

**SEETHA WEERAKOON**  
**V.**  
**MAHENDRA, O.I.C. POLICE STATION,**  
**GALAGEDERA AND OTHERS**

SUPREME COURT.

BANDARANAYAKE, J., FERNANDO, J., KULATUNGA, J.

S. C. APPLICATION NO. 36/90.

MAY 03, AND JUNE 04, 1991.

*Fundamental Rights - Illegal arrest and detention - Articles 13(1) and (2) of the Constitution - Failure to produce before Magistrate under Regulation 19(1) of the Emergency Regulations.*

The petitioner and her sister were arrested on 12th August, 1989 and handed over to the Galagedera Police Station of which the 1st respondent was in-charge. She was detained there till 27th August 1990 on which date the Magistrate remanded her to fiscal's custody. The A.S.P. Kandy had earlier issued a detention order under Regulation 19(2) of the Emergency Regulations authorising detention of the petitioner for 90 days at the Galagedera Police pending investigations into an offence under Regulation 23(c). This order expired on 12.11.1989 but the petitioner's detention at the Galagedera Police Station continued. On 28th February 1990 a detention order under Regulation 17(1) of the Emergency Regulations was issued by the Secretary Defence for further detention of the petitioner to prevent her from acting in any manner prejudicial to the national security or to the maintenance of public order and the 3rd respondent (IGP) made order that the detention be carried out at Galagedera Police Station. Admittedly the petitioner was not, during the period of her detention immediately following her arrest produced before a Magistrate as required by Regulation 19(1) of the Emergency Regulations.

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The Magistrate who had ordered the remand of the petitioner on 27.08.1990 extended the remand and eventually on 03.12.1990 released her. The Advisory Committee that met to review the detention was itself in the dark as to the reason for the detention. There was no detention order covering the detention when it met on 04.01.1990.

**Held:**

1. The petitioner was being kept in continued detention under orders made mechanically without adequate grounds therefor.

2. If the offence for which the petitioner was arrested as set out in the detention order is not specific in terms of the law and the Advisory Committee itself had not been aware of the reason for her arrest it also supports her complaint that she was not informed of the reason for her arrest as required by Article 13(1) of the Constitution.

3. There is no explanation for the failure to produce the petitioner before the Magistrate within 30 days as required by Regulation 19(1) of the Emergency Regulations.

4. A bare statement in the respondents affidavits that the petitioner engaged in terrorist activity, or is a member of a subversive group or conducted anti-government classes or engaged in anti-government agitation would not provide an adequate justification for the arrest and detention of the petitioner. The Court should be furnished with the material or the information on the basis of which the petitioner was arrested to enable the Court to objectively determine the reasonableness of the suspicion which led to such arrest. No such material has been placed before Court.

5. The arrest and detention of the petitioner are unlawful and violative of her rights under Article 13(1) and (2) of the Constitution.

**Per Kulatunga, J :**

“It is understandable that in suppressing insurgent activity, cordon and search operations may have to be conducted leading to the arrest of whole groups of persons. Such persons may have to be detained pending investigations; but care must be taken to ensure that persons in respect of whom there is no evidence of involvement with any offence are released early; they must not be forgotten or kept in prolonged detention as a matter of expediency as happened in this case.

(6) As the 1st respondent (OIC Galagedera Police Station) is also personally responsible for the infringement of the petitioner's fundamental rights he must pay the petitioner Rs. 2,500/- as a sanction for his conduct in addition to compensation by the State.

**Cases referred to:**

1. *Edirisuriya v. Navaratnam* [1985] 1 Sri LR 100
2. *Nanayakkara v. Henry Perera* [1985] 2 Sri LR 375
3. *Nallanayagam v. Gunatillake* [1987] 1 Sri LR 293

APPLICATION for violation of fundamental rights by illegal arrest and detention.

*K. Thiranaganama with J. Hassan, Miss P. Nagendra and A. Hettige for Petitioner.*

*D. S. Wijesinghe P.C. with Nihal Somasiri for 1st respondent.*

*R. Arasekularatne S.S.C. with Y. Kodagoda for 2nd to 6th respondents.*

*Cur.adv. vult.*

July 29, 1991.

**KULATUNGA, J.**

The petitioner who is a student preparing for the G.C.E. Advanced Level Examination and her younger sister were arrested on 12.08.89 by army personnel from Uduwa Elotuwwatte army camp. On 13.08.89 they were handed over to the Galagedera Police Station in charge of the 1st respondent. The petitioner complains that she was not informed of the reason for her arrest. She states that her sister was released after 14 days but she was detained at Galagedera Police Station until 27.08.90; that she was not shown any detention order; but the police officers told her that her period of detention was being extended every month. In consequence of representations made by Ukku Banda the petitioner's father, he was summoned to

appear before the Advisory Committee under Regulation 17(4) of the Emergency Regulations on 04.01.1990. In his affidavit (P3) Ukku Banda says that the members of the Advisory Committee inquired from him as to the incidents that occurred in the village and the reason for the petitioner's detention to which he replied that there were no incidents there and that there was no reason for the petitioner's arrest.

At first, the petitioner's parents were not permitted to see her regularly. They were allowed to see her only once namely on 04.02.90. They were permitted to visit her only after the representatives of the International Committee of the Red Cross visited Galagedera Police Station in June, 1990. The petitioner herself made representations for her release and received a reply dated 16.08.90 from the Principal Staff Officer, Operational Headquarters, Ministry of Defence informing that her case had been referred to the Committee for classification, separation, rehabilitation and release for necessary action. However, on 27.08.90 she was produced before the Magistrate's Court of Kandy and was remanded. Thereafter she was kept at the remand prison, Kandy. On 06.09.90 she filed this petition alleging infringement of her fundamental rights secured by Article 13(1), (2) and (4).

The 1st respondent (Officer-in-Charge of Galagedera Police Station) states that on 13.08.89 Lieutenant Dikkumbura of the army unit at Uduwa handed over the petitioner and her sister to the Galagedera Police. The same day the Assistant Superintendent of Police, Kandy issued a detention order under Regulation 19(2) of the Emergency Regulations authorising the 1st respondent to detain the petitioner for 90 days at the Galagedera Police Station pending investigations into an offence under Regulation 23(c) (3R1). This order expired on 12.11.89 but the petitioner continued to remain in detention at the Police Station without any order for such detention until 08.02.90 when an order under Regulation 17(1) of the Emergency Regulations was made by the Secretary Defence for further detention of

the petitioner to prevent her from acting in any manner prejudicial to the national security or for the maintenance of public order (2R4); and 3rd respondent (The Inspector-General of Police) directed that the petitioner be detained at the Galagedera Police Station. Admittedly, the petitioner was not, during the period of her detention immediately following her arrest, produced before a Magistrate as required by Regulation 19(1) of the Emergency Regulations.

The 1st respondent's explanation for the detention of the petitioner without any order therefor between 13.11.89 and 08.02.90 is that it is the Counter Subversive Unit Kandy that attends to the obtaining of detention orders. After making inquiries at the Counter Subversive Unit he expected to receive a further order. Such orders are in practice invariably received at the Police Station some time after the expiry of the current order; and the order 4R2 had been issued late due to a delay by the Counter Subversive Unit in forwarding their application to the Secretary, Ministry of Defence. The 1st respondent gives no explanation for his failure to produce the petitioner before a Magistrate as required by law. Mr. D. S. Wijesinghe, learned President's Counsel appearing for him submitted as a possible explanation for this lapse the fact that such failure may have been occasioned by want of instructions from the Counter Subversive Unit whose instructions he carried out in all such matters.

On 27.08.90 the 1st respondent produced the petitioner before the Magistrate's Court of Kandy with a 'B' report No. 29441/90 (P6) wherein he stated —

- (a) that he was investigating the complaint of the Uduwa army unit made on 13.08.89 regarding the suspect who had been arrested for subversive activity and handed over to him for further investigations;
- (b) that further investigations are being made;

(c) that he was holding her under an order made in terms of Regulation 17(1) of the Emergency Regulations.

On that day the 1st respondent also moved for an order remanding the petitioner to Fiscal custody pending further investigations. The Magistrate made an order for her remand until 10.09.90 which was subsequently extended until 03.12.90 on which date she was released from Fiscal Custody.

To a question by Court as to why the petitioner who was detained at the Galagedera Police Station under a preventive detention order was produced before a Magistrate the learned President's Counsel said that this was done on the instructions of the Counter Subversive Unit. However, the petitioner alleges in her further affidavit dated 12.04.91 that by so producing her the 1st respondent has misled the Magistrate to issue an order for her remand to Fiscal Custody.

As justification for the detention of the petitioner, the 1st respondent states that the investigations made by his subordinate officers regarding the petitioner revealed information that she was involved in terrorist activities with one Kalyani Saram an organiser of the J.V.P., that in her statement the petitioner stated that the said Kalyani and another had met her and solicited her support for subversive activities which she declined; and that while eight terrorist suspects including the petitioner were in custody there was an attack on the Galagedera Police Station which the police repelled by firing back. The police believe this attack to be an attempt to free the suspects who were in custody.

The 2nd respondent (the Army Commander) states that the petitioner and her younger sister were arrested by Lieutenant Dikkumbura in a cordon and search operation on information regarding subversive activity after which they were handed over to the Galagedera Police Station.

The 3rd respondent (I.G.P.) states that in February 1990 he received an application from the Superintendent of Police

Kandy for a detention order against the petitioner under Regulation 17(1) of the Emergency Regulations which he forwarded to the Secretary, Ministry of Defence. The 4th respondent states that the said application (4R1) had been received by his predecessor in office on 08.02.90 pursuant to which the detention order 4R2 was made. In 4R1 S.P. Kandy states that there is material to show that the petitioner had joined subversive groups and conducted anti-government classes, recruited members for subversive groups and engaged in anti-government agitation. He recommends a preventive detention order on the basis of such allegations.

Mr. Thiranagama, learned Counsel for the petitioner submitted that the arrest and detention of the petitioner are unlawful and violative of Article 13(1) and (2) of the Constitution, for the following reasons:

1. There are no valid grounds for her arrest; hence there is no justification for it. State has failed to produce any material warranting her arrest for an offence under Regulation 23(c). Consequently, the detention order 3R1 is unlawful. There is also no detention order covering the period from 13.11.89 to 08.02.90.
2. In any event, the police have failed to produce the petitioner before a Magistrate not later than thirty days after her arrest as required by Regulation 19(1) and hence her detention under order 3R1 is bad.

*Edirisuriya v. Navaratnam* (1)

*Nanayakkara v. Henry Perera* (2)

*Nallanayagam v. Gunatilake* (3)

3. The order 4R2 is not based on adequate material. It has been made mechanically. The respondents themselves had not treated that order seriously in that whilst it authorised the petitioner's detention at the Galagedera Police Station she was remanded to Fiscal Custody on

the application of the Police and was thereafter released by the Magistrate even without a revocation of the order.

Regulation 23(c) is in the following terms:

“Whoever in any manner overawes, influences, or coerces, or prepares, conspires, or attempts to overawe, influence or coerce, any person with the intention of including or compelling the government of Sri Lanka, The President, a Member of Parliament, a member of the Police, a member of the armed forces or a public officer, to exercise or refrain from exercising in any manner the lawful powers of the government of Sri Lanka, The President, such Member of Parliament, member of the Police, member of the armed forces or public officer shall be guilty of an offence....”

The offence so created is punishable with death or rigorous imprisonment upto twenty years and the forfeiture of all property. A mere reference in the detention order to Regulation 23(3) does not sufficiently clarify the nature of the act for which the petitioner was arrested. A bare statement in the respondents' affidavits that she engaged in terrorist activity, or is a member of a subversive group or conducted anti-government agitation would not provide an adequate justification for the arrest and detention of the petitioner. The Court should be furnished with the material or the information on the basis of which the petitioner was arrested to enable the Court to objectively determine the reasonableness of the suspicion which led to such arrest. No such material has been placed before this Court; and Mr. Arasekularatne, learned Senior State Counsel conceded the existence of such infirmity in the case for the respondents. He also conceded that the material furnished to justify the detention order 4R2 is also limited to bare statements in affidavits.



It was stated from the Bar that in justifying the petitioner's arrest the respondents are handicapped by the fact that Lieutenant Dikkumbura who arrested her is not available as he is engaged in operations. I am unable to accept this statement in mitigation of the infringement of the petitioner's rights. The State had over six months to obtain Lieutenant Dikkumbura's affidavit. If he was engaged in operations during that entire period, an affidavit to that effect should have been filed. This has not been done. In any event, the 1st respondent has said that the police have themselves investigated the allegations against the petitioner and even referred to the pages of the information book. If so, it was open to the State to have furnished to this Court the material disclosed in such investigations; relevant extracts of the information book could have been produced; but none of this has been done. As such, the impugned arrest and detention have to be regarded as unjustified.

The detention under the order 3R1 is bad for the failure to produce the petitioner before a Magistrate which is a requirement under the procedure established by law for the arrest and detention of suspects. (Regulation 18(1) & 19(1) of the Emergency Regulations). Referring to this requirement Wanasundera J. said —

“It is more than a mere formality or an empty ritual, but is generally recognised by all communities committed to the Rule of Law as an essential component of human rights and fundamental freedoms”.

(*Edirisuriya v. Navaratnam* (1) p. 118)

At page 120 he said —

“It behoves us therefore to see that provisions such as this, safeguarding human rights and human freedom are exactly complied with”.

In *Nallanayagam v. Gunatilake* (3) this Court held the non-production of the detenu before a Magistrate as required by Regulation 19(1) to be a violation of Article 13(2) of the Constitution. Colin Thome J. said (p.298) —

“Article 13(2) embodies a salutary principle safeguarding the life and the liberty of the subject and must be exactly complied with by the executive. In our view this provision cannot be overlooked or dismissed as of little consequence or as a minor matter”.

I am of the view that want of instructions from the Counter Subversive Unit is not, as learned President's Counsel suggested, a valid explanation for the 1st respondent's failure to produce the petitioner before a Magistrate; nor is it open to the 1st respondent to seek to justify the needless production of the petitioner before the Magistrate's Court on 27.08.90 on the ground that this was done on the instructions of the Counter Subversive Unit. As on that day she was in preventive detention at the Galagedera Police Station and the police had no lawful authority to apply for her remand to Fiscal Custody contrary to the terms of the detention order 4R2. Such conduct gives credence to the allegation that the police themselves did not treat the order 4R2 seriously.

It is also relevant to note that when the petitioner's father Ukku Banda appeared before the Advisory Committee on 04.01.90 there was no detention order covering the petitioner's detention. If the Committee was seriously reviewing her detention the absence of a detention order should have come to light. Nothing like that happened which gives credence to the version of Ukku Banda that the Committee itself was in the dark as regards the reason for her detention which made them inquire from him what the reason was. No affidavit by the respondents denying this version has been filed. In the circumstances, there is substance in the submission that the petitioner was being kept in continued detention under orders made mechanically, without adequate grounds therefor.

If the offence for which the petitioner was arrested as set out in the detention order is not specific in terms of the law and the Advisory Committee itself had not been aware of the reason for her arrest it also supports her complaint that she was not informed of the reason for her arrest as required by Article 13(1) of the Constitution.

For the above reasons, I determine that the arrest and detention of the petitioner are unlawful and violative of her rights under Article 13(1) and (2) of the Constitution.

In deciding upon the relief to be granted to the petitioner I take the following matters into consideration. Without doubt some allowance has to be given to the forces and the police in the matter of arrest during insurgent activity. Whilst the Court will strike down unlawful acts violative of fundamental rights, nothing will be done which would have a chilling effect on the conduct of law enforcement agencies who are faced with numerous difficulties in the maintenance of the national security or public order against subversive activity. It is understandable that in suppressing insurgent activity cordon and search operations may have to be conducted leading to the arrest of whole groups of persons. Such persons may have to be detained pending investigations; but care must be taken to ensure that persons in respect of whom there is no evidence of involvement with any offence are released early; they must not be forgotten or kept in prolonged detention as a matter of expediency as happened in this case. The petitioner was detained at the Police Station for one year which detention is illegal for more than one reason until the Magistrate released her; but the Magistrate cannot by such release invalidate the detention order 4R2. If there was no objection to the release of the petitioner the appropriate course was that the Secretary should have revoked 4R2. This has not been done up to date. However in view of my determination that the petitioner's detention is illegal that order stands quashed.

In all the circumstances, I am of the view that the petitioner is entitled to a sum of Rs. 20,000/- (Rupees Twenty Thousand) as compensation; I direct the State to pay her the said sum. The evidence establishes that the 1st respondent is also personally responsible for the infringement of the petitioner's fundamental rights. As a sanction for such conduct, I direct him to pay the petitioner a sum of Rs. 2,500/- (Rupees Two Thousand Five Hundred) as costs.

**Bandaranayake, J.** — I agree.

**Fernando, J.** — I agree.

*Application allowed. Compensation ordered.*