

LERINS PEIRIS

v.

NEIL RUPASINGHE, MEMBER OF PARLIAMENT AND OTHERS

SUPREME COURT
AMERASINGHE, J.
WIJETUNGA J. AND
GUNASEKERA, J.
SC APPLICATION 126/99 (FR)
19th NOVEMBER, 1999

Fundamental rights - Expulsion of the petitioner from a workshop - Freedom of speech, assembly and association - Article 14(1) (a), (b) and (c) of the Constitution - Executive action.

The petitioner was the Chairman of a non-governmental organization. One of its objects was the establishment of the Muturajawela United Peoples Organization (MUPO). The organization was aimed at implementing the Muturajawela Master Plan for the development of the Muturajawela/Negombo Lagoon Area. There was some tension between politicians and others regarding the Muturajawela Project, so much so, the President herself appeared to have decided to instruct Members of Parliament against interfering with the Master Plan implementation process.

On 5.1.1999, the petitioner was invited by the Chairman of the Central Environmental Authority to attend a workshop concerning the Muturajawela/Negombo Lagoon System. While the petitioner was seated at the meeting place the 1st respondent (Member of Parliament for the area) and the 2nd respondent (Chairman, Wattala Pradeshiya Sabha) who were there with the 3rd-5th respondents (Members of the Pradeshiya Sabha) told the petitioner that he should be kept out of the meeting. When the petitioner protested, the 2nd respondent and others assaulted him; and on the instructions of the 1st and 2nd respondents the Manager of "the Marsh" the venue of the meeting and police officers requested the petitioner to leave and seek medical treatment. The petitioner left the place, made a complaint to the Pamunuwa Police Station and received treatment at the Ragama Hospital.

Held :

(1) The conduct of the respondents constitutes executive action, chargeable to the State.

(2) The 1st, 2nd, 3rd 4th and 5th respondents violated the petitioner's fundamental rights guaranteed by Article 14(a) and (c) of the Constitution.

Per Amerasinghe, J.

"Where a person acts under colour of his office or to the extent that in the opinion of the Court he or she appears to the public to be exercising official functions, or panoplied with State power, such conduct may be attributable to the State as executive action."

Per Amerasinghe, J.

"The unfettered interchange of ideas from diverse and antagonistic sources, however unorthodox or controversial, however shocking or offensive or disturbing they may be to the elected representatives of the people or any section of the population, however hateful to the prevailing climate or opinion, even ideas which at the time a vast majority of the people and their elected representatives believe to be false and fraught with evil consequences, so long as they are lawful, must not be abridged."

Cases referred to :

1. *Velumurugu v. A. G. and others* F. R. D. Vol 1 p. 180 at p. 224
2. *Wijeratne v. Vijitha Perera and Others* SC Application No. 379/93 SC minutes 2nd March, 1994
3. *Faiz v. Attorney - General and Others* (1995) 1 Sri L R 372 at pp 380 - 383
4. *Deshpriya and Another v. Municipal Council, Nuwara Eliya and two others* (1995) 1 Sri L R 262 at p. 369
5. *Upaliratne and Others v. Tikiri Banda and Others* (1995) 1 Sri L R 165 at pp 204 - 205
6. *Palihenage Don Saranapala v. S. A. D. B. R. Solanga Arachchi and Others* (1999) 2 Sri L R 166

7. *Wickramatunga v. Anuruddha Ratwatte and Others* (1998) 1 Sri L 201 at 220 - 221
8. *Rahuma Umma v. Bertj Premalal Dissanayake* (1996) 2 Sri L R 293 at pp 297 - 299
9. *Channa Pieris v. Attorney - General and Others* (1994) 1 Sri L R 1
10. *U. S. v. Schwimmer* 279 US 644 - 653 (1928)
11. *Red Lion Broadcasting Co. v. F. C. C.* 395 U. S. 367 S. Ct. 1794 L. Ed 2d 371 (1961)
12. *Federal Communications Commission v. League of Women Voters* 486 U. S. 364 - 104 S. Ct. 3106 82 L. Ed. 278 (1984)
13. *Abrams v. United States* 250 U. S. 616 - 40 S. Ct. 7 - 63 L. Ed 1173 (1919)
14. *National Association for the Advancement of Coloured People v. Alabama Ex Rel. Patterson* 357 U. S. 449 - 78 S. Ct. 11633 2 L. Ed 1488 (1958)
15. *Palko v. Connecticut* 302 U. S. 319 - 658 S. Ct. 149 - 82 L. Ed 288 (1937)
16. *West Virginia State Board of Education v. Barnette* 319 U. S. 624 - 63 S. Ct. 1178 - 87 L. Ed. 1628 (1941)

APPLICATION for relief for infringement of fundamental rights.

R. K. W. Goonesekere with *J. C. Weliamuna* for petitioner

Padmasiri Nanayakkara with *Tillekasiri Alahakoon* for 1 - 5 respondents.

Cur. adv. vult.

December 08, 1999

AMERASINGHE, J.

There was a non-governmental organisation known as the Janodhaya Sajeewana Kendraya. The petitioner was the Chairman/Chief Animator of the organization. The organization was a non-political community based centre. One of its main achievements was the establishment of the Mutturajawela United Peoples Organization (MUPO). The organization aimed

at implementing the Maturajawela Master Plan initiated by the Greater Colombo Economic Commission for the sustainable development of the Maturajawela / Negombo Lagoon area.

It would appear that there was some tension between politicians and others who were concerned with the implementation of the Maturajawela Project. At a meeting with Her Excellency the President at which the petitioner was present the subject of political interference was taken up and the President, according to the minutes of the meeting, was to "instruct the Members of Parliament from the area to refrain from interfering with the master plan implementation process".

The petitioner was invited by the Chairman of the Central Environmental Authority in collaboration with the Integrated Resources Management Programme in Wetlands to attend a workshop on the 5th of January 1999 on the establishment of an Academic Network/Commission Research on the Integrated Maturajawela and Marsh and Negombo Lagoon System.

According to the petitioner, he proceeded to the meeting place and took his seat when one Chandana Perera informed the petitioner that the 1st respondent was waiting outside to meet the petitioner.

The petitioner went up to the 1st respondent who was with the 2nd to the 5th respondents and about 20 other persons. When the petitioner inquired why he had been summoned, the 1st and 2nd respondents told the petitioner that he should be kept out of the meeting; otherwise the 1st and 2nd respondents would not allow the meeting to start and to continue. When the petitioner protested and inquired as to what right the 1st to the 5th respondents had to prevent the petitioner from participating in the meeting, the 2nd respondent and others had assaulted the petitioner. The 1st and the 2nd respondents told the Manager of "The Marsh", at which the meeting was to be held,

that if the meeting was to continue the petitioner should be asked to leave. Police officers as well as the Manager appealed to the petitioner to go and seek medical treatment. The petitioner thereafter left the place and went to the Pamunugama Hospital. After he had made a statement at the Pamunugama Police Station, the petitioner was directed to the Ragama Hospital where he was treated.

The 1st respondent states that he and the 2nd to the 5th respondents were invited to participate in the meeting and that he and the said respondents were waiting outside the meeting hall until the proceedings commenced. Upon seeing the petitioner he "inquired from him about the involvement of his organization in the project". The petitioner in turn questioned the respondent as to what right he had to ask that question and stated further that he had "done a better service in the area and that he could not show his might to him" and that he was not "scared of thuggery" and stated that the 1st respondent was a "thug". When the petitioner became abusive the crowd "became restless" and the Manager of the premises with the help of the Police "requested and persuaded the petitioner to leave the premises so that the meeting could proceed smoothly". The petitioner "being persuaded" left the premises and the meeting commenced thereafter. The 1st respondent was hurt by the petitioner's description of him as a "thug" and made a complaint to the Pamunugama Police about the incident.

In the complaint made by the 1st respondent to the Police the 1st respondent stated that the petitioner asked him why he was looking for him. That is more consistent with the petitioner's version that the 1st respondent sent for him rather than the 1st respondent's version that he happened to meet the petitioner outside the meeting hall. The 1st respondent stated that he asked the petitioner "about the involvement of his organization in the project." One would have expected him as the Member of Parliament for the area to have known of the involvement of MUPO in the Muthurajawela Project. In fact in paragraph 3 of his affidavit the 1st respondent admits that he

was aware that MUPO was "participating in discussions over this project." The 1st respondent does not deny that the petitioner was assaulted but states that he left the hall due to "persuasion" by the Officer in Charge of the Police Station and by the Manager of the meeting place. On the other hand, the Medico Legal Report furnished by the 1st respondent shows that the petitioner's complaint that he was assaulted was consistent with his narration of the incident. In fact, the statement by the petitioner to the Police as well as the statement made to the Judicial Medical Officer, Colombo North on 6/1/99 show that some people present were more than merely "restless". Admittedly, there were no detectable external injuries and no abnormalities found after observation of any head injury. However, he suffered from tenderness in the shoulder region which the Medical Officer stated could have been sustained due to an assault.

Admittedly, learned counsel for the respondents repeatedly stated that the 1st to 5th respondents were present on the occasion of the workshop as invitees. So was the petitioner. The 1st to 5th respondents were there, in the words of learned counsel appearing on their behalf, as "elected representatives of the people." They were not there as private citizens nor as legislators but as persons whose views were sought on the promotion and implementation of policy relating to certain aspects of an important project of public significance. As such, it might be reasonably inferred, they were seen by the convenor of the workshop, the Central Environmental Authority, as well as by the police officer and Manager of the venue of the meeting who were said to have "persuaded" the petitioner to leave the place, as well as by the other invitees, as persons exercising functions attached to their offices and positions. They were present and were seen to be exercising their official duties, business or functions.

In the circumstances, in my view, their conduct is therefore chargeable to the State. Where a person acts under colour of his office or to the extent that in the opinion of the Court he or

she appears to the public to be exercising official functions, or panoplied with State power, Such conduct may be attributable to the State as executive action. See per Sharvananda, J. (as he, then was) in *Velmurugu v. A. G. and Others*,⁽¹⁾ per Fernando J. in *Wijeratne v. Vijitha Perera and Others*,⁽²⁾ per Fernando, J. in *Faiz v. Attorney General & Others*,⁽³⁾ per Fernando, J. in *Deshapriya and Another v. Municipal Council Nuwara Eliya and Two Others*,⁽⁴⁾ per Amerasinghe, J. in *Upaliratne and Others v. Tikiri Banda and Others*,⁽⁵⁾ per Amerasinghe, J. in *Palihenage Don Saranapala v. S. A. D. B. R. Solanga Arachchi and Others*,⁽⁶⁾ per Amerasinghe, J. in *Wickrematunga v. Anuruddha Ratwatte and Others*⁽⁷⁾ at pp. 220-221; per De Silva, C. J. in *Rahuma Umma v. Berty Premalal Dissanayake*⁽⁸⁾.

The respondents stated that the petitioner left the place because he was "persuaded" by a police officer and by the person in charge of the meeting place to leave the premises. He was not prevailed upon by some legitimate process to leave the place voluntarily. He did leave the place. Such a course of action, in my opinion, was forced upon the petitioner by the hostile circumstances created by the 1st to 5th respondents. The petitioner it seems was a capable and virtuous fighter on behalf of the rights of the people. Indeed it seems that precisely because he was a valiant and, moreover, formidable fighter on their behalf, representing as he did about 1000 families in the area over which the 1st to 5th respondents also had authority, the 1st to 5th respondents who had their own programme resented his participation at the workshop.

The upshot of the incident was that the petitioner could not participate at the workshop. And in the process the petitioner was prevented from exercising his fundamental rights of freedom of speech and expression, the freedom of peaceful assembly and freedom of association guaranteed by Article 14(1) (a), (b) and (c) of the Constitution. Those are not absolute rights; they are rights that may be curtailed in the extraordinary circumstances set out in Article 15 of the

Constitution. It was no part of the case of the 1st to 5th respondents that their case fell within such extraordinary circumstances. With regard to the alleged violation of the Constitution they offered no defence at all, except to suggest that they had nothing to do with the non-participation of the petitioner since the petitioner had been "persuaded" by the Manager of the meeting place and the Police to leave the place so that the meeting could go on "smoothly".

The 1st to the 5th respondents had intimidated the petitioner by assaulting him or instigating or permitting the assault and inducing or encouraging the Police and the Manager of the meeting place to "persuade" the petitioner to leave the premises, commending to him, perhaps, the view that "The better part of valour is discretion" (Henry IV, Part I, v. IV. 120).

I am of the view that the 1st to 5th respondents thereby effectively prevented the petitioner from exercising his rights of freedom of speech, peaceful assembly and freedom of association guaranteed by the Constitution.

Leave to proceed had been granted in respect of the alleged violation of Article 11. The petitioner, an accredited representative of the public, was assaulted in public. However, learned counsel for the petitioner did not wish to press the matter, and therefore I make no observations in that regard.

"The theory of freedom of expression, as Thomas Emerson observed, "is a sophisticated and even complex one. It does not come naturally to the ordinary citizen but needs to be learned. It must be restated and reiterated not only for each generation, but for each new situation." Perhaps the 1st to the 5th respondents, although they were "elected representatives of the people", found it difficult to understand the system of freedom of expression as envisioned by the language of the Constitution. In *Channa Pieris v Attorney General and Others*,⁽⁹⁾ I endeavoured to explain at some length the intrinsic bases of the right to freedom of expression, namely, the desire

to discover the truth, the need of every man and woman to achieve personal fulfilment, and the demands of a democratic regime. It seems that the case before me calls for a reiteration of what was said in *Pieris*. Instead of burdening this judgment with a repetition of what was said, I would call attention to the observations made in that judgment at pages 130-142. I should, however, like to say the following by way of emphasis, having regard to the fact that learned counsel repeatedly referred to the fact that the 1st to the 5th respondents were "elected representatives of the people".

As elected representatives of the people, they were admitted to office upon solemnly declaring and affirming or swearing to the best of their abilities to "uphold and defend the Constitution . . ." Article 4(d) of the Constitution provides that "the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided." The 1st to the 5th respondents failed to adhere to the directions given in Article 4(d).

As the "elected representatives of the people", they ought, in my view, to have appreciated the fact that the continued vitality of free speech is essential if democracy is to flourish and indeed if democratic institutions like Parliament and Pradeshiya Sabhavas of which, with justification, they proudly announced themselves to be members, were to survive.

The representative of the majority of electors are entrusted with the powers of the State; but such powers are exercised within a framework of constitutional restraints designed to guarantee to all citizens certain fundamental rights which are set out in Chapter III of the Constituion. These rights, including the right of free speech and the cognate rights of freedom of assembly and association, are important both as values into themselves, benefitting the individual, and as having an instrumental value, bringing aggregate benefits to society.

Freedom of thought and expression is an indispensable condition if Sri Lanka is to be more than a nominally representative democracy. Holmes, J. in *U.S. v. Schwimmer*,⁽¹⁰⁾ observed that "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is in principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate." Speech, in the sense of expression by words or deeds is the way in which thoughts are made known to others. Speech concerning public affairs is more than self-expression: it is the essence of self-government. To make an informed and educated decision in choosing his or her elected representative, in deciding to vote for one group of persons rather than another, a citizen must necessarily have the opportunity of being informed and educated with regard to proposed policies. Members of the public and their representatives, like the petitioner, must be able to freely and openly, without previous restraint of fear of harassment, discuss such matters and obtain clarification so as to be able to form judgments affecting their own lives. Moreover, it is only by discussion that proposals adduced can be modified so that measures desired by the voter can be brought about. The 1st to the 5th respondents it seems failed to notice that the right of free speech enhances the contribution to social welfare, which enlarged the prospect for individual self-fulfilment.

Between elections, it is only through free debate and exchange of ideas that the elected majority can be made responsive to and reflect the will of the people. The election of representatives does not imply that they may do as they will. Members of the public must be free to influence intelligently the decisions of those persons for the time being empowered to act for them in matters which may affect themselves. Every legitimate interest of the people or a section of them should have the opportunity of being made known and felt in the political process. There are many matters of public concern, either because they arise in between elections and cannot be decided by universal suffrage or because they are not based on

political loyalties or preferences, are nevertheless matters on which the individual citizen must communicate his or her ideas if representative democracy is to work. The evidence adduced shows that the Muthurajawela United Peoples Organization, of which the petitioner was the Chairman and Chief Animator, manifested the qualities of an organization concerned with the rights of people in the relevant geographical area. The health of a society of self-government is nurtured by the contributions of individuals to its functioning. No person or group of persons, not even majorities and elected representatives of the people, can in my view, claim to have a monopoly of good ideas. Many a strange and singular idea has in time, through argument and debate, had the power to get itself accepted as the truth. The unfettered interchange of ideas from diverse and antagonistic sources, however unorthodox or controversial, however shocking or offensive or disturbing they may be to the elected representatives of the people or any sector of the population, however hateful to the prevailing climate or opinion, even ideas which at the time a vast majority of people and their elected representatives believe to be false and fraught with evil consequences, so long as they are lawful, must not be abridged.

There is a vital societal interest in the continued vitality of free speech. It is only the vigorous preservation of an uninhibited market place of ideas that will ensure that truth will ultimately prevail. Cf. *Red Lion Broadcasting Co. v. F. C. C.*,⁽¹¹⁾ *Federal Communications Commission v. League of Women Voters*,⁽¹²⁾ As Justice Holmes observed in *Abrams v. United States*,⁽¹³⁾ "Persecution of the expression of opinions seems to be perfectly logical. If you have no doubt of your premises or your power and want a result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But

when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution." An assumption underlying Article 14(1) (a) of the Constitution is that speech can rebut speech, propaganda will answer propaganda and that free debate of ideas will result in the wisest policies, at least for the time being.

In the matter before us, not only did the actions of the 1st to the 5th respondents prevent the petitioner from exercising his right of free speech, but they also violated his associational rights relating to his expressive activities. The effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. Cf. *National Association for the Advancement of Colored People v. Alabama Ex rel. Patterson*,⁽¹⁴⁾ Indeed, freedom of association is an indispensable means of preserving other individual liberties like free speech. It has been described as "the matrix, the indispensable condition of nearly every other form of freedom". *Palko v. Connecticut*,⁽¹⁵⁾ see also *Channa Pieris* (supra) at pp. 143-147. According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression led by the majority and their elected representatives. Justice Jackson in *West Virginia State Board of Education v. Barnette*,⁽¹⁶⁾ cited with approval in *Wijeratne v. Vijitha Perera and Others*, (supra) said; "Those who begin coervice elimination or dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. It seems trite but necessary to say that the First Amendment was designed to avoid these ends by avoiding these beginnings."

For the reasons stated in my judgment, I declare that the first, second, third, fourth and fifth respondents violated the petitioner's fundamental rights guaranteed by Article 14(1)(a), (b) and (c) of the Constitution.

In the light of the observations made heretofore, the violation of the petitioner's fundamental rights of freedom of speech, assembly and association deserves to be described as reprehensible.

I make order that the first, second, third, fourth and fifth respondents shall each pay the petitioner a sum of Rs. 50,000 within three months of the date of this Order.

I make further order that the first, second, third, fourth and fifth respondents shall each pay the petitioner a sum of Rs. 5000 as costs within three months of the date of the Order.

WIJETUNGA, J. - I agree.

GUNASEKERA, J. - I agree.

Relief granted.