; or

(b) from acting in any manner contrary to any of the provisions of sub-paragraph (a) or sub-paragraph (b) of paragraph (2) of the Regulation 41 or Regulation 26 of these regulations;

it is necessary to do, the Secretary may make order that such person be taken into custody and detained in custody."

The argument was that Regulation 17 contemplated the case of taking into preventive detention a person who was at large and that that was not so in the present case because Wijesekera was already in custody on a Detention Order made under Regulation 19(2).

Regulation 17 applies to the detention of a person with a view to preventing him from acting in the manner set out in sub-paragraph (a) or (b) to that regulation and is commonly referred to as preventive detention.

In the present case the Detention Order 'X' was made by the 1st respondent for the purpose of making investigations into the complaint of Mr. Ronnie de Mel, the Minister of Finance in respect of

the damage alleged to have been caused to his house by a mob led by Wijesekera. Investigations were set in motion and the statements of Priyantha (2R4), Sirisunanda Thero (2R2) Wimalasiri (2R3) all pointed to the fact that Wijesekera had incited a large crowd of persons to destroy the bungalow of the Minister of Finance, his office, the C.W.E. and the library and that he was going about the town inciting the crowds to further acts of violence and damage to public buildings.

As observed earlier this was a period highly charged with emotion and tension prior to the signing of the Peace Accord between the President of Sri Lanka and the Prime Minister of India, which was strongly opposed by certain sections of the people who in protest started setting fire to and damaging public and private property. Wijesekera, an Attorney-at-Law and the Basnayake Nilame of the Sri Vishnu Maha Devalaya, Devinuwara was a person who was capable of wielding considerable influence in the area and it was alleged that he was inciting the crowds to commit these acts of violence. His alleged conduct constituted not only an offence under regulation 26(*f*) but was also prejudicial to the national security and maintenance of public order for which a detention order under Regulation 17(1) could have been made in the first instance.

The Detention Order 'X' made by the 1st respondent under Regulation 19(2) was for the purpose of investigation and its duration was for a period of ninety days only. It is true that during the period of detention it would not have been possible for Wijesekera to have committed any further offences under the Emergency Regulations. But as the alleged offence was one of inciting the people to acts of violence and the investigation revealed the possibility of his resorting to the commission of further acts of a similar nature if released, the more effective remedy was a detention order preventing him from doing so under Regulation 17(1). It may well have been that the I.G.P., the 4th respondent was of that view after he ascertained from the 2nd respondent the nature of the evidence available against Wijesekera on 3.8.87 when he requested the 5th respondent, the Secretary to the Ministry of Defence, in his Report, to issue a Detention Order under Regulation 17(1). In any event there is nothing to prevent a detention order under Regulation 17(1) from being made while a detention order under Regulation 19(2) was in force, provided the circumstances justified it, as in the present case.

It was also submitted by the petitioner that after the Detention Order under Regulation 19(2) was made by the 1st respondent, there was no justification for the 5th respondent, to have issued a Detention Order under Regulation 17(1) on the same material. But after the first Detention Order was made, the statement of Wimalasiri was recorded on 2.8.87 disclosing further evidence against Wijesekera. When the 4th respondent, contacted the 2nd respondent on 3.8.87 in order to find out the nature of the evidence available against Wijesekera, there was in addition the statement of Wimalasiri. Then he made his report and request to the 5th respondent to issue a Detention Order under Regulation 17(1). The 5th respondent is the Permanent Secretary to the Ministry of Defence and in addition to the report of the 4th respondent, would have had access to intelligence reports regarding the extent of the unrest in the country and the danger it posed to the security of the State, before he satisfied himself that a Detention Order under Regulation 17(1) of the Emergency Regulations was apparently the more appropriate order to make in order to prevent Wijesekera from acting in any manner prejudicial to the national security and for the maintenance of public order.

It was next contended by counsel for the petitioner that Regulation 17(1) of the Emergency Regulations in terms of which the second Detention Order was issued on Wijesekera violated Wijesekera's fundamental rights contained in Article 13(4) of the Constitution and was ultra vires the Constitution.

Article 13(4) states that:

> "No person shall be punished with death or imprisonment except by order of a competent court made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment."

It was submitted that Article 15(7) permits the restriction of the fundamental rights recognised by Article 12, 13(1), 13(2) and 14 but leaves untouched Article 13(4). This very matter came up for consideration by this court in *Vijaya Kumaranatunga v. G. V. P. Samarasinghe and others* (4) and it was held that preventive detention under Regulation 17(1) of the Emergency Regulation cannot be regarded as punishment and, Article 13(4) had no application to it. Consequently Regulation 17(1) was held not to be ultra vires the Constitution.

Mr. H. L. de Silva, P.C., Counsel for the petitioner in his written submissions tendered after the conclusion of the hearing of the application, with the permission of court, criticised the decision in *Kumaranatunga's* case on the ground that Soza, J., who wrote the judgment in that case (with Samarakoon C.J., and Ranasinghe J., agreeing) had given an 'unduly restricted meaning' to the word 'punishment'. He submitted that in its *wider sense*, the deprivation or curtailment of personal liberty even though it may be actuated or motivated by considerations of national security or public order, yet in its *effects and consequences* also inflicts pain or suffering on the subject by reason of the deprivation of his freedom. It does not cease to be a 'punishment' on the person who is subjected to it, merely because the objects or purposes of the State in taking such action are to protect national security.

This submission does not commend itself to me. In *Rex v. Halliday* (5), which was a case under the Regulations made under the Defence of the Realm Act, Lord Finlay L.C. at page 165 said:

> "On the face of it the statute authorizes in this sub-section provisions of two kinds—for prevention and for punishment. Any preventive measures, even if they involve some *restraint or hardship upon individuals*, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. Anyone who infringes such regulations will become the proper subject of punishment." (The emphasis is mine).

Later in his judgment at page 269 he went on to say:

> "One of the most obvious means of taking precautions against dangers such as are enumerated is to impose some restriction on the freedom of movement of persons whom there may be any reason to suspect of being disposed to help the enemy. It is to this that regulation 14B is directed. The measure is not *punitive but precautionary.*"

In *Gopalan v. State of Madras* (6) the Supreme Court of India, page 27, Mukherjee J., at page 91 quoting Lord Finlay in *Rex v. Halliday (supra)* said:

> "The word 'preventive' is used in contradistinction to the word 'punitive'. The object is not to punish a man for having done something but to intercept him before he does it and to prevent him

from doing it. No offence is proved, nor any charge formulated; and the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence, vide Lord Macmillan in *Liverridge v. Anderson* (7)".

Shukla in the Constitution of India 7th Ed., page 134 states:

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis for detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu *acting in a manner similar to his past acts and preventing him by detention from doing so* (The underscoring is mine). The power of preventive detention is qualitatively different from that of punitive detention."

I accordingly hold that Regulation 17(1) of the Emergency Regulations is not violative of Article 13(4) and is not ultra vires the Constitution.

The petitioner finally attacked the validity of Wijesekera's arrest, and the two Detention Orders made against him on the ground that they were made mala fide at the instance of Mr. Ronnie de Mel, the Minister of Finance. The petitioner stated that Mr. Ronnie de Mel was not happy about Wijesekera's election in 1986 as the Basnayake Nilame of the Sri Vishnu Maha Devalaya, Devinuwara, after defeating by a majority B. A. Perera who had held that post over two decades, Wijesekera was making elaborate arrangements to hold the annual perahera from August 5th to the 16th, 1987 and the petitioner states that the 2nd and 3rd respondents took him into custody on 30.7.87 on a groundless complaint made by Mr. Ronnie de Mel on the telephone to the 2nd respondent on the morning of the 30th July, in an order to prevent Wijesekera from officiating at the forthcoming perahera. But the complaint 1R4 and the statement 1R4a of Mr. de Mel, taken along with the other statements recorded by the Police at that time do not bear out the petitioner. It was also stated that Wijesekera was the organiser of the rival S.L.F. Party for the Devinuwara Electorate during the Referendum held in 1982, while Mr. de Mel was the U.N.P. Member of Parliament for Devinuwara. The Minister failed to get a majority of votes and was removed from Devinuwara and appointed Member of Parliament for Bulathsinghala. The Finance Minister was embittered by his defeat and was now

seeking to take political revenge on Wijesekera. But the Referendum was held in 1982 and if the Minister was inclined to take political revenge against Wijesekera it is hardly likely that he would have waited so long till 1987 to do so.

The first Detention Order dated 31.7.87 was issued by the 1st respondent on Wijesekera under Regulation 19(2) of the Emergency Regulations, detaining him at the Matara Police Station. Under this regulation Wijesekera was to be detained for a period not exceeding ninety days from the date of his arrest. It is alleged that on 3.8.87, while this Detention Order was in operation at the funeral of Jinadasa Weerasinghe who was the M.P. for Tangalle, the Minister of Finance in the presence of the 1st to the 3rd respondents called B. A. Perera and told him that he would have to officiate at the August Perehera because Wijesekera would not be free to do so. This is denied by the 1st and 3rd respondents in their affidavits and by B. A. Perera, himself in his affidavit 1R2.

Under the proviso to Regulation 19(1) a person arrested and detained under the Regulation 18 must be produced before a Magistrate within a reasonable time, and in any event, not later than thirty days after such arrest. An application purporting to be under this proviso was made by Wijesekera's wife in the Magistrate's Court of Matara on 3.8.87, within four days of his arrest, praying that Wijesekera be produced before the Magistrate and that his detention be declared to be a penalty, violative of Article 13(4) of the Constitution, which relief was not within the jurisdiction of the Magistrate to grant. Order was however made by the acting Magistrate that Wijesekera be produced in court on the 4th August. But on the night of the 3rd August Wijesekera was taken to the Magazine Prison in Colombo upon a Detention Order made by the 5th respondent under Regulation 17(1).

It was submitted that this course of action was adopted by the respondents in order to circumvent the order of the acting Magistrate. The respondents have denied this allegation in their affidavits. It would appear that by 3.8.87 the statement of another witness called Wimalasiri had been recorded on 2.8.87 supporting the statements of the other witnesses. When the 4th respondent ascertained from the 2nd Respondent on 3.8.87 what the nature of the evidence against Wijesekera was, he decided to request the 5th

respondent to issue a Detention Order under Regulation 17(1) evidently as more appropriate than a Detention Order under Regulation 19(2). The 5th respondent has satisfied himself on this report and no doubt, on other material available to him, that a detention order under Regulation 17(1) was necessary and has issued it (1 R 5). He was justified on the available material in making such an order, in good faith.

In *Hirdaramani v. Ratnavale* (8), G. P. A. Silva, J., said:

"If a conclusion of good faith is equally possible, that is to say, if the circumstances show that the Permanent Secretary could have honestly held the opinion which he did before making an order for detention the submission of counsel (of bad faith) must fail. The Permanent Secretary could therefore have formed an opinion even if the material available fell short of what is required for proof. In the words of Lord MacMillan in *Liversidge v. Anderson* (7): 'The question is one of preventive detention justified by reasonable probability, not of criminal conviction, which can only be justified by legal evidence. As I have indicated a 'a court of law manifestly could not pronounce upon the reasonableness of the Secretary of State's cause of belief unless it were able to place itself in the position of the Secretary of State and were in possession of all the knowledge, both of facts and of policy, which he had. However, the public interest must, by the nature of things, frequently preclude the Secretary of State from disclosing to a court or to any one else the facts and reasons which actuated him'."

The petitioner states that on the 10th August, 1987 after the perahera was over the Finance Minister visited the Devinuwara temple with the District Minister for Matara and the M.P. for Devinuwara and told the Chief Incumbent of the Temple that Wijesekera is a thief and the Minister would remove the black coat of Wijesekera and not allow him to be the M.P. for Devinuwara. The Petitioner has annexed two affidavits X2 and X3 from two persons who purported to have over-heard it. The Chief Incumbent of the temple has filed an affidavit (1R7) denying that Mr. Ronnie de Mel uttered those threats when he visited the temple on 10.8.87. In the affidavit X3 the Superintendent of Police was alleged to be standing in the compound of the avasaya where this conversation is alleged to have taken place, but he also specifically denies in his affidavit the petitioner's allegation.

The allegation of mala fides made by the Petitioner has been denied by the respondents and other persons in their affidavits so that it is not possible to come to a positive finding that it has been established.

For the reasons given I am of the view that Wijesekera's fundamental rights have not been violated. The petitioner's application is dismissed without costs.

SENEVIRATNE, J.—I agree.

H. A. G. DE SILVA, J.—I agree.

Application dismissed.