

**DEVANANDA**  
**v.**  
**DAYANANDA DISSANAYAKE**  
**(COMMISSIONER OF ELECTIONS AND OTHERS)**

COURT OF APPEAL

YAPA, J.

KULATILAKE, J.

CA 314/99

19<sup>TH</sup> JULY, 1999

24<sup>TH</sup> SEPTEMBER, 1999

19<sup>TH</sup> OCTOBER, 1999

12<sup>TH</sup> NOVEMBER, 1999

06<sup>TH</sup>, 07<sup>TH</sup> DECEMBER, 1999

01<sup>ST</sup>, 14<sup>TH</sup>, 30<sup>TH</sup> MARCH, 2000

27<sup>TH</sup> APRIL, 2000

*Parliamentary Elections Act 1 of 1981 - S. 64 (2) (4) Filling of vacancies if nomination paper is exhausted - Nomination of members outside the nomination list - Is it permissible? Constitution - Article 13(b), Article 101(1) (h) - otherwise.*

The Petitioner is a Member of Parliament and the Secretary General of a recognised political party E. P. D. P. The Petitioner contested the electoral district of Jaffna at the General Elections of 1994 as the Leader of the Independent Group 2, which had 13 members in the 'Nomination Paper'; of the 13 candidates Nos 1 - 9 were declared elected. Soon after the election No. 9 in the list resigned and No. 10 was thereafter declared elected. The Petitioner contends that Nos. 11, 12, 13 (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents) resigned. Nos. 4 and 10 were expelled from the Party.

The Petitioner thereafter made representations to the 1<sup>st</sup> Respondent seeking permission to nominate two members from outside the Nomination list, as the nomination paper has already been exhausted. The 1<sup>st</sup> Respondent however certified the names of the 3<sup>rd</sup> (No. 11) and the 4<sup>th</sup> Respon-defendant (No. 12); and gazetted the names of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents declaring them as members of Parliament.

The Petitioner challenged this decision on the ground that, it is unlawful without authority more, so, as the 3<sup>rd</sup> and 4<sup>th</sup> Respondents had resigned from the group. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents contention is that, the letter of resignation were not genuine and that they have been forged or fabricated.

**Held :**

- (i) The Respondents have at no stage denied the signatures appearing in the letter of resignation. Their argument seems to be that, the Petitioner has made use of the papers obtained by him signed in blank at or about the time of the General Election of 1994 to fabricate these letters of resignation.

*Per Yapa J.,*

“It is hard to believe firstly that the Respondents who were intending to represent the voters in Parliament are so irresponsible and foolish to have given such papers signed in blank, so as to give him a free hand to use their signatures for whatever purpose the Petitioner thought it fit, secondly even assuming that the Respondents were so stupid to have given such papers signed in blank, it would still appear impossible for one to believe that the signatures are so placed in the manner that is found in the resignation letters.”

- (ii) According to S.64(3), exhaustion of a Nomination Paper can take place not only by *Election or otherwise* but also where none of the candidates whose names remain on such a nomination paper have secured any preferences.
- (iii) The word “otherwise” in S.64(3) has an extended meaning, exhausted by election or otherwise would necessarily include, death, expulsion, or resignation of a candidate whose name appears in the nomination paper. Such an interpretation is in harmony with the 1978 Constitution.

Further held -

- (i) In the event of there being no dispute or controversy with regard to the expulsion or the resignation, the authorities should comply with the provisions of S.64(3) and S.64(4) of the Parliamentary Elections Act. for the filling of vacancies. If a situation arises where there is a dispute or controversy on the matter of expulsion or resignation then such a dispute may well have to be resolved by Court before the Authorities could take action in terms of S.64(3), S.64(1).

**APPLICATION** for Writs in the nature of Certiorari and Mandamus.

**Case referred to :**

1. *National Association of Local Government Officers vs. Bolton Corporation* - 1943 Ac 166 at 177.

*L. C. Seneviratne P. C.*, with *U. Abdul Najim* for Petitioner.

*K. Sripavan D. S. G.*, for 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

*Srinath Perera, P. C.*, with *Nevil Ananda* for 3<sup>rd</sup> Respondent.

*Faiz Musthapha P. C.*, with *N. M. Suhaid* and *A. M. Pandiraratne* for 4<sup>th</sup> Respondent.

*K. S. Ratnavel* with *Gamini Senanayake* for 5<sup>th</sup> Respoondent.

*Cur. adv. vult.*

August 04, 2000.

**HECTOR YAPA, J.**

The petitioner is a Member of Parliament representing Electoral District of Jaffna. He is also the Secretary-General of the Eelam People's Democratic Party (hereinafter referred to as the E. P. D. P.) which is a recognized political party. Petitioner contested the Electoral District of Jaffna at the General Elections of 1994 as the leader of the Independent Group No. 2. At the relevant time the 1<sup>st</sup> respondent was the Commissioner of Elections. The 2<sup>nd</sup> respondent was the Returning Officer for the Electoral District of Jaffna in his ex officio capacity. The names of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents appeared as candidates Nos. 11, 12 and 13 in the nomination paper, according to their preferential vote at the poll (General Elections 1994) for the Electoral District of Jaffna. The 6<sup>th</sup> respondent was the Secretary General of Parliament.

Petitioner has stated in his application dated 12.04.1999, that prior to the 1994 General Elections the E. P. D. P. and the United National Party (hereinafter referred to as the U. N. P.) came to an understanding to submit their nominations under the leadership of the petitioner as an Independent Group for the Electoral District of Jaffna to contest the Parliamentary

Elections of 1994. Consequent to the said understanding they formed an Independent Group under the petitioner's leadership which consisted of 10 members of the E. P. D. P. and 3 members of the U. N. P., who are the 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> respondents in this application. These 13 members submitted their nomination paper for the Parliamentary Elections of 1994, to the Returning Officer for the Electoral District of Jaffna and this group was recognised for all purposes as the Independent Group No. 2, in terms of the provisions of the Parliamentary Elections Act, No. 1 of 1981, contesting the Electoral District of Jaffna. After the poll these 13 candidates from the Independent Group No. 2, were placed in the following order according to their preferential vote.

1. Nythiyanantha Douglas Devananda.
2. Alagaiah Rasamanickam.
3. Umapathisivam Baskaran.
4. Rajendram Ramamoorthy.
5. Nadarajah Atputharajah.
6. Murugesu Chandrakumar.
7. Sangarapillai Sivathanan.
8. Sinniah Thangavel.
9. M. A. Gafoor Zafarullah.
10. Rajendram Rameshvaran.
11. Suppiah Jeganathan.
12. Mohamed Sultan Raheem.
13. Nadarajah Sivarajah.

Of the said 13 candidates, candidates Nos. 01 to Nos. 09, were declared elected to the Parliament from the Independent Group No. 2, for the Electoral District of Jaffna. Soon after the election held in 1994, Mr. M. A. Gafoor Zafarullah tendered his resignation and in terms of Parliamentary Elections Act, No. 1 of 1981, Mr. Rajendram Rameshvaran candidate No. 10, was declared elected by the Commissioner of Elections

to represent the Independent Group No. 2, for the Electoral District of Jaffna.

The petitioner alleges in his application that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who were candidates Nos. 11, 12 and 13 according to the preferential vote at the 1994 Elections, tendered their resignations from the Independent Group No. 2, for the Electoral District of Jaffna by their respective letters dated 22.07.1995 and thereby they ceased their relationship with the Independent Group No. 2. In their letters of resignation addressed to the petitioner the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have inter alia stated as follows:

"I wish to inform you that I am no longer in agreement with the policies followed by you and I am not able to continue as a member of the Independent Group led by you. I therefore wish to inform you that this letter should be treated as my immediate resignation from the Independent Group No. 2, for the Electoral District of Jaffna for all purposes."

The three resignation letters of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondent are produced marked P1(a), P2(a) and P3(a). Thereafter the petitioner has forwarded the said resignation letters of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to the Returning Officer for the Electoral District of Jaffna, (2<sup>nd</sup> respondent) for his information and necessary action along with the petitioner's covering letters dated 24.07.1995 produced marked P1, P2 and P3. In addition the petitioner has sent the copies of the said letters of resignation of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents under registered cover to the Commissioner of Elections (1<sup>st</sup> respondent) and the Secretary General of Parliament (6<sup>th</sup> respondent) for their information and necessary action.

The petitioner has further stated in his application that in August 1994, a Member of Parliament of his group in writing indicated his willingness to resign from Parliament and therefore by his letter dated 04.09.1995 produced marked P5, the petitioner sought the advice of the 1<sup>st</sup> respondent with

regard to the filling of the vacancy, in the event of the said Member of Parliament resigning, since by then the nomination paper of the Independent Group No. 2, for the Electoral District of Jaffna has already been exhausted by the resignation of the three remaining members of the group referred to above, namely, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents. The 1<sup>st</sup> respondent (Commissioner of Elections) replied the said letter (P5) by his undated letter of September 1995, produced marked P6, which stated inter alia as follows. "There is no provision in the Parliamentary Elections Act No. 1 of 1981 to cause a vacancy to be filled by a member nominated outside the nomination paper until all the candidates whose names appear in the nomination paper submitted by any recognised political party or Independent Group in respect of an electoral district have been exhausted by election or otherwise." Thereafter the petitioner by his letter dated 20.10.1995 produced marked P7, sought clarification regard to the contents of the said letter P6, for which no reply was received. The petitioner however stated that subsequently he received a letter dated 15.12.1995 produced marked P8 from the Returning Officer for the Electoral District of Jaffna Mr. C. Pathmanathan who was the predecessor in office of the 2<sup>nd</sup> respondent, which stated that there is no provision under the Parliamentary Elections Act, No. 1 of 1981, for a candidate to resign from his candidature. It would appear that this reply is in response to a letter sent by the petitioner dated 24.07.1995, which has not been produced in the case. The petitioner did not take any further steps on the said letter P8, since Mr. R. Ramamoorthy did not resign and therefore the need to fill his vacancy as a Member of Parliament did not arise.

According to the application of the petitioner it would appear that, consequent to the two decisions of the Supreme Court in S. C. Special Applications Nos. 02/99 and 03/99 delivered on 30.03.1999, affirming the validity of the expulsion of the two Members of Parliament, namely, Mr. Rajendram Rameshvaran and Mr. Rajendram

Ramamoorthy from the Independent Group No. 2, two seats of the Independent Group No. 2, for the Electoral District of Jaffna in Parliament became vacant with effect from 30.03.1999. Hence the petitioner made representation to the 1<sup>st</sup> respondent on 01.04.1999, stating that the nomination paper of the Independent Group No. 2, for the Electoral District of Jaffna has already been exhausted with effect from 22.07.1995, due to the resignations of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and requested the 1<sup>st</sup> respondent to permit the petitioner to nominate two members from the Independent Group No. 2, (which has to be out side the nomination list) to be declared elected to represent the said group for the Electoral District of Jaffna in Parliament, in terms of the provisions of the Parliamentary Elections Act, No. 1 of 1981. This letter is produced marked P9. In this matter the position taken up by the petitioner is that, having regard to the constitutional and other statutory provisions as referred to in his application, the 1<sup>st</sup> respondent who is the Commissioner of Elections is legally bound to act in the following manner.

- (a) That the 1<sup>st</sup> respondent (Commissioner of Elections) is bound by law to call upon the 2<sup>nd</sup> respondent (Returning Officer) to furnish his return in Form M, two names from the Nomination Paper of the Independent Group No. 2, for the Electoral District of Jaffna, in order to fill the vacancies created in Parliament, in view of the above mentioned decisions of the Supreme Court.
- (b) Thereupon the 2<sup>nd</sup> respondent is bound in law to inform the 1<sup>st</sup> respondent that the names appearing in the Nomination Paper of the Independent Group No. 2, have been now exhausted.
- (c) Upon receipt of such information, the 1<sup>st</sup> respondent is bound by law to call upon the petitioner to nominate two persons who are members of the Independent Group No. 2, to fill the said vacancies.

Therefore under these circumstances the petitioner contends that, the 2<sup>nd</sup> respondent has no option other than to inform the 1<sup>st</sup> respondent that the nomination paper of the Independent Group No. 2, for the Electoral District of Jaffna, has been exhausted with effect from 22.07.1995. However, the petitioner states that the 2<sup>nd</sup> respondent unlawfully and acting without authority has certified the names of the 3<sup>rd</sup> and the 4<sup>th</sup> respondents and forwarded his return in Form M to the 1<sup>st</sup> respondent to declare them (3<sup>rd</sup> and 4<sup>th</sup> respondents) to be elected as Members of Parliament from the Independent Group No. 2, for the Electoral District of Jaffna, in order to fill the two vacancies created in Parliament due to the expulsion of the two members referred to above. Thereupon the 1<sup>st</sup> respondent has also acting unlawfully and without authority has proceeded to cause the publication of the Gazette notice declaring the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Members of Parliament from the Independent Group No. 2, for the Electoral District of Jaffna. The said Gazette Extraordinary No. 1074/10 dated 08.04.1999 relating to the filling of the said two vacancies mentioned above has been produced marked P10 and P11. The petitioner therefore has stated in his application that the publication of the said Gazette Notification marked P10 and P11 by the 1<sup>st</sup> respondent would cause irremediable loss and prejudice to the petitioner in his capacity as the leader and member of the Independent Group No. 2. Hence among other relief, the petitioner sought an interim order from the Court of Appeal staying the operation of the said Gazette Notification marked P10 and P11, until the final determination of this application. Since the Court of Appeal refused to grant the said interim relief, it would appear that the petitioner has obtained the said interim relief from the Supreme Court in S. C. Spl. L. A. No. 96/99, and the said interim order is to be operative until the conclusion of the proceedings in the Court of Appeal (vide P17). In addition the petitioner in this application has sought the following relief:-

(i) A writ of certiorari to quash the certificate made by the 2<sup>nd</sup> respondent in terms of Section 64 (2) of the Parliamentary Elections Act, No. 1 of 1981, in From M, naming the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Members of Parliament. (ii) A writ of Certiorari to quash the 1<sup>st</sup> respondent's Gazette notice i. e. Gazette Extraordinary bearing No. 1074/10 dated 08.04.1999 marked P10 and P11 which declared the 3<sup>rd</sup> and 4<sup>th</sup> respondents as having been elected as members of Parliament.

(iii) A writ of mandamus (petitioner should have applied for a writ of Prohibition in this instance) to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents not to consider 5<sup>th</sup> respondent's name in filling any future vacancy if any, from the Independent Group No. 2, for the Electoral District of Jaffna. (iv) A writ of Mandamus to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to treat the nomination paper of the Independent Group No. 2, for the Electoral District of Jaffna, as having been exhausted by election or otherwise in terms of the Parliamentary Elections Act, No. 1 of 1981, and (v) a writ of Mandamus to direct the 1<sup>st</sup> respondent to call upon the petitioner to nominate two members of the Independent Group No. 2, in order to fill the two vacancies in parliament on behalf of the Independent Group No. 2, for the Electoral District of Jaffna.

In the objections filed by the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents, the position taken up by them is that, the contents set out in the resignation letters; namely P1 (a), P2 (a) and P3 (a) are false in that there was no agreement between the petitioner and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents with regard to the acceptance of the policies followed by the E. P. D. P. It is further alleged by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that at about the time of the Parliamentary Elections of 1994, the petitioner had obtained number of documents (meaning papers) signed in blank from the said respondents for the purpose of utilizing them in connection with the said election. In other words the impression that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents were attempting to create in the mind of the Court is that the petitioner has prepared the said resignation letters P1 (a).

P2 (a) and P3 (a) using the papers he had obtained from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents signed in blank. Therefore the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents moved for the dismissal of the petitioner's application. However in the counter objections filed by the petitioner, he has taken up the position that, it was impossible to make use of the signatures on the blank sheets of paper to prepare the said letters of resignation. Further the petitioner has tendered seven affidavits marked P15 (a) to P15 (f) and P16 obtained from the other candidates who were elected to Parliament (except those expelled), from the Independent Group No. 2, for the Electoral District of Jaffna, stating that the petitioner had not obtained their signatures or that of any other candidate in blank papers at or about the time of the General Elections of 1994. It was further contended by the petitioner that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have not denied or contradicted the press interviews given to the Tamil Newspapers Virakasari and Thinakkural admitting their resignations, as evidenced by the publication appearing in the said newspapers marked P12, P13 and P14 with English Translations marked P12 (a), P13 (a) and P14 (a). In these circumstances the petitioner has maintained that, he is entitled to proceed with this application for the purpose of obtaining the relief as prayed for in the application.

At the hearing of this application learned Counsel for the petitioner submitted that in view of the expulsion of the two members of Parliament from the Independent Group No. 2, and which expulsion was affirmed by the Supreme Court on 30.03.1999, the question arose as to whether the next two candidates in the nomination paper of the Independent Group No. 2, namely, 3<sup>rd</sup> and 4<sup>th</sup> respondents are entitled to be declared elected as Members of Parliament. However the learned Counsel argued that, since the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who were candidates numbers 11, 12, and 13, in the nomination paper according to the preferential vote at the poll, have resigned from the membership of the Independent Group No. 2, they have ceased to be candidates of the said

Independent Group No. 2, and therefore they are not entitled by law to be declared as Members of Parliament from the Independent Group No. 2. Hence Counsel submitted that it was unlawful for the 1<sup>st</sup> and 2<sup>nd</sup> respondents to declare the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Members of Parliament. Learned Counsel further submitted that the contention of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that (i) they have not resigned from their membership in the Independent Group No. 2 and (ii) that in any event a candidate cannot lose his candidacy by resignation before he is declared a Member of Parliament is without any basis and therefore unacceptable. On this question of resignation, learned Counsel contended that the letters of resignation dated 22.07.1995 (P1 (a), P2 (a) and P3 (a)) of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents addressed to the petitioner who is the leader of the Independent Group No. 2 and the covering letters addressed by the petitioner dated 24.07.1995 to the 2<sup>nd</sup> respondent (Returning Officer) enclosing the said letters of resignation (Vide P1, P2 and P3) with copies to the 1<sup>st</sup> respondent (Commissioner of Elections) and the 6<sup>th</sup> respondent (Secretary General of Parliament) under registered article receipt dated 25.07.1990 marked P4, are sufficient proof of the fact that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have resigned from the Independent Group No. 2. Besides Counsel contended that the fact that the resignation letters P1 (a), P2 (a) and P3 (a) have been certified as having been duly signed by the respective respondents by a Justice of Peace establishes the genuineness of the said letters of resignation. According to the Counsel for the petitioner the Justice of Peace (who is now dead) who has certified the resignation letters was the same Justice of Peace who attested the oath of the said respondents contained in the nomination paper of the Independent Group No. 2. It may well be that since these letter of resignation were prepared in English the need arose to read and understand before signing them. Counsel further referred to the news items published in the Tamil paper Virakesari and Thinakkural of 14.04.1999 (vide P12 and P13 with English Translations P12 (a), P13 (a)) where the 4<sup>th</sup> respondent has admitted the fact

of his resignation from the Independent Group No. 2 and the news item published in the Tamil paper *Thinakkural* dated 16.04.1999 (vide P14 with English Translation P14 (a)), where the 3<sup>rd</sup> respondent has admitted the fact of his resignation from the said Independent Group. Therefore Counsel submitted that the failure of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to deny or contradict the said statements attributed to them, and for that matter, their failure to give any explanation as to why the said newspapers published such material relating to their resignations from the Independent Group No. 2, clearly indicates that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have in fact resigned from the Independent Group No. 2.

Learned Counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents on the other hand submitted that the said letters of resignation were not genuine and the said letters have been forged or fabricated. To support this contention, Counsel referred to the contents in the letters of resignation, which according to him were false, in that, at no stage there had been any agreement with regard to the acceptance of the policies followed by the petitioner. On the other hand, if the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had agreed with the policies of the E. P. D. P. there was absolutely no necessity for them to have joined with the petitioner to contest the elections as an Independent Group. Counsel pointed out that an examination of the three letters of resignation namely P1 (a), P2 (a) and P3 (a) would reveal that these letters are identical except for the fact that the addresses of the writers appearing on them are different. Further the presence of the certificate of the Justice of the Peace to the effect that "the above letter of resignation was read over . . . and after having understood the same signed in my presence on this 22<sup>nd</sup> day of July 1995 at Colombo" makes it more suspicious for the reason that, if the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents prepared the said letters, then, obviously they have prepared these letters having understood the contents thereof. If that be the case, then there was no necessity for a third party namely, a Justice of Peace to get the writers of these letters themselves to read it, in order

to ensure that the persons who wrote them understood the contents of such letters they themselves have written. Therefore learned Counsel submitted that these special features observed in these letters of resignation clearly showed and supported the fact that the letters of resignation marked P1 (a), P2 (a) and P3 (a) were fabrications.

One important fact to be noted in this case is that, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have at no stage denied the signatures appearing in their letters of resignation. Their argument seems to be that, the petitioner has made use of the papers obtained by him signed in blank from the three respondents at or about the time of the General Elections of 1994, to fabricate these letters of resignation marked P1 (a), P2 (a) and P3 (a). However it is hard to believe firstly that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who were intending to represent the voters in Parliament for the Electoral District of Jaffna at the General Elections of 1994, are so irresponsible and foolish to have given such papers signed in blank to the petitioner, so as to give him a free hand to use their signatures for whatever purpose the petitioner thought it fit. Further this conduct does not stand to reason. Secondly, even assuming that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had been so stupid to have given such papers signed in blank, it would still appear impossible for one to believe that their signatures are so placed in the blank sheets so as to enable the petitioner to fabricate these letters of resignation in the manner that is found in the resignation letters marked P1 (a), P2 (a) and P3 (a). A close examination of these three letters of resignation would clearly show that the signatures appearing on them have been placed after the said letters of resignation have been prepared. In addition it is to be noted that some of the Members of Parliament of the Independent Group No. 2 have tendered affidavits marked P15 (a) to P15 (f) and P16 denying categorically that the petitioner had obtained on blank sheets of paper the signatures of the candidates of the Independent Group No. 2, at or about the time of the General Elections 1994. Another factor that weighs heavily against the 3<sup>rd</sup> and 4<sup>th</sup> respondents

is the fact that they have not denied or explained the interviews granted by them to the press namely, the Tamil Newspapers Virakesari and Thinakkural (P12, P13 and P14) referred to above. This fact supports the position taken up by the petitioner that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have in fact resigned. If these news items which appeared in the press were incorrect, we are unable to understand why the 3<sup>rd</sup> and 4<sup>th</sup> respondents remained silent without contradicting that position. After all, these news items refer to the interviews granted by the 3<sup>rd</sup> and 4<sup>th</sup> respondents personally. In respect of the 5<sup>th</sup> respondent there is also another letter dated 24.07.1995 signed by the 5<sup>th</sup> respondent addressed to the 1<sup>st</sup> respondent (marked by the Counsel for the petitioner as P18 at the hearing of this application) where he (5<sup>th</sup> respondent) has admitted that he has handed over his resignation on 22.07.1995 as a member of the Independent Group led by Mr. N. Douglas Devananda. (the petitioner in this application). Authenticity of this letter has not been challenged.

Another relevant observation to be made here is that, the resignations of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from the Independent Group No. 2, seems to have taken place in the year 1995, when there was no prospect of any vacancies arising in Parliament to be filled from the nomination list. In other words it would appear that the three respondents have resigned at a time when they had no expectation of finding a place in Parliament. However four years later i. e. in the year 1999, when there appeared some prospects for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to enter Parliament, it is seen that they have taken up the position that the three resignation letters signed and tendered by them to the petitioner are not genuine and that they are fabrications, a position which cannot be supported from the material available before the Court. Therefore we hold that the three letters of resignation signed by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents marked P1 (a), P2 (a) and P3 (a) are genuine and therefore the said three respondents have in fact resigned from the Independent Group No. 2.

The other matter to be considered in this application is that, since the resignations of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are valid and therefore the nomination paper of the Independent Group No. 2 has been exhausted, is the 2<sup>nd</sup> respondent (Returning Officer) bound to inform so, to the 1<sup>st</sup> respondent (Commissioner of Elections) and then is the 1<sup>st</sup> respondent bound by law to call upon the petitioner to nominate two persons who are members of the Independent Group No. 2, to fill the two vacancies in Parliament. Learned Counsel for the petitioner and the respondents have referred to the relevant provisions in the constitution and the Parliamentary Elections Act, No. 1 of 1981 as amended by Parliamentary Elections (Amendment) Act, No. 15 of 1988.

Article 99 (13) (b) of the 1978 constitution provides as follows:-

Where the seat of a Member of Parliament becomes vacant as provided in Article 66 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph, the person whose name appears first in order of priority in the relevant nomination paper (excluding the names of any persons who have previously been declared elected) shall be declared elected to fill such vacancy.

Article 101 (1) (h) of the constitution provides as follows:-

101 (1) The Parliament may by law make provision for . . .  
 . . . . .

- (h) the form and manner in which vacancies shall be filled when all the candidates whose names appearing in the nomination paper of a recognized political party or independent group have been exhausted by election or otherwise; and . . . . .

Accordingly Parliamentary Elections Act, No. 1 of 1981, as amended by Act, No. 15 of 1988, following provisions have been made for the filling of such vacancies.

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- Section 64 (1) Where the seat of a Member of Parliament becomes vacant as provided in Article 66 of the Constitution (other than paragraph (g) of that Article) or by virtue of the provisions of paragraph 13 (a) of Article 99 of the Constitution, the Secretary-General of Parliament shall inform the Commissioner who shall direct the returning officer of the electoral district which returned such Member to fill the vacancy as provided for under paragraph 13 (b) of Article 99 of the Constitution within one month of such direction.
- (2) The returning officer shall forthwith after complying with the direction of the Commissioner, make a return, substantially in Form M set out in the First Schedule to this Act to the Commissioner who shall cause the name of the Member so declared elected to be published in the *Gazette*.
- (3) Where all the candidates whose names appear in the nomination paper submitted by any recognized political party or independent group in respect of an electoral district have been exhausted by election or otherwise or where none of the candidates whose names remain on such a nomination paper have secured any preferences, and thereafter a vacancy occurs to be filled by a member nominated by such party or group, the returning officer of such electoral district shall inform the Commissioner.

(Vide Section 17 of the (amendment) Act, No. 15 of 1988.)

- (4) Upon the receipt of such information the Commissioner shall require the secretary of the recognized political party or the group leader of the independent group to which the Member who vacated the seat belonged, to nominate a member of such party or group to fill the vacancy. Upon the receipt of such nomination the Commissioner shall declare such person to be a Member for the electoral district in respect of which the vacancy occurred, and cause the name of the Member so declared to be published in the *Gazette*.

Learned Counsel for the petitioner submitted that the applicable provisions for the filling of a vacancy when the nomination paper of a political party or Independent Group has become exhausted is to be found in Section 64(3) and Section 64(4) of the Parliamentary Elections Act as amended. According to the amended Section 64(3), exhaustion of a nomination paper can take place not only by Election or otherwise, but also where none of the candidates whose names remain on such a nomination paper have secured any preferences. Therefore learned Counsel for the petitioner contended that the words "or otherwise" appearing in the phrase nomination paper . . . exhausted by election or otherwise . . . as contained in Section 64(3) would include other instances where a candidate ceases to be a member of a political party or Independent Group. According to Counsel such instances would include when the nomination paper is exhausted by death, expulsion or resignation (or any other manner) of a candidate, and in which event he ceases to be a member of a political party or Independent Group. In other words Counsel was trying to give an interpretation to the words "or otherwise" in Section 64(3) of the Parliamentary Elections Act. In order to show that the words "or otherwise" conveys different meanings, Counsel cited the case of *National Association of Local Government Officers v. Bolton*

*Corporation*<sup>(1)</sup> at 177, where the words "or otherwise" have been interpreted to mean "or in another way". Therefore Counsel argued that the words "or otherwise" would clearly include instances where candidates whose names appear in the nomination paper of a political party or Independent Group has died or expelled or resigned from such a political party or Independent Group and thereby ceased to be candidates. In order to support his contention learned Counsel cited the case of C. A. 220/94, C. A. minutes of 05.05.1994, (which was an Application for a writ of Prohibition and Mandamus on the Commissioner of Elections), where the Court of Appeal comprising of Justice S. N. Silva President/ C. A. (as he was then) and Justice Dr. R. Ranaraja gave judgment permitting the 1<sup>st</sup> respondent (Commissioner of Elections) to declare the 4<sup>th</sup> respondent elected to fill the vacancy created by the resignation of the 3<sup>rd</sup> respondent, (Incumbent Member of Parliament) by-passing the 2<sup>nd</sup> respondent who has been a member of the Sri Lanka Muslim Congress and would otherwise have been entitled to be declared elected to fill the vacancy created by the 3<sup>rd</sup> respondent's resignation, but for the fact that the 2<sup>nd</sup> respondent has ceased to be a member of the Sri Lanka Muslim Congress upon his expulsion which was not challenged by him (2<sup>nd</sup> respondent). Hence Counsel submitted that, in terms of Section 64(3) of the Parliamentary Elections Act, the nomination paper of the Independent Group No. 2, has been exhausted by virtue of the resignations of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, who have now ceased to be the candidates of the Independent Group No. 2. In the circumstances Counsel for the petitioner contended that in terms of Section 64(4) of the Parliamentary Elections Act, the 1<sup>st</sup> respondent (Commissioner of Elections) is required by law to call upon the Secretary of the Independent Group No. 2, who is the petitioner in this application to nominate two members from his group to fill the two vacancies created in Parliament.

However, learned Counsel for the 3<sup>rd</sup> respondent (Counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents associated themselves with this argument) contended that the words "or otherwise" contained in Section 64(3) of the Parliamentary Elections Act as amended, will not include a resignation of a candidate whose name appears in the nomination paper submitted by any recognised political party or Independent Group in respect of an Electoral District. Learned Counsel's reasoning was that, if the words "or otherwise" are interpreted to include a "resignation" of a candidate whose name appears in the nomination paper would create a situation where the Returning Officer will be called upon to hold an inquiry in order to decide the question whether a particular resignation of a candidate is genuine or not. As a result of this situation arising, the Returning Officer will have to embark on an investigation or inquiry to decide whether a candidate has in fact resigned. Learned Counsel therefore submitted that the words "or otherwise" should only include such instances where no such investigation or inquiry becomes necessary by the Returning Officer. Hence Counsel contended that the only meaning that could be given to the words "or otherwise" would be the death of a candidate. Therefore it would appear that, if the argument of the learned Counsel for the 3<sup>rd</sup> respondent is accepted as correct, then, the exhaustion of a nomination paper can arise only in three situations under Section 64(3) of the Parliamentary Elections Act, namely, when the nomination paper is exhausted by election, death or where none of the candidates whose names remain on such nomination paper have secured any preferences. Therefore according to the Counsel's argument the one and only meaning that could be given to the words "or otherwise" is death of a candidate.

We find it difficult to accept this contention of Counsel for the reason that, if that was the intention of Parliament, then surely Section 64(3) of the said act would have stated very clearly the words "the nomination paper . . . exhausted by

election or death, without using the words by "election or otherwise". Further the words "or otherwise" cannot be given such a restricted meaning as suggested by learned Counsel for the 3<sup>rd</sup> respondent, as it was never the intention of the Parliament for the reason the phrase "or otherwise" by itself connotes a liberal meaning. The Oxford English Dictionary, Second Edition Volume X gives to the word "otherwise" the following meanings i. e. in another way, or in other ways; in a different manner, or by other means; differently. It would appear therefore the word "otherwise" has an extended meaning and in the circumstances it would be very clear as suggested by learned Counsel for the petitioner, that, when Section 64(3) stated that the nomination paper . . . . . "exhausted by election or otherwise" the said words would necessarily include death, expulsion or resignation of a candidate whose name appears in the nomination paper. Such an interpretation is in harmony with the 1978 constitution. (Vide Article 66.)

Further in the event of there being no dispute or controversy with regard to the expulsion or the resignation of a candidate whose name appears in the nomination paper, then, in our considered view the Returning Officer and the Commissioner of Elections should accordingly comply with the provisions of Sections 64(3) and 64(4) of the Parliamentary Elections Act for the filling of vacancies. However if a situation arises where there is a dispute or controversy on the matter of expulsion or resignation (as in this case), then, such a dispute may well have to be resolved by Court before the Returning Officer or the Commissioner of Elections could take action in terms of Sections 64(3) and 64(4) of the said act.

Further we cannot subscribe to the view as suggested by Counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that, a candidate whose name appears in the nomination paper cannot resign until he has got himself elected to Parliament. Such an interpretation is artificial and contrary to one's freedom of thought or conscience. In the same way we are unable

to accept the argument of Counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that in this case a writ of Certiorari does not lie, since there is no determination or decision by the 1<sup>st</sup> and the 2<sup>nd</sup> respondents who were merely complying with the statutory provisions. On the contrary it must be stated here that the decision or determination made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in this case, as evident from the material available, has been unlawful and an in excess of their authority.

Therefore in the present application we are of the view that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have resigned and further that the words "or otherwise" in Section 64(3) of the Parliamentary Elections Act as amended would include among other things a resignation. In the circumstances we hold that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents have acted unlawfully and in excess of their authority, when the 2<sup>nd</sup> respondent (Returning Officer) decided to forward his return in Form M to the 1<sup>st</sup> respondent (Commissioner of Elections) to declare the 3<sup>rd</sup> and 4<sup>th</sup> respondents to be elected as members of Parliament and the 1<sup>st</sup> respondent proceeded to cause the publication of the Gazette Extraordinary No. 1074/10 dated 08.04.1999 marked P10 and P11.

For the aforesaid reasons we make order granting a writ of Certiorari as prayed for in the petition (i) to quash the certificate made by the 2<sup>nd</sup> respondent in terms of Section 64(2) of the Parliamentary Elections Act, in Form M naming the 3<sup>rd</sup> and 4<sup>th</sup> respondents as members of Parliament and (ii) to quash the 1<sup>st</sup> respondent's Gazette notice i. e. Gazette Extraordinary bearing No. 1074/10 dated 08.04.1999 marked P10 and P11 which declared the 3<sup>rd</sup> and 4<sup>th</sup> respondents as having been elected as Members of Parliament. In addition we issue a writ of Mandamus as prayed for in the petition (i) to direct the 1<sup>st</sup> and the 2<sup>nd</sup> respondents to treat the nomination paper of the Independent Group No. 2 for the Electoral District of Jaffna

as having been exhausted by election or otherwise in terms of the Parliamentary Elections Act, No. 1 of 1981 as amended and (ii) to direct the 1<sup>st</sup> respondent to take necessary and consequential steps to call upon the petitioner to nominate two members of the Independent Group No. 2 in order to fill the vacancies in Parliament on behalf of the Independent Group No. 2 for the Electoral District of Jaffna. Since we have held that the 5<sup>th</sup> respondent has resigned, it is unnecessary to make any order in respect of him. Further we deeply appreciate the assistance given to us by Counsel.

**KULATILAKA, J.** - I agree.

*Application allowed.*