

GUNATILAKA
v.
LANKA SAMA SAMAJA PAKSHAYA & OTHERS

COURT OF APPEAL
J. A. N. DE SILVA, J. (P/CA)
KULATILAKE, J.
RAJA FERNANDO, J.
C.A. 1571/2000
FEBRUARY 14TH, 15TH, 16TH 2001

Provincial Council Elections Act 2 of 1988, S. 63 Expulsion of a member from Constituent Party - Who should conduct the Inquiry ? Is it the Central Committee or District Level Committee - Rules of Natural Justice.

The Petitioner is a member of the Sabaragamuwa Provincial Council, elected on the nomination list of the 4th Respondent (Peoples Alliance - P. A.) Party being a member of the 1st Respondent Party (L.S.S.P).

The General Secretary of the L.S.S.P. informed the General Secretary of the P. A. that a decision has been taken to expel the Petitioner from the L.S.S.P. (1st Respondent Party) and from the Office of Member of the said Provincial Council.

The Petitioner sought to challenge the expulsion on the grounds that there was no intimation that he has been expelled from the 4th Respondent Party (P. A.) or request by the Secretary of the Provincial Council to the Commissioner of Elections that he be expelled.

Held :

- (i) According to the contention of the 1st Respondent (L.S.S.P) Party the party operates at 3 levels. viz: Local Sabha, District Committee and Central Committee.

The Local Sabha is the grass root level organisation of the party. The District Committee composes of representatives elected by the Party members of the District. The Central Committee is the highest body of the Party and composes of representatives elected by the General Body at the Party Convention.

- (ii) All Party members and candidates of a District are bound by the decisions of the District Committee and all party members and candidates of the local Sabha are bound by the decisions of the Local Sabha.

Where any party member commits a breach of discipline, the local Sabha or the District Committee shall report such violation to the Central Committee for purpose of awarding punishment.

- (iii) Each party works under its Constitution and different parties adopt different procedures with regard to matters of discipline within the party as set out in their own Constitution.

An inquiry was held by the Kegalle District Committee, the Petitioner was given an opportunity to show cause. There is no requirement that the Petitioner should have been given a second opportunity to explain at the level of the Central Committee.

- (iv) The 1st Respondent Party has complied with the procedures laid down and the Petitioner has been offered an opportunity to show cause at the District Committee level. The Central Committee has by ratifying the decision of the District Committee have themselves decided to expel the Petitioner from the 1st Respondent Party.

APPLICATION under S.63 of the Provincial Councils Elections Act 2 of 1988.

Wijedasa Rajapakse with Kapila Liyanagamage, R. Dassanayake, K. Ranasinghe for Petitioner.

Ms. Chamantha Weerakoon-Unamboowe, with Ms. Ayanthi Abeywickrema and V. Ponnambalam for 2nd Respondent.

A. Gnanadasan D. S. G., for 8th Respondent - Commissioner of Elections and the Attorney General.

Cur. adv. vult.

February 22, 2001. (Reasons March 1, 2001)

RAJA FERNANDO, J.

The Petitioner is a member of the Sabaragamuwa Provincial Council having been elected on 6. 4. 1999 from the Kegalle District on the Nomination list of the 4th Respondent party being a member of the 1st Respondent party.

On 30th November, 2000 petitioner has received a copy of a letter addressed to the 8th Respondent, The Commissioner of Elections, by the 6th Respondent which stated that the

2nd Respondent has informed the 6th Respondent that on 7. 1. 2000 a decision has been taken to expel the petitioner from the 1st Respondent party and from the office of member of the said provincial council. "P5".

In this application filed under Section 63 of the Provincial Councils Elections Act No. 2 of 1988 the petitioner is seeking a declaration from this Court :

- (a) that the expulsion by the Petitioner from the 1st Respondent Party and/or from 4th Respondent Party is invalid.
- (b) that the petitioner has not ceased to be a member of the Sabaragamuwa Provincial Council.
- (c) that the petitioner continues to be and remains a member of the Sabargamuwa Provincial Council.

The grounds on which the petitioner is seeking the above reliefs are:

- (a) that the petitioner was not informed of any purported charges and/or allegations against him.
- (b) that there was no opportunity given to the petitioner to show cause to any purported charge and/or allegation.
- (c) that the petitioner was not heard at all and therefore it is contrary to the rules of natural justice.

At the hearing of this application Counsel for the Petitioner sought to confine his application to the issue of expulsion of the Petitioner from the 1st Respondent Party as there is no intimation that he has been expelled from the 4th Respondent party or request by the Secretary of the Sabaragamuwa Provincial Council to the Commissioner of Elections that he be expelled from the office of member of the Provincial Council.

Therefore, the only matter for decision now before this Court is whether the expulsion of the Petitioner from the 1st Respondent party is valid.

The petitioner came to Court on the basis that he was a member of the 1st Respondent Party and that he was never informed of any charge or allegation against him. He was not given an opportunity to show cause and that he was not heard before a decision to expel him from the 1st Respondent Party was taken. Therefore he contended that the decision to expel him from the 1st Respondent Party is contrary to the rules of Natural Justice and the procedure set out in the Party Constitution. Petitioner has produced marked "P1" the Constitution of the 1st Respondent Party which governs the relationship between the Petitioner and the 1st Respondent Party with regard to matters relating to the party.

In view of the above matters raised by the learned Counsel this Court has to examine the procedure laid down in the constitution of the 1st Respondent party in dealing with discipline in the party and whether such procedure has been followed by the Respondents in expelling the Petitioner from the 1st Respondent Party and whether the rules of Natural Justice have been observed.

Whilst the petitioner stated in his affidavit that the Petitioner was not informed of any charge and no opportunity was given by the 1st Respondent Party to show cause. The 2nd Respondent filed his objections together with an affidavit from one Sirisena Rajapaksa a member of the Town Council of Kegalle from the 1st Respondent Party marked "R2". According to the affidavit of Sirisena Rajapaksa, at a meeting of the Warakapola Branch (local) of the 1st Respondent Party the conduct of the Petitioner in not supporting the candidates recommended by the 1st Respondent Party for the General Election held on 10. 11. 2000 was discussed and a decision was taken to report this matter to the District Committee to expel the Petitioner from the 1st Respondent Party and also from the Sabaragamuwa Provincial Council.

It is common ground that the petitioner was not present at the above meeting of the Warakapola Branch (local) when the conduct of the petitioner was discussed, and hence had no opportunity to show cause before the Warakapola Branch (local).

Sirisena Rajapaksa further states in his affidavit that he was present on 4. 11. 2000 at the meeting of the Kegalle District Committee of the 1st Respondent Party at which the Petitioner too was present and the report submitted by the Warakapola Branch was taken up for discussion. At the District Committee meeting the Petitioner was present and was afforded an opportunity to show cause against the decision of the Warakapola Branch but the Petitioner remained silent. At the conclusion of the discussion the decision of the Warakapola Branch (local) was approved by the Kegalle District committee unanimously and decided that the petitioner should be expelled from the 1st Respondent Party and from the Sabaragamuwa Provincial Council. It was further decided that the decision of the Kegalle District Committee be conveyed to the General Secretary of the 1st Respondent Party and through him to the Party.

The affidavit of the 2nd Respondent who is the Secretary of the 1st Respondent Party states that on the instructions of the Central Committee of the 1st Respondent Party he required the "Locals" to inquire into and report on all party members of the "Locals" who failed, neglected or refused to support and campaign for the election of the Party candidates on the nomination list of the 4th Respondent Party at the Parliamentary elections held on the 10th of November 2000.

Accordingly the Warakapola Local Branch had inquired into the matter and reported that the petitioner had failed and refused to support the party's candidates at the parliamentary election and that this was despite specific instructions issued by the 1st Respondent Party. Further the local had decided that the Petitioner should be expelled from the 1st Respondent party

and also from his position as member of the Sabaragamuwa Provincial Council.

The said decision of the Warakapola Branch has been conveyed to the Kegalle District Committee which has endorsed the decision.

The Kegalle District Committee reported the said decision to the Central Committee, and the Central Committee ratified the said decision of the Kegalle District Committee.

There was no counter affidavit filed by the Petitioner denying or contradicting the facts averred in the affidavits of the 2nd Respondent or the affidavit of Sirisena Rajapakse filed together with the objections of the 2nd Respondent.

In the absence of a denial or contradiction of the averments in the affidavit of the 2nd Respondent and the affidavit of Sirisena Rajapaksa this Court cannot reject the position taken up by them that the petitioner was in fact given an opportunity to show cause against the decision to expel the petitioner from the 1st Respondent Party at the District committee meeting of the party held on 4. 11. 2000 and that the Petitioner who was present at the meeting remained silent.

On the material placed before court this Court is satisfied that the Petitioner was given an opportunity to show cause against his expulsion from the 1st Respondent Party at the Kegalle District committee meeting held on 4th November 2000.

On this point the Court also observes that the petitioner in not disclosing to Court about the meeting of the Kegalle District Committee held on 4. 11. 2000 at which he was present was suppressing material facts from Court.

The next matter for Court consideration is whether the procedure followed by the 1st Respondent Party in expelling the Petitioner from the Party is the procedure laid down in the Party Constitution of 1st Respondent Party.

According to the constitution of the 1st Respondent Party marked "PI" the party operates at three levels:

1. The "Local Sabha"
2. The District Committee
3. Central Committee

The Local sabha is the grass - root level organisation of the party. The District Committee composes of representatives elected by the party members of the District. The Central Committee is the highest body of the Party and comprises of representatives elected by the general body at the Party convention.

According to the scheme set out in the constitution of the 1st Respondent Party unless otherwise directed by the Central Committee all party members and candidates must be members of the "Local Sabha". (Article 10)

All party members and candidates are bound by the decision of the Central Committee.

All Party members and Candidates of the District are bound by the decisions of the District Committee and all party members and candidates of the "Local sabha" are bound by the decision of the "Local Sabha" (Articles 26, 27, 28).

With regard to disciplinary action Article 35 confers the power of awarding punishment for violation of discipline by any party member to the Central Committee.

Article 36 states that where any party member commits a breach of discipline the "Local Sabha" or the District Committee shall report such violation to the Central Committee for the purpose of awarding punishment.

It is the contention of the Petitioner that the "Local Sabha" or the District Committee has no authority to take any

disciplinary action against a party member and the only body that has the authority to take disciplinary action is the Central Committee and the Central Committee did not inform the Petitioner of any charge or give him an opportunity to show cause and hence the Order of expulsion of the Petitioner from the 1st Respondent Party is invalid.

The Respondent contends that whilst the power of imposing the punishment is left to the Central Committee the power to inquire and report any violation of discipline by a party member is vested with the "Local sabha" or the District Committee and that the District Committee of Kegalle did inquire into the matter of violation of party discipline by the Petitioner on the directions given by the Central Committee and he was afforded an opportunity to show cause. Thereafter they reported to the Central Committee that the Petitioner has violated party discipline and the Central Committee has ratified the decision of the District Committee and thus the award of the punishment is the decision of the Central Committee.

It was further contended on behalf of the Respondent that there is no requirement under the constitution of the 1st Respondent Party that the inquiry into the breach of discipline be carried out by the Central Committee itself: on the contrary the party organisation is such that such inquiries are conducted by one's own peers at the Local or District level. In this case an inquiry was held by the Kegalle District Committee, the Petitioner was given an opportunity to show cause, therefore the procedure as set out in the 1st Respondent Party constitution has been complied with and there is no requirement that the Petitioner should have been given a second opportunity to explain at the level of the Central Committee.

Each party works under its own constitution and different parties adopt different procedures with regard to matters of discipline within the party as set out in their own constitutions.

The Court can only decide as to whether the rules of natural justice have been observed and the party has acted in terms of the procedure laid down in the constitution of the party

in question even though that procedure may be different from that of another party.

On the material before Court we are satisfied that the 1st Respondent party has complied with the procedure laid down in their constitution with regard to violation of discipline by the Petitioner and that he has been afforded an opportunity to show cause at the District Committee level. The Petitioner has failed to offer any explanation or show cause and the Central Committee has by ratifying the decision of the District Council to expel the Petitioner from the 1st Respondent Party have themselves decided to expel the Petitioner from the 1st Respondent Party. Hence we do not find any merit or substance in the submission of the Counsel for the petitioner that no opportunity was afforded to the petitioner prior to his expulsion.

Accordingly we find that the expulsion of the Petitioner from the 1st Respondent Party is valid.

The petition of the Petitioner is dismissed with costs.

Due to the time constraints in the Provincial Councils Elections Act No. 2 of 1988 the Order was delivered on 22. 02. 2001 and the reasons for the order is given today 01. 03. 2001.

J. A. N. DE SILVA J. P/CA - I agree.

KULATILAKE J. - I agree.

Application dismissed.