TILAK KARUNARATNE
v.
MRS. SIRIMAVO BANDARANAIKE AND OTHERS

SUPREME COURT.
DHEERARATNE, J.
RAMANATHAN, J. AND
WIJETUNGA, J.
SC (Spl.) 3/93.
JULY 26, 27, 28, 29, 30 AND AUGUST 2, 3, 1993.

Constitutional Law – Article 99(13) (a) and (c) of the Constitution – Expulsion from political party – De facto exercise of power by party office bearers – Freedom of speech – Freedom of Association – Failure to use fora within party to ventilate grievances – Article 14(1) (a) and (c) of the Constitution – To what extent can freedom of speech be restricted by the requirement of party discipline – Nature of membership of a political party – Obligations of membership.

Petitioner, an elected Member of Parliament of the SLFP, was persistently urging the party leadership to hold intra–party elections for various committees of the party organization in terms of the party constitution. Admittedly, no intra–party elections have been held since 1986. Petitioner made a statement to "Lakdiva" newspaper which was published on 24.01.1993 the contents of which related to democracy and non-holding of elections of the SLFP which was committed to democracy. Charges against the petitioner in the show cause letter sent to him

were based on that statement admittedly made by him to "Lakdiva". He was expelled from the party on a decision taken by the executive committee on 2.6.93 after a disciplinary inquiry to which he refused to submit. Petitioner challenged his expulsion in terms of Article 99 (13) (a) of the Constitution.

Held: (Ramanathan J. dissenting)

(1) Jurisdiction of the Supreme Court in terms of the proviso to Article 99 (13) (A) is wide ; it is an original jurisdiction on which no limitations are placed. In deciding whether the expulsion of a Member of Parliament was valid or invalid some consideration of the merits is obviously required.

(2) Regarding the competence of the expelling authority to expel the petitioner, it is sufficient if it had the de facto power to expel. The de facto doctrine is based on public policy and necessity ; it is a pragmatic doctrine designed to avoid endless confusion and needless chaos resulting from legality of the expelling authority being successfully challenged in collateral proceedings.

(3) A political party is a voluntary association and its members are bound together by a contract which is usually the party constitution from which arises contractual obligations of the membership. These obligations are either express or implied. Article 14 (1) (c) of the Constitution guarantees to every citizen the freedom of association. Freedom of association places a voluntary self-limitation on the freedom of speech and expression guaranteed under Article 14 (1) (a) and that self-limitation is the foundation of the freedom of association. Petitioner took every possible step within the party fora to persuade the party leadership to hold elections in terms of the party constitution and when his persistent pleas brought no results, in the interest of the party he spoke to the media. In those circumstances the impugned statement made by the petitioner to "Lakdiva" is justified as having been made in the exercise of his freedom of speech and expression guaranteed under the Constitution. The expulsion of the petitioner is therefore invalid.

Cases referred to :

1. *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1947] 2 All ER 680 ; [1948] 1 KB 223.
2. *Dawkins v. Antrobus* (1879) 17 Ch D 615 [1881–51] All ER Rep. 126; (1881) 44 LT 557.
3. *Richardson – Gardner v. Freemantle* (1871) 24 LT 81.
4. *Maclean v. Workers Union and Others* (1929) 141 Law Times 83 ; [1929]1 Ch. 602.
5. *Hopkinson v. Marquis of Exeter* (1867) LR 5 Eq. 63 ; (1867) 37 LJ Ch. 173.
6. *Hamlet v. General Municipal Boilermakers and Allied Trade Union* [1987]1 All ER 631.
7. *Dissanayake and Others v. Kaleel and Others* – SC (Spl) 4 – 11/91 – SC Mins of 03-12-1991.

8. *Parameswaran Pillai Bashkaran Pillai and another v. State* Prosecutor AIR 1951 Travencore – Cochin 45.
9. *P. S. Menon v. State of Kerala and Others* AIR (1970) Kerala 165.
10. *Immedisetti Ramakrishnaiah Sons, Anakapalli and Others v. State of Andra Pradesh and another* AIR (1976) Andra Pradesh 193.
11. *Gokaraju Ranagaraju v. State of Andra Pradesh* AIR (1981) SC 1473.
12. *Adams v. Adams* [1971] WLR 188.
13. *In re James* [1977] 2 WLR 1; [1977] Ch 41.
14. *Extein Norton v. Selby County, State of Tennesse* (1886) 118 U. S. Lawyers' Ed. Book 30 page 178.
15. *In re K. Stephen Perera* et al 68 NLR 332.
16. Yapa Abeywardena v. Harsha Abeywardene and another SC 51/87 (Spl).
17. Scading v. Lorant (1851) 3 HLC 418, 447.
18. Jayatilleke v. Kaleel SC Nos. 1 and 2/92 – SC Minutes of 28-02-1992.

APPLICATION challenging expulsion from political party.

D. S. Wijesinghe, PC with *Maxie Bastiansz, S. Mahenthiran, Nihal Fernando, A. M. Jiffery, Maithree Gunaratne* with *K. Sivanathan and Preethikumari Arachchige of Sivanathan* and Associates for Petitioner.

H. L. de Silva, PC with *Nihal Jayamanne, Anandalal Nanayakkara and Ms. N. Amerasinghe* for the 1st to 4th, 11th, 13th, 14th, 17th to 20th, 23rd, 27 to 36 respondents.

Manohara R. de Silva for 5th, 8th to 10th, 22nd and 26th respondents.

A. K. Premadasa, PC with *G. H. S. Suraweera* and *C. E. de Silva* for 16th respondent. No appearance for 6th, 7th, 12th, 15th, 21st, 24th, 25th and 37th respondents.

Cur. adv. vult.

April 27, 1993.

DHEERARATNE, J.

INTRODUCTION

Petitioner is a Member of Parliament belonging to the Sri Lanka Freedom Party (SLFP), duly elected at the general election held in 1989, to represent the Kalutara District. 1st, 2nd and 3rd respondents are President, General Secretary and Treasurer of the SLFP respectively ; 4th to 8th respondents are Vice Presidents while 9th and 10th respondents are Assistant Secretaries ; 1st to 30th respondents are members of the Central Committee ; and 31st to 35th respondents are members of the Disciplinary Committee. 36th respondent is the party itself – a recognized political party within the

meaning of the Parliamentary Elections Act No 1 of 1981. 37th respondent is the Secretary–General of Parliament who is added as a party purely for the purpose of giving him notice of this application. Petitioner was expelled from the SLFP consequent to a decision taken by the Central Committee on 2.6.93 and the 2nd respondent, General Secretary of the party by his letter dated 3.6.93 (P40) informed him of his expulsion. On 30.6.93 petitioner filed this application in terms of Article 99 (13) (a) for a determination by this court that his expulsion from the SLFP is invalid. The parties represented by Mr. H. L. de Silva, PC. and Mr. A. K. Premadasa, PC. have joined issue with the petitioner ; while Mr. Manohara de Silva on behalf of his clients submitted to court that he supports the position taken up by the petitioner.

EVENTS IMMEDIATELY LEADING TO THE EXPULSION

Sometime prior to 6.9.92, as evidenced by the report in the " Island " newspaper of that date (P22) under the title " SLFP leadership under challenge ", the petitioner, when interviewed by the media expressed views advocating a change in the leadership of the SLFP which he called the " old guard " and for holding of elections of office bearers, which elections he claimed had not been held for several years. By letter dated 16.10.92 (P23) the 1st respondent acting in terms of Rule 14 (7) of the party constitution (P1) suspended the petitioner from membership of the party. By that letter petitioner was also informed that a disciplinary inquiry will be held against him for conducting himself " not in keeping with the constitution and in disregard of discipline ". The statements made to the media by the 1st respondent P24 and P25 and the letter sent by the petitioner to the 1st respondent on 23.10.92 (P25 A) indicate that sometime earlier, the petitioner had voiced similar views to those contained in P22 to the BBC. Petitioner was prepared to withdraw the allegedly offending statements if the 1st respondent was prepared to give him a firm undertaking to withdraw the suspension. By letter P25 A the petitioner so informed the 1st respondent. No charge sheet was served and no inquiry was held in respect of the statements issued by petitioner to the media and his suspension from membership of the SLFP continued unrevoked.

In January 93, the petitioner while under suspension from his party was interviewed by a journalist attached to the newspaper called " Lakdiva " and excerpts of that interview were published in the

" Lakdiva " issue of 24.1.93 (P26). By letter dated 3.2.93 (P27) 2nd respondent drew petitioner's attention to certain excerpts from the petitioner's statement to " Lakdiva " and alleged that he had acted in gross violation of the constitution and discipline of the party. The letter further notified petitioner to show cause why disciplinary action should not be taken against him. Petitioner replied P27 by his letter dated 17.2.93 (P28). Petitioner was informed thereafter by the 2nd respondent to be present at an inquiry to be held by the Disciplinary Committee of the party on 29.3.93. Petitioner by letter dated 24.3.93 (P30) addressed to the 2nd respondent objected to 3 particular members of the Disciplinary Committee inquiring into his matter on the ground of their being biased. He stated that an impartial inquiry could be held if the committee is composed of any 5 out of 17 persons named by him ; 2 members already in the Disciplinary Committee were included by him in this list of 17. Petitioner wanted to know in advance the names of the members of the Disciplinary Committee and he further asked for a postponement of the inquiry to a date after the Sinhala New Year. 2nd respondent wrote to the petitioner letter dated 2.4.93 (P34) to say that although the Disciplinary Committee met on 29.3.93, no inquiry could be held due to the absence of the petitioner and that in order to give him another opportunity to present his defence, the inquiry was refixed for 16.4.93. By letter dated 7.4.93 addressed to the 2nd respondent, petitioner asked for an adjournment of the inquiry fixed for the 16th ; one reason for his request as stated by him was that he was extremely busy over the Provincial Council elections. On 16.4.93 the Disciplinary Committee met but the petitioner was absent and a letter by him requesting a postponement was handed over to the committee by his lawyers. The committee acceded to that request and appointed 22.5.93 as the final date of hearing. On 22.5.93 petitioner did not appear before the committee and a medical certificate indicating petitioner's inability to attend due to his illness, was tendered on his behalf by Mr. S. L. Gunesekera, M.P. The inquiry was then refixed for 1.6.93. On 28.5.93 petitioner wrote letter P38 to the Chairman/ Member Disciplinary Board in which he alleged inter alia that disregarding his objection to some members of the Disciplinary Commitee investigating the complaint against him on the ground of bias, he was given to understand that those members were included in the committee ; the Disciplinary Committee was not one duly appointed under the SLFP constitution ; and that he was not obliged to submit himself to an inquiry by a Disciplinary Committee which

was not impartial and which had been nominated by persons not validly holding office as members of the Central Committee of the SLFP.

On 31.5.93 petitioner filed action in the District Court seeking a declaration inter alia that the 1st to 30th respondents were not duly elected members of the Central Committee of the SLFP and further seeking an interim injunction restraining 1st to 30th respondents from subjecting the petitioner to a disciplinary inquiry. On 31.5.73 itself the learned District Judge Colombo made order refusing an enjoining order restraining 1st to 30th respondents. The Disciplinary Committee met on 1.6.93 and submitted its report. On the following day the report was considered by the Central Committee and a decision was taken to expel the petitioner with immediate effect. This decision was communicated to the petitioner by letter P40 dated 3.6.93.

THE SHOW CAUSE LETTER AND THE EXPLANATION

Allegations against the petitioner which culminated in his expulsion are contained in the show-cause letter P27 written by the 2nd respondent in Sinhala. It is useful for the purpose of these proceedings to set out in full an English translation of that document.

It has been reported to me that the following statements among others have been made by you as published under the caption " Dialogue " (debasa) in the Sunday 24th January 1993 issue of the " Lakdiva " volume 1 issue no. 2, which is a public news paper published and distributed in Sri Lanka.

" We call the SLFP a democratic party. We ask for a mandate to establish democracy in this country but there is no democracy in our party itself. A very dangerous type of dictatorship is prevailing in our party. This is the primary reason for this dispute ".

" There has been only one leadership in the SLFP for the last 24 years. This is a thing that should never happen in a political party working under a democratic structure. However good may such leader be, it is a gross injustice to the able and educated lot in the lower strata of the party who represent several generations and who always stagnate in the same position. Therefore, a non-stop pressure from the bottom to the top is inevitable.

This is the main and primary reason for this dispute. It is an extraordinary thing if internal conflicts do not arise in a party like this that calls itself democratic. The simple answer that this is a fight between capitalism and socialism is not valid in fact."

" Had we not made this struggle, there would have been no room for the existence of any active politics in the SLFP by now. What new thing have we given to the people? We have been stagnating in the same place for a number of years. We cannot go forward without creating such a change and innovation as this inside our party.

The progress and existence of the party rests in the victory or defeat of the struggle we are carrying on for the establishment of democracy. There are two camps in the party now. A party so divided cannot March towards a specific goal.

No election of office bearers has been held in this party for the past eight years. This alone clearly shows that the party leadership has accepted the position that it cannot win in a just election held to elect office bearers.

If we are to challenge the anti-democratic and dictatorial leadership of a political party like the UNP, we should first make ourselves strong. We should have a leadership that can guide us towards one goal. But when it is not so.....?"

" Administrative structures of all descriptions in this country are in the hands of the UNP. The UNP has been able to strengthen its power in whatsoever manner in all political and administrative spheres. At a time when all these strengths are with him, I do not believe that President Premadasa will hold such a so called 'just' election. I do not think that Premadasa can be defeated in a 'just' election. He will hold such elections as he can win.

Therefore, Premadasa can be defeated only through a true struggle by the people. Such cruel rulers like these could not be driven away through democratic methods. If we are to chase Premadasa away by any means we must have a true leadership for that purpose. Today what we lack is only the necessary leadership. "

According to the copy of the letter dated 25.1.93 addressed by you to the editor of the Sunday Observer annexed to the letter dated

25.1.93 sent to me by you, you have admitted that you made statements to the said "Lakdiva" newspapers of 24.1.93.

I have to state that grave injury and damage has been caused to the Sri Lanka Freedom Party and to its activities as well as to its leadership by the publication of the aforesaid statements in the " Lakdiva " newspaper. Further these statements have caused the general public to be discontended and dissapointed with the SLFP and its leadership and for the general public to hold them in contempt and disgrace.

If you have made the above mentioned statements while being a member of the Sri Lanka Freedom Party as well as a Member of Parliament of that party, they are seriously detrimental to the party ; and it is a violation of its constitution and an act of grave misconduct. It is also a matter of violation of party discipline.

For your easy perusal I am annexing hereto a copy of the full dialogue as published in the said newspaper " Lakdiva " and you are hereby requested to show cause within 14 days of the receipt of these statements.

The charges were based on " the aforesaid statements " as picked and chosen by the 2nd respondent and in my opinion they were so understood by the petitioner. Most candidly he admitted having made those statements to " Lakdiva ". The explanation for his conduct, he promptly offered within the stipulated time to the 2nd respondent by letter P28 which reads as follows :

I am in receipt of your letter dated 3rd February 1993 received by me on the 5th instant.

I have been and am strongly of the view that –

(a) There has to be due and proper elections within the party and primarily for the Central Committee.

(b) The party leader must be duly and properly elected.

(c) It is not proper that one person should hold the leadership of the party for 34 years without being elected by the party.

(d) That the ' Central Committee ' and/or the ' Office Bearers ' of the Party cannot properly or lawfully function for so many years without a proper election.

These views, I have repeatedly expressed to prominent members of the SLFP and have without ambiguity expressed these views to Mrs. Sirimavo Bandaranaike, MP, Mr. Anura Bandaranaike, MP, Mr. Dharmasiri Senanayake, MP, Mr. Kingsley Wickramaratne, MP, Mr. Mahinda Rajapakse, MP, amongst many others.

I have also expressed these views within the SLFP organizations of my electorate and also at meetings of the SLFP Parliamentary Group. These are the views I would have expressed before the All Island Committee and the Executive Committee of the party had they been summoned. I was prevented from expressing my views even to these committees by reason of the fact that meetings thereof were not summoned in breach of the imperative provisions of the Party Constitution for several years.

I am not a member of any other commitee or organ of the SLFP and have no other forum (at present except SLFP organization in my electorate) to express my views.

My efforts of communicating these views to the membership of the SLFP through Mrs. Sirimavo Bandaranaike, MP, Mr. Anura Bandaranaike, MP, Mr. Dharmasiri Senanayake, MP, Mr. Kingsley Wickramaratne, MP and Mr. Mahinda Rajapakse, MP, have brought no results. No dialogue was possible. No forum was given to me within the party to express my views to the membership of the party. My views were not placed for discussion at any forum of the SLFP.

On the other hand, I was suspended from the membership of the party from on or about 16th October 1992 and no charges have yet been preferred. I was thus deliberatedly prevented from expressing my views within the SLFP or having my views put up for discussion within the SLFP.

I am also a Member of Parliament elected from the Kalutara District as a member of the SLFP. In these circumstances, I have a duty to bring to the notice of the membership of the SLFP and the supporters of the SLFP my views.

In the circumstances set out above, the only manner in which I could bring these matters to the notice of these persons was through the media.

The views expressed are political, fundamental and emanate from my conscience. They are not in anyway directed personally against anyone inclusive of Mrs. Sirimavo Bandaranaike, MP.

I stand by my views, specially taking into consideration the constitution of the SLFP. I once again request that proper elections be held to the Central Committee and for the Party Leadership.

With regard to what was published in the " Lakdiva " of 24.1.93, I was interviewed by Mr. Wimalasiri Gamlath of that publication. I expressed my views to him, but not all views expressed by me to him were expected to be published. The only views expressed by me which I expected to be published concerned the lack of elections to the Central Committee and to the Party Leadership.

I do not share the view that any harm has been caused to the party or its leader by the publication you refer to in your letter to me. The party as you are aware is fighting for greater democracy. I deny that I have acted against the party and/or acted in breach of party discipline in granting the interview.

I have always been a loyal Member of the SLFP and have not acted against the interests of the party, and will never act against the interest of the party because, among other things, it is self defeating. On the other hand I have always acted in the best interest of the SLFP and of the Country.

In conclusion, I am constrained to say that I am surprised to have received your letter accusing me of a breach of party discipline by making the statements in question to " Lakdiva ". Several members of the party including Mrs. Sirimavo Bandaranaike, MP, Mr. Anura Bandaranaike, MP, Mr. Stanley Thilakeratne, MP, Mr. Nandimithra Ekanayake, MP, Mr. S. B. Dissanayake, MP and Mrs. Chandrika Kumaranatunga have made statements extremely critical of the Party and/or its members and such statements received wide publicity in the press. However, no disciplinary action was at any time taken against any of them for making the said statements.

In the circumstances, I have been singled out for discriminatory treatment and I cannot resist concluding that your letter has been actuated by malice.

The Disciplinary Committee, as seen by the report 2R9 dated 1.6.93, was unanimous in arriving at the conclusion that the petitioner " (a) lowered the party and its leadership in the estimate of the general public ; (b) brought the party and its leadership into disrepute and (c) contravened party discipline." The Central Committee members summoned by telephone met on 2.6.93 and according to the minutes of the meeting 2R10 among some other matters the report 2R9 was considered. Majority of members numbering 18 voted for the expulsion of the petitioner, 4 voted against and 3 abstained.

CHALLENGE OF PETITIONER'S EXPULSION – GROUNDS

Before commencement of the hearing, the broad grounds upon which petitioner relies to challenge his expulsion in these proceedings, were submitted to us in writing at our request, by learned President's Counsel for the petitioner.

Those grounds are :–

1. Absence of jurisdiction in the Central Committee to expel him by reason of the averments in paragraphs 58 to 60 of the petition. The petitioner submits that it is not an answer for the principal respondents to say that the petitioner had by his conduct impliedly waived the right to challenge the jurisdiction of the Central Committee, for the reason that waiver necessarily implies knowledge of one's rights plus an election to abandon those rights.

2. Absence of jurisdiction in the Disciplinary Committee to hold the inquiry against the petitioner by reason of its irregular appointment, the mala–fides prompting the appointment, and bias on the part of some members of the committee as averred in paragraphs 61 and 41–43 of the petition. The petitioner also submits that the delegation of the power to appoint the members of the Disciplinary Committee to the 1st respondent is ultra vires the constitution of the party.

3. That the party leadership could not have taken action to expel the petitioner for granting the interview to the Lakdiva newspaper as it was held out to the membership that criticism of the party leadership will not be considered a ground for disciplinary action. The conduct of the party leadership amounts to a waiver and/or acquiescence and/or estops them from taking disciplinary action against the petitioner.

4. Even if there was a breach of discipline, the petitioner was justified in granting the interview which led to his expulsion by reason of the unreasonable and unconstitutional stifling by the party leadership of his undoubted right as a member of a voluntary association to communicate and gain acceptence of his point of view with regard to a need for internal changes.

5. The expulsion was invalid by reason of malafides.

6. That having regard to the flagrant and contemptuous violations of the fundamental provisions of the constitution by the party leadership the constitution was for all practical purposes a dead letter. It is therefore not open to the purported Central Committee to invoke the provisions of the selfsame constitution to justify the expulsion of the petitioner.

7. The expulsion is invalid by reason of the failure on the part of the Central Committee to comply with the principles of natural justice. The petitioner submits that the lack of due and proper notice, the undue haste, the failure to notice some of the members, the active participation of the 1st respondent, the total lack of material before the Central Committee of the defence of the petitioner etc. vitiated the decision to expel the petitioner.

JURISDICTION OF THE SUPREME COURT

The nature of the jurisdiction conferred on the Supreme Court in terms of the proviso to Article 99 (13) (a) is indeed unique in character ; it calls for a determination that expulsion of a Member of Parliament from a recognized political party on whose nomination paper his name appeared at the time of his becoming such Member of Parliament, was valid or invalid. If the expulsion is determined to be valid, the seat of the Member of Parliament becomes vacant. It is this seriousness of the consequence of expulsion which has prompted the framers of the Constitution to invest that unique original jurisdiction in the highest court of the Island, so that a Member of Parliament may be amply shielded from being expelled from his own party unlawfully and/or capriciously. It is not disputed that this court's jurisdiction includes, an investigation into the requisite competence of the expelling authority ; an investigation as to whether the expelling authority followed the procedure, if any, which was mandatory in

nature ; an investigation as to whether there was breach of principles of natural justice in the decision making process ; and an investigation as to whether in the event of grounds of expulsion being specified by way of charges at a domestic inquiry, the member was expelled on some other grounds which were not so specified. Mr. H. L. de Silva, PC. contended that the decision to expel the petitioner was a political decision and therefore the criteria adopted for expulsion may vary from case to case, person to person and time to time ; he reminded us of the words of caution of the great American Chief Justice, Marshall that 'judges should not enter the political thicket'. He submitted that the jurisdiction of this court does not extend to an examination of the meritworthiness of the expulsion. It was submitted that this court could interfere only if the decision of the expelling authority was unreasonable in the *'Wednesbury sense' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1] that is, if the decision is so unreasonable as to be irrational. Our attention was drawn to the following cases relating to expulsion of members from voluntary associations :- *Dawkins v. Antrobus* [2] ; *Richardson – Gardner v. Freemantle* [3] ; *Maclean v. Workers Union and Others* [4] ; and *Hopkinson v. Marquis of Exeter* [5] where it was held that if exercise of the power of expulsion was made bona fide, the court should refrain from interfering. The case of *Hamlet v. General Municipal Boilermakers and Allied Trade Union* [6] was also cited where failure of the domestic tribunal to take into account matters which were relevant or taking into account matters which were irrelevant, was held to be not falling within the scope of review by court.

Our jurisdiction appears to be wider ; it is an original jurisdiction on which no limitations have been placed by Article 99 (13) (a). As stated by Fernando J. in *Dissanayake and others v. Kaleel and others* [7], " Our own jurisdiction under Article 99 (13) (a) is not a form of judicial review, or even of appeal, but rather an original jurisdiction analogous to an action for declaration, though it is clearly not a rehearing. Are we concerned only with the decision making process, or must we also look at the decision itself? Article 99 (13) (a) required us to decide whether the expulsion was valid or invalid ; some consideration of the merits is obviously required."

THE CENTRAL COMMITTEE AND COMPETENCE TO EXPEL

At the apex of the SLFP hierarchy is the Central Committee, which according to the party constitution P1, is its supreme body. It consists of 3 component elements ; 12 members of the party elected by the Executive Committee ; not more than 11 representatives appointed by the President of the party from among the members of the Executive Commitee ; and not more than 10 Members of Parliament (Rule 13). The constitution is silent as to how these Members of Parliament are to be picked, but it is reasonable to assume that it implies that they are to be elected from among themselves and are not to be chosen by the President of the party. The Central Committee has the power to appoint a Disciplinary Committee comprised of 5 members and to determine powers and functions of the latter body (Rule 15). Where the General Secretary is convinced that any member of the party has contravened the party policies or has violated party discipline, he has the power to call for explanation from such member and submit a report to the Disciplinary Committee for action. Disciplinary Committee is then empowered to hold an inquiry and convey its decision to the Central Committee. The Central Committee is vested with the power to consider the report and determine the course of action to be taken against the errant member (Rule 14 iv). Independently, the President of the party has the power to suspend a member from his membership (Rule 14 vii).

Petitioner contends that the Central Committee which expelled him was not lawfully constituted or was functus inasmuch as no annual elections have been held, as the constitution requires, to elect office bearers either of the Central Committee or of the Executive Committee since 1986. The fact that no elections have been held for those bodies since 30th January 1986 was admitted by the respondents. Rule 28 of the party constitution provides that elections of all organizations set out in the constitution shall be held annually or within the period as may be determined by the Central Committee. It is pointed out that the Central Committee never gave its mind to that matter in order to make a determination as to any such period ; if there was any such decision the contesting respondents failed to produce the minutes of such a determination. It is also pointed out by learned counsel for petitioner that Rule 31 of the party constitution, which makes provision for office bearers already holding office to continue to function until new office bearers are elected for any year, cannot cure

the irregularity of not holding elections for 7 long years. He is right in that submission.

Counsel for the petitioner further contended that the Central Committee was not a lawfully constituted body for the following reasons :–

(1) Appointment of 10th respondent who is a Member of Parliament, by letter dated 5.11.88 (P47) by the 1st respondent, also appointing him to the post of Assistant Secretary of the Central Committee by the same letter.

(2) Appointment of 16th–19th respondents who are Members of Parliament by the 1st respondent on 2.7.91.

(3) 21st–27th respondents who were elected to office in 1986 by virtue of their being Members of Parliament, ceased to be Members of the then Parliament on its dissolution on 20.12.88 ; they were not re-elected to the Central Committee after they were elected as Members of Parliament subsequently.

(4) 29th and 30th respondents who are presently Members of Parliament were appointed by the Central Committee, although on 20.10.92, the SLFP parliamentary group unanimously decided to appoint two other Members of Parliament.

(5) 25th respondent who was an elected Member of Parliament, resigned his seat on or about 7.4.93, yet continues to function as a member of the Central Committee.

(6) 20th respondent was appointed in or about October 92 by the 1st respondent. She was not a member of the Executive Committee at the time of her appointment.

Mr. H. L. de Silva, PC. submits that the validity of the composition of the Central Committee cannot be attacked in these proceedings which are collateral and such challenge should be appropriately made directly in a court of competent jurisdiction empowered to grant a declaratory decree. He invited this court to proceed on the basis that members of the Central Committee have acted under colour of their office and submitted that all acts done by the Central Committee are

legally valid, until the composition of the Central Committee is declared to be invalid in an appropriate declaratory action. It was contended that the de facto doctrine gave validity to acts of persons who held office at the relevant time of making the impugned decision and that the members of the Central Committee were not total usurpers. Reliance was placed in support of the de facto doctrine on the dicta expressed in the following cases :- *Parameswaran Pillai Bashkaran Pillai and another v. State Prosecutor* [8] ; *P. S. Menon v. State of Kerala and others* [9] ; *Immedisetti Ramakrishnaiah Sons, Anakapalli and others v. State of Andra Pradesh and another* [10] ; *Gokaraju Rangaraju v. State of Andra Pradesh* [11] ; *Adams v. Adams* [12] ; *In Re James* [13] ; *Extein Norton v. Selby County, State of Tennessee* [14] ; and *In Re K. Stephen Perera et al* [15].

The *de facto* doctrine is based on public policy and necessity ; it is a pragmatic doctrine designed to avoid " endless confusion and needless chaos " resulting from the legality of appointments being successfully challenged in collateral proceedings. Learned counsel for the petitioner submitted that this doctrine cannot be applied to the facts of the present case, because the members of the Central Committee, far from having acted bona fide in the interest of the public or third persons, have acted for their own benefit. There is no material before us to determine that the Central Committee members acted for their own benefit. It was further contended by Mr. Wijesinghe, PC, that none of the cases cited in support of the de facto doctrine deal with instances of domestic bodies, but they all deal with statutory tribunals or officials created by law. I see no reason for this court not to be guided by the same principle in considering the authority of the Central Committee which appears to have had numerous dealings in running the party with the general public and institutions created by law. I cannot overlook the fact that the SLFP is a major political party in this country which has held the reins of power on several occasions since its birth in 1951 and which now forms the largest parliamentary group in the opposition. 1st respondent as leader of the party, as its constitution provides, has appointed a large number of electoral organizers ; and 2nd respondent as General Secretary, has performed and has to perform numerous obligations according to law, particularly in relation to the nomination lists of the party members to Parliamentary, Provincial Councils' and Local Authorities' elections. Any pronouncement by us on the legality of the appointment of the office bearers of the Central Committee in these proceedings,

is bound, in my opinion, to create endless confusion and needless chaos in the enormous party organization and in its dealings with the general public and public authorities. For these reasons I would decline to extend our jurisdiction in these proceedings to what may be directly done by a court of competent jurisdiction in an appropriate declaratory action. In view of our decision on this aspect of the matter, we would refrain from addressing our minds to the further question as to whether the petitioner, by his conduct, has impliedly waived the right to challenge the jurisdiction of the Central Committee on the principle that a person may not approbate and reprobate. I will proceed to examine the petitioner's case on the basis that the members of the Central Committee of the SLFP, acting under colour of their office and in the ostensible discharge of their duties, had the competence de facto to expel him.

PARTY POLICIES AND DISCIPLINE

The constitution of the SLFP–P1 is prefaced with a statement of its policies which reads as follows :–

> The basic principle of the SLFP is Democratic Socialism. Namely, the middle path. There are a host of various individual and collective freedoms which constitute the basic principles of Democratic Socialism. We consider them to be essential features of a free democracy. We treat freedom of thought, freedom of expression, freedom of assembly, freedom to manifest one's religion, franchise etc. to be the freedom of the individual. We treat the freedom from want, fear, illiteracy and illhealth as collective freedoms. Government by a parliament elected with the free vote of the people, efficiency and impartiality of the government machinery, and the independence of the judiciary are considered by us to be the basic principles of democracy.
>
> We recognize the concentration of the entire effort of the state for the welfare of the people, providing equal opportunity for all citizens, and the creation of a classless society as the fundamental features of socialism.
>
> It is our conviction that, on the one hand, the journey towards socialism under a democratic institution, for the creation of a democratic society runs counter to dictatorship, and is achieved

without compulsion and in keeping with the wishes of the people, and that on the other hand, the privileges enjoyed by a small section of society, as a consequence of democratic capitalism needs control.

It is our view, that a third feature, namely, the religious and cultural resuscitation should be incorporated into the aforesaid two fold social democratic principles.

Rule 26 of the SLFP constitution spells out the rights and duties of members as follows :–

(i) It shall be binding on all members to adhere to all party policies and decisions of the party and to take steps in furtherance of the objects of the party and to popularize the party among the people.

(ii) Every member is required to comply with the rules and regulations of the party and should conduct himself in a disciplined manner.

(iii) It shall be the duty of every member to assist and support the candidates nominated by the party in all elections.

(iv) (Omitted).

We are informed that a code of conduct for Members of Parliament, Provincial Councillors and Members of Local Authorities has been agreed upon by the Central Committee of the SLFP on 19.7.93, as evidenced by P62, after this application was filed. No rules or regulations appear to have been made pertaining to discipline. None was cited before us.

THE PETITIONER, PARTY ELECTIONS AND INTRA-PARTY DISPUTES

The petitioner became a member of the SLFP in or about 1982 and was appointed the chief organizer of the Bandaragama electoral division of the Kalutara District in 1984. On 18.11.88 he wrote confidential letter P3 to the 1st respondent urging that immediate remedial action be taken in organizing party activity in the Kalutara District, if the 1st respondent, who was the SLFP candidate for the

presidential election at that time, were to secure the maximum number of votes in that district. At the general election held in 1989, he was elected Member of Parliament for the Kalutara District from his party, receiving the highest number of preferential votes in the district. At several SLFP parliamentary group meetings held after the petitioner was elected to parliament, he urged the need for democratising the party and the necessity to hold party elections. The petitioner alleges that in the latter part of 1990, he had a long conversation with the 1st respondent at her residence, in the course of which he suggested that she steps down from the leadership of the party in order to resurrect the party from the sorry plight it had fallen into by that time. 1st respondent admitted some conversation with the petitioner, but stated that the petitioner told her that she should think more of the party than of her children ; she denied that a suggestion was made by the petitioner to step down from the leadership. On 6.6.89 the petitioner received a circular letter from the 8th respondent who was the then General Secretary of the party, addressed to all Members of Parliament of the SLFP, requesting them to submit proposals for the party's further course of action and revision of its policies. The petitioner sent his proposals on 29.6.89 (P4) in response. Several proposals in P4 dealt with democratisation of the party structure, the constitution and party policies. In response to a circular letter dated 30.1.89 (P5) from the 8th respondent as General Secretary of the party, the petitioner forwarded resolutions (P6A) passed by the Bandaragama electoral area organization, some of which urged democratisation of the party constitution. On 30.3.90 the petitioner was appointed by the Central Committee to a committee comprising of 10 members of the parliamentary group chaired by the 25th respondent to consider ways and means of strengthening the party organization. The petitioner by letter dated 2.4.90 (P7) submitted to the 25th respondent his proposals for consideration of the committee. Proposals in P4 included amendment of the SLFP constitution to make it more democratic and broad based and the urgent necessity for holding elections of all party organizations. Again on 20.9.90, the 9th respondent as General Secretary wrote to all Members of Parliament of the SLFP calling for proposals for the formation of the future programme of the party. The petitioner in response, by his letter dated 1.10.90 (P10) pointed out to the 9th respondent that sending any proposals was a wastage of his time and energy, as the proposals sent by him on earlier occasions did not appear to him to have been subjected to any consideration by the leaders of the party.

On 11.11.90 the Central committee appointed a 4 member committee to consider proposals to reorganize the party and for settling intra-party disputes which had surfaced at that time. By letter dated 25.11.90 (P11) the petitioner wrote to the 22nd respondent who was a member of that committee, setting out his proposals for the consideration of the committee. In P11 the petitioner among other matters strongly urged the necessity of amending the party constitution with a view to democratise the party machinery and also made a strong case for holding of the long overdue elections to elect office bearers of the Central Committee, Executive Committee and the All–Island Committee. On 24.01.91 the Central Committee met and approved the recommendations of the committee. It was decided that the 5th respondent be appointed the all–island party organizer ; the 1st respondent indicated to the Central Committee that she desired to step down from the party leadership ; and a resolution to the effect that in June (1991) a new leader should be appointed was passed (P12).

Petitioner thereafter received a circular letter dated 25.1.91 from the 1st respondent stating that the Central Committee was pleased to appoint the 5th respondent as the all–island party organizer and requesting the petitioner to give all assistance to the 5th respondent in the task of reorganizing the party. By letter dated 1.2.91 (P14) written by the petitioner to the 5th respondent as the newly appointed all- island party organizer, he again highlighted the necessity of democratising the party structure and holding of elections. The petitioner by letters 8.6.91 (P15) and 21.6.91 (P16) at the invitation of the 5th respondent submitted comprehensive proposals directed towards reorganization of the party. It is also in evidence that the petitioner expressed similar views about party elections at certain seminars organized by the party.

Later, the 1st respondent changed her mind regarding stepping down from the leadership. By letter dated 23.8.91 (P59) circulated by the 1st respondent, a copy of which was addressed to the petitioner, she stated among other matters that although she had already expressed her desire not to stand for election as president of the party, in view of a deep seated conspiracy taking place to oust her from the leadership, she had decided to continue as president. The reference to 'conspirators' in that letter stirred up a hornet's nest in the party circles.

2nd respondent by his statements made to the media on 3.6.92 (P61A) and on 20.9.92 (P61D) announced that party elections were coming soon. 1st respondent sent a circular letter dated 14.10.92 (P66) stating that arrangements were being made to hold elections of the party no sooner the atmosphere to hold such elections was conducive and requested all concerned to desist from signing any document which would cause dissension within the party. About the time 1st respondent sent letter P66, it appears that there was a hue and cry for party elections coming from several quarters. SLFP councillors of local bodies in the Galle District who met on 4.10.92 (P60D) with the active participation of the 25th respondent, who is a member of the Central Committee ; SLFP bhikku organization which met on 8.10.92 (P60C) and some SLFP Gampaha District organizers headed by the 24th respondent, a member of the Central Committee, who met on 20.10.92 (P67), were all demanding party elections. The Gampaha District party organizers sent a petition to the 1st respondent requesting among other matters that elections be held. The signatories to this petition were headed by the 24th and 5th respondents, both of whom are members of the Central Committee. The appointment of the 20th respondent as a Gampaha District organizer by the 1st respondent was also condemned in that petition as being dictatorial.

Elections of the SLFP youth organization were held on 3.10.92 and the 1st respondent publicly announced that they were manipulated, while the 5th respondent in a statement to the media denied this allegation (P20E1, P20E2 & P20E3). Elections of the SLFP bhikku organization were held in October 1992 but the elections were anulled by the 1st respondent on the ground that they were irregular (P20F & P20F1). 5th respondent made statements to the media contradicting that position (P20F2). The petitioner submits that the 1st respondent's views on the elections of the youth organization and the bhikku organization, were dictatorial in that they were not expressed with the sanction or approval of the Central Committee. It was during this time when the 1st and the 5th respondents clashed openly through the media, that the petitioner was suspended by the 1st respondent by letter P23 of 16.10.92.

It appears that the non-holding of party elections, so vital to an organization which professes to further democracy in the country, has been a burning issue among party members. Petitioner submitted that

the party was subjected to ridicule by its opponents on that score (P11). 2nd respondent in his affidavit said " it has not been expedient to hold such election [for the Central Committee] for variety of reasons, which had been accepted by a majority of the general membership of the party, including the parliamentary group and the general membership [sic] and the Central Committee appointed in 1986 has continued to perform its functions without objection and the general membership including the petitioner submitted to its authority."

The statement is absolutely devoid of detail. As to what the variety of reasons were, Mr. de Silva PC. was unable to enlighten us, but he submitted that the insurgent activities in the country to which several SLFP members had fallen victim, was one of the probable reasons. As against this, for the petitioner it was submitted that even this reason does not hold water, because since 1986 several elections were held in the country at the national level, parliamentary, provincial councils' and local authorities'.

VIOLATING PARTY DISCIPLINE ; FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION

A political party is a voluntary association of individuals who have come together with the avowed object of securing political power on agreed policies and a leadership. Cohesion is a sine qua non of success and stability whether a political party is in power or in the opposition. To foster party cohesion discipline among its members becomes absolutely necessary. Party disintegration has to be arrested by firm disciplinary measures that include expulsion which Article 99 (13) (a) of our Constitution itself recognizes. The members of a party are bound together by a contract which is usually the party constitution, from which arises contractual obligations of the membership. These obligations are either express or implied.

Mr. H. L. de Silva, P.C. commended to us the dicta of Sharvananda CJ. in the case of *Yapa Abeywardene v. Harsha Abeywardene and another* [16]. In particular, he drew our attention to the following passage from that judgment at page 7.

> " The argument [based on freedom of thought and conscience and freedom of speech and expression guaranteed under the constitution] in support of this ground could have been

addressed acceptably to a court of a century ago when party system was in its embryo. But it overlooks the democratic development of a century. In 1888 famous parliamentarian John Bright could say 'I must follow my own judgment and conscience and not the voice of my leaders. But today thanks to the evolution of the party system, democracy has assigned the individual member to the role of a cog in the party wheel and it is the party that has become spokesman of the country's interests. The party system has reached the stage where the individuality of the average party member has scarcely an opportunity of finding independent expression. The party caucus tends to override all opposition and once the party line is decided, the member becomes a little more than a rubber stamp for its decisions. "

In Yapa Abeywardene's case the point at issue was a violation of a directive given by the party to vote in favour of a particular bill. The justification alleged for Yapa Abeywardene's conduct was the 'free mandate' theory in relation to actions of parliamentarians. Perhaps the observations of Sharvananda CJ. could be understood in that context. The soundness of that sweeping dicta was doubted in the case of Dissanayake and others v. Kaleel and others (supra) where Kulatunga J. was constrained to remark " but he is not a lifeless cog liable to be subject to unlawful or capricious orders of directions without remedy. " In the same case, Fernando J. remarked " I take the view that a member has not been reduced to the position of a mere cog in the party machine bereft of any independence of action. While his relationship to the party tends to suggest that he has no independence, some of his constitutional functions are essentially, discretionary, quasi judicial ; some even judicial." Mr. H. L. de Silva PC. submitted that in respect of non-constitutional functions of a member the " cog in the wheel " theory should still hold good. I am unable to agree with that proposition. If for instance, the party gives a direction to a member in direct violation of a fundamental policy of the party, is that member meekly bound to obey such a direction?; or if the party gives a direction to a member in flagrant violation of a term of his contract with the party, is such member expected to tamely submit to the direction? I am unable to subscribe to a proposition which tends to devalue the nature of the contractual bond of a political party vis-a-vis a member (and particularly a Member of Parliament) to a relationship perhaps that of master and servant.

As the statement of policies in the SLFP constitution reveals, it is a party unequivocally committed to the ideals of democracy. The contention of Mr. Wijesinghe, PC. in vindication of the impugned conduct of the petitioner, is his consistent demand for party elections from his leaders receiving negative response. The petitioner questions the moral justification of his party calling for greater democracy in the country, when there are no party elections and thus no manifestation of democracy within the party itself. This scenario reminds me of the story narrated by the Greek biographer Plutarch, about Lycurgus, the 9th century B.C. traditional law-giver of Sparta. Lycurgus being asked why he, who in other respects appeared to be so zealous for equal rights of men, did not make his government a democracy rather than an oligarchy, replied, " Go you and try democracy in your own house."

It was contended by Mr. Wijesinghe, PC. that the petitioner was bound by Rule 26 (1) of the party constitution (i) to " take steps to fulfil the objects of the party " – democracy was one such object ; and (ii) to " popularize the party among the people. " Those were responsibilities of a party member in terms of the constitution. The statement to 'Lakdiva' the excerpts from which form the foundation of the charges against the petitioner, contends Mr. Wijesinghe, was made in furtherance of the objects of the party and to popularize the party among the people after the petitioner dismally failed in his attempts to force the leadership to hold elections. Even the allegation made by the petitioner that there exists a dangerous dictatorship within the party is referable to the non-holding of elections. It could be seen that all the excerpts in P27 except the reference to the late President Premadasa and the UNP relate to democracy and non-holding of party elections. It is idle to think that the Central Committee took exception to the reference made to the late President Premadasa and the UNP, but in any event that reference too, indirectly (not remotely) relates to the lack of party elections and the resultant party disunity.

Mr. H. L. de Silva, PC. submitted that the petitioner has failed to requisition meetings of the Executive Committee or the All-Island Committee, of both of which he is an exofficio member, by obtaining the signatures of 1/3rd of their membership, in terms of Rule 13 (ii) of the party constitution ; therefore, it was submitted, that the petitioner has not exhausted all the fora within the party, to ventilate his views before he spoke to the media. I see no force in this contention

because in the circumstances in which the petitioner was placed, that was an impossible task to have embarked upon, without the blessings and contrary to the wishes of the leadership. As Mr. Wijesinghe, PC. points out, a similar attempt by the Gampaha District organizers led by a senior party member and a member of the Central Committee – the 24th respondent, proved abortive (P67) ; and in any event the 1st respondent's injunction (P66) to desist from signing any document 'which will cause dissension within the party' was an insuperable obstacle to signing or collecting signatures for a notice of requisition. It was also pointed out that the 1st respondent's power to suspend a member under the constitution, which power she never failed to exercise, was always menacing.

Passage of time has not staled the force of John Stuart Mill's statement that " if all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had power, would be justified in silencing mankind. " It is this fundamental freedom of speech and expression including publication that is enshrined in Article 14 (1) (a) of our Constitution which is the supreme law of the country. Article 14 (1) (c) of the Constitution guarantees to every citizen the freedom of association. The freedom of association places a voluntary self-limitation on the freedom of expression and that self-limitation is the foundation of the exercise of the freedom of association. How much of the freedom of expression has to be compromised for the sake of freedom of association? The inter-play between these two freedoms is best expressed in the words of Fernando J. in *Dissanayake's* case (supra) :-

> " The petitioners' case was presented throughout as if only their rights, and fundamental rights, were involved. The party rules involve all the other members as well. What of their right? Just as the petitioners agreed not to criticise their party and colleagues in public, without prior internal discussion, so also their fellow-members undertook a reciprocal obligation not to criticise the petitioners. That is not all. The petitioners sought to relegate the party rules to the lowest level in the hierarchy of norms. But Article 99 (13) (a) impliedly recognizes at least one aspect of the party rules and discipline. More important, the rules of a political party are not a mere matter of contract, but the basis of the exercise of the freedom of association

recognized by Article 14 (1) (c) ..... One of the conditions on which party members agreed to exercise this fundamental right was by mutually accepting reciprocal obligations placing limitations on the exercise of the freedom of speech by each other, in the interests of their association. Hence no question of superior or inferior norms arises. Inherent in the two freedoms is the liberty to make adjustments....."

Petitioner firmly and honestly believes that all maladies afflicting his party, which is committed to the ideals of democracy, spring from the failure to hold party elections since 1986. He may be right in his opinion ; or he may be wrong ; but that does not concern this court. The party constitution stipulates holding annual elections for the party organizations and the leadership is bound, as far as the membership is concerned, to hold such elections annually or within a reasonable period determined by the Central Committee. No meetings of the Executive Committee or the All-Island Committee were summoned and thus the petitioner was deprived of the opportunity of placing his views before those committees. The petitioner took every possible step within the available party fora to persuade the leadership to hold party elections and when his persistent pleas brought no results, in the best interests of his party, he spoke to the media. The statement to 'Lakdiva' was couched in moderate language and was expressed without any semblance of vituperation directed at any person. I am of the view that in those circumstances the petitioner's impugned statements are justified as having been made in the exercise of his freedom of speech guaranteed under the Constitution.

MALA FIDES AND FAILURE TO OBSERVE PRINCIPLES OF NATURAL JUSTICE

In view of the conclusion already reached by me, it is unnecessary to deal with the questions raised on behalf of the petitioner relating to mala fides of some members of the Central Committee, failure to observe principles of natural justice in the decision making process, and as to whether the petitioner was differently treated from other members of the SLFP who chose to ventilate intra-party conflicts publicly in the media. Particularly, in regard to the questions of malice and differential treatment, I am glad that we have been mercifully saved from entering 'a political thicket'.

CONCLUSION

The application is allowed and I hold that expulsion of the petitioner from the SLFP by decision of the Central Committee made on 2.6.93 was invalid. I make no order as regards costs. We deeply appreciate the assistance given to us by learned counsel.

WIJETUNGA, J. – I agree.

RAMANATHAN, J.

I have had the benefit of perusing the judgment of Dheeraratne, J. As I am not in agreement with it, I have written this dissenting judgment.

The facts have been set out fully in the judgment of Dheeraratne, J. and it is unnecessary for me to repeat them in detail. The application rests largely on the legal issues that arise for determination.

The facts briefly are as follows :
The petitioner had joined the Sri Lanka Freedom Party in 1982 and in 1984 he was appointed as the chief organizer for Bandaragama electorate in the Kalutara District. In 1989 he was elected to the Kalutara District as a Member of Parliament.

In September, 1992 the petitioner made statements to the Island Newspaper which had subsequently been broadcast by the B.B.C. to the effect that the 1st respondent had been at the helm of the party for as long as thirty two years which was too long. The petitioner had been suspended by the 1st respondent in exercise of the powers under Article 14 (7) of the Party Constitution for the breach of Party discipline.

The petitioner had subsequently given an interview to the Lakdiva Newspaper (P26) article containing excerpts of an interview published in the Lakdiva Newspaper on 24.1.1993 which was a criticism of the leadership and party. A show cause letter (P27) dated 3.2.1993 was sent by the General Secretary of the party to the petitioner and finally the inquiry was fixed for 1.6.93.

By letter dated 28.5.93 (P 38) the petitioner informed the Disciplinary Committee and stated that no purpose will be served in his placing facts before the Committee which was not impartial and which was constituted by persons who were not duly elected and ceased to hold office.

The petitioner was informed of his expulsion from party membership by letter dated 3.6.93. (P40)

The petitioner has applied to this Court in terms of the proviso to Article 99 (13) (a) of the Constitution challenging his expulsion from the Sri Lanka Freedom Party. The Constitution empowers this Court to determine whether the expulsion of a Member of Parliament from a recognised political party or independent group which he belongs is *valid.* (the emphasis is mine)

I am of the view, that this Court is not empowered to examine the merits of the decision expelling the petitioner but is confined to a consideration of its validity. The question is not whether the expulsion is right or wrong. This is not an application by way of appeal or review of proceedings or order made in the District Court.

The principle contention made by the petitioner was that the Central Committee of the party was not a validly constituted body.

On the material placed before me I am satisfied that the members of the Central Committee were de facto holders of office who at the time of the making of the impugned order of expulsion of the petitioner were de facto office holders.

Professor Wade, Administrative Law (6th edition) page 336, has illustrated the wide application of the de facto functionaries by a House of Lords case *Scadding v. Loranta* [17] where Lord Truno, L.C. remarks

> " You will at once see to what it would lead if the validity of their acts, when in office, depended upon the propriety of their election. It might tend, if doubts were cast upon them, to consequences of the most destructive kind. It would create uncertainty with respect to the obedience to public officers, and it might lead also to persons, instead of resorting to

ordinary legal remedies to set right anything done by the officers, taking the law into their own hands ".

I am unable to agree with the submission advanced on behalf of the petitioner that the de facto doctrine has no application to domestic bodies like the Central Committee, the 36th respondent. I am of the opinion, that there are no limitations placed on the de facto doctrine which has a wide application. I am fortified by Professor Wade's comments at page 337.

" The de facto doctrine has a long history and has been applied to a wide variety of officers. It was even said to have applied to monarchy, so that it might validate acts done in the names of kings whose title to the throne was considered illegitimate and who were kings 'in fact and not in law'. At the other end of the scale the doctrine was invoked from an early date to uphold copyhold titles enrolled by stewards of manors who were not properly appointed ".

I am satisfied that the members of the Central Committee were acting with colour of office and in pursuance of that office, made orders which are deemed to be valid in law. The members of the Committee have exercised their powers de facto.

There has been no prior direct proceeding in which the validity of their appointments or rights have been challenged. Their authority can be questioned only in proceedings which directly challenge their appointments. Rubinstin, states in his treatise on Jurisdiction and illegality pages 205–206 :

" The mere fact the acts and decisions were made by a tribunal which has not been legally appointed is not sufficient to render them nullities. If a Judge is recognised de facto, his authority can be questioned only in proceedings which directly challenge his appointment or which seek to prevent him from hearing a case. Any other method of attack is doomed to failure ".

A corollary to the doctrine of de facto office holder is the rule that a collateral attack on the legal authority of the office holder cannot be made when the validity to an act done by the de facto holder of the office is being challenged.

The petitioner is in these proceedings challenging the validity of his expulsion by the Central Committee. It is *not* open for the petitioner in these proceedings to question the legal authority of the Central Committee. This should have been done before the expulsion in a direct proceeding for a declaration that the Central Committee had ceased to hold office.

I am in agreement with Mr. de Silva's submission that had the District Court action filed on 31.5.93 been filed earlier and had the petitioner obtained a declaration that the members of the Central Committee had not been duly elected in terms of Article 13 of the Party Constitution, then any subsequent expulsion would have been of no legal effect. It should have been done before the expulsion by a direct proceeding seeking a declaration that the Central Committee member had ceased to hold office. In *Re K. Stephen Perera* [15] held that the right of a de facto Judge to hold office with colourable title to his office, cannot be questioned in collateral proceeding. His authority can only be questioned in which it directly challenges the validity of his appointment.

I am satisfied that there has been no breach of the rule of natural justice. A hearing was offered but the petitioner chose not to avail himself of it. The order cannot be characterised as unreasonable in the *Wednesbury* sense [1] for bad reasons. The petitioner's attack on the leadership and the party in the Lakdiva newspaper is a breach of party discipline by making public criticism of an internal party matter. The petitioner could have also resorted to Article 31 (2) of the Party Constitution to persuade 1/3rd of the membership to his views. Instead he resorted to a scrullious attack on the leadership to the public, in the Lakdiva newspaper. He eschewed the domestic forum of the party. I am unable to say that the action of the Central Committee was " unreasonable " in the circumstances of this case.

The Central Committee of a political party must be allowed a discretion to decide what sanctions are appropriate for violations of party discipline. A party is entitled to sever the link between a member and his party, terminating his contractual relationship. A collateral attack is disallowed in these proceedings and the expulsion by the Central Committee of the petitioner is valid.

I will now proceed to consider the plea of approbation and reprobation which was placed in the forefront of the submissions made by Mr. de Silva. The principle is that a person cannot both approbate and reprobate. A person is not allowed to accept a benefit and reject the rest.

It is the Central Committee which approved the petitioner's nomination as a candidate at the Parliamentary Elections of 1989. As submitted by Mr. de Silva when the petitioner tendered his nomination paper as a candidate of the SLFP he made the representation that the signature of the SLFP contained therein was the signature of the Secretary who was the duly appointed Secretary of the party. Further, he accepted the position that the Central Committee which approved his candidature was a duly constituted body, which had the required legal competence to approve his candidature. Having got the benefit of the acts of the Central Committee and of the Secretary of the party, it is certainly now not open to the petitioner to question the validity of the appointment of the Central Committee and the office bearers of the party.

The petitioner cannot be permitted to take up inconsistent positions. In short, he cannot be permitted to approbate and reprobate. This principle is a bar to his attacking the validity of the competence of the Central Committee, in an endeavour to avoid the consequences of his expulsion by the Central Committee.

It was urged on behalf of the petitioner that he had made representation to his party and as this was unheeded he had no forum in which to express his views and he was justified in raising issues in public.

A Member of Parliament owes allegiance to his party in government or in opposition as the case may be. Accordingly, he votes in the divisions of the House in compliance with the instructions of the party whips. A Member of Parliament is subjected to three interests ;– (1) national interest ; (2) party interest ; (3) constituency interest. Where the party interest is involved there is no justification in going public. Any dissent must be raised and discussed internally within the party as this is purely a domestic matter. The petitioner is entitled to canvas reforms within the party. He must find an opportunity to get his views accepted within the party, at Parliamentary

party meetings, unofficial groups. The petitioner is a member of Parliament. He could canvas support for his views in the All Island Committee, Executive Committee and get the support of 1/3rd of the membership to set the party machinery into operation for his reforms.

The petitioner has not adequately employed his party forums provided by the Party Constitution instead he has raised matters in public vide (P26).

I am of the opinion, that where a person takes up internal matters in public and tries to destroy the party, he is subject to party discipline and must take the consequences for it.

The petitioner's standing and weak support is reflected by the voting of the Central Committee which has a cross section of party opinion and consists of the party hierachy.

(a) 18 voted for petitioner's expulsion.
(b) 4 voted against his expulsion.
(c) 2 members abstained.
(d) 4 members absent.

The majority vote was for the petitioner's expulsion. The opinion of the disciplinary committee was unanimous. It is clear that the faction the petitioner represented has only minimal support.

I am inclined to agree with the submission of Mr. de Silva that as the petitioner was unable to muster support of 1/3rd of the membership of the All Island Committee and Executive Committee for the purpose of tabling a resolution ; he resorted to public vilification of the party and the leadership.

I am of the opinion, in the circumstances and facts of this application, there was no justification for the petitioner to abandon the existing party forum and to voice these matters in public.

The next question for consideration is to what extent the right of freedom of speech of a member of Parliament is restricted by the requirement of party discipline. The criticism of policies within a party is legitimate but when done in public the answer depends on the facts and circumstances of each case.

The petitioner admits he made a statement to the Lakdiva newspaper on 24.1.93. I now refer to P27 which interalia has extracts made by the petitioner to Lakdiva newspaper as follows :

" We call the S.L.F.P. a democratic party. We ask for a mandate to establish democracy in this country but there is no democracy in our party itself. A very dangerous type of dictatorship is prevailing in our party. This is the primary reason for this dispute.

There has been only one leadership in the SLFP for the last 24 years. This is a thing that should never happen in a political party working under a democratic structure. However, good may such leader be, it is a gross injustice to the able and educated lot in the lower strata of the party who represent several generations and who always stagnate in the same position. Therefore, a non-stop pressure from the bottom to the top is inevitable.

This is the main and primary reason for this dispute. It is an extraordinary thing if internal conflicts do not arise in a party like this that calls itself democratic. The simple answer that this is a fight between capitalism and socialism is not valid in fact.

Had we not made this struggle, there would have been no room for the existence of any active politics in the SLFP by now. What new thing have we given to the people? We have been stagnating in the same place for a number of years. We cannot go forward without creating such a change and innovation as this inside our party.

The progress and existence of the party rests on the victory or defeat of the struggle we are carrying on for the establishment of democracy. There are two camps in the party now. A party so divided cannot March towards a specific goal.

No election of office bearers has been held in this party for the past eight years. This alone clearly shows that the party leadership has accepted the position that it cannot win in a just election held to elect office bearers.

If we are to challenge the anti-democratic and dictatorial leadership of a political party like the UNP, we shall first make ourselves strong. We shall have a leadership that can guide us towards one goal. But when it is not so.....?

Administrative structures of all descriptions in this country are in the hands of the UNP. The UNP has been able to strengthen its power in whatsoever manner in all political and administrative spheres. At a time when all these strengths are with him, I do not believe that President Premadasa will hold such a so called " just " election. I do not think that Premadasa can be defeated in a " just " election. He will hold such elections that he can win.

Therefore, Premadasa can be defeated only through a true struggle by the people. Such cruel rulers like these could not be driven away through democratic methods. If we are to chase Premadasa away by any means we must have a true leadership for that purpose. Today what we lack is only the necessary leadership. "

It seems to me on a consideration of the above statements that Mr. de Silva is correct in his submission that, that statement contained in P27 constitutes a condemnation and vilification of both party and leadership. The inevitable consequence of the statements is to lower the estimation of both the party and the leadership in the eyes of the people as a whole.

As stated by Kulatunga, J. in *Jayatillake v. Kaleel* [18],

" A M.P. who uses his right to freedom of speech to create such a situation, whether as leader or as supporter, violates the party obligations and exceeds the bonds of such freedom : he thereby forfeits the protection of Article 14 (1) (a) of the Constitution. "

A member of Parliament is entitled to freedom of speech in public but subject to the constraints of party discipline. The comments that are disparaging and injurious to the party and leadership would not give a person the protection.

The petitioner has raised the allegation of malice. The law places a heavy burden on the party who alleges mala fides. In the present case, I am of the opinion, that the material placed before this Court in support of the allegation of mala fides is tenuous, insubstantial and wholly lacking in particulars and vague. I hold it has not been established.

It is necessary to emphasize that the relationship of a member with his political party rests on a contractual basis. The expulsion of a member is the severance of the formal contractual link between the member and the party.

Where there has been a breach of party discipline a party has the discretion to mete out punishment which is appropriate in the circumstances of each case. The primary purpose of a political party is the acquisition of power. The unity of the party is fundamental consideration and many of the issues are in substance of a political nature. A party will have to decide from time to time what course of action is best suited to the achievement of the preservation of the unity of the party. It is a reasonable proposition that the assessment of these matters fall within the realm of political judgment and the scope of judicial intervention is restricted.

This Court's constitutional jurisdiction is confined to the *validity* of the expulsion and there is no warrant to trespass upon areas where decisions are matters purely of political judgment, unless manifestly unreasonable.

The limitations of the jurisidiction of this Court have been correctly and precisely expressed by Kulatunga, J. in S.C. Application Nos. 1 and 2/92 in *Jayatillake v. Kaleel* [18].

> " A political party must be allowed a discretion to decide what sanctions are appropriate for violations of Party discipline; and if the Party decides, bona fide, to expel any member guilty of repudiating the Party, this Court will not in the exercise of its constitutional jurisdiction impose such member on the Party. If that is done, Parliamentary Government based on the Political Party System will become unworkable ".

I hold that the expulsion of the petitioner is valid for the foregoing reasons and I dismiss the application with costs.

Application allowed.