P. R. DE SILVA
v.
KALEEL AND OTHERS

COURT OF APPEAL.
PALAKIDNAR, J. (PRESIDENT, COURT OF APPEAL),
WIJEYARATNE, J. AND
WEERASEKERA, J.
C.A. APPLICATION NO. 679/92
NOVEMBER 6, 11, 12 & 13, 1992.

Provincial Councils – Expulsion of Provincial Council Member from U.N.P. membership – Provincial Councils Elections Act, No. 2 of 1988, s. 63(1) – Provincial Councils Act, No. 42 of 1987 s. 3 – Article 154 of the Constitution.

Held:

Section 63(1) of the Provincial Councils Elections Act, No. 2 of 1988, which provides for an expulsion of a Provincial Council Member is not invalid, because this provision has not been included in the Constitution (which establishes Provincial Councils) nor in the Provincial Councils Act, No. 42 of 1987, (which provides by section 3 for disqualifications and by section 5 for vacation of seats).

By Article 154(a) of the Constitution, it is laid down that Parliament shall, by law, provide for the election and qualifications for membership of Provincial Councillors and implicit in this provision is the power of passing legislation for disqualifications too, and hence section 63(1) has been enacted under these powers.

In any event Article 80(3) of the Constitution precludes the Court from pronouncing upon the validity of any Act of Parliament.

Section 63(1) of the Provincial Councils Act bears almost the same wording as Article 99(13) (a) of the Constitution applicable in respect of expulsion of Members of Parliament which can be challenged in the Supreme Court.

In both instances the expulsion can be challenged on grounds that "such expulsion was invalid".

Reasons and justification for the expulsion will have to be gone into to determine this question.

When the rules of natural justice have been followed prior to expulsion, it is sufficient for the respondents to satisfy court that the expulsion was valid and proof beyond reasonable doubt is unnecessary.

Where –

1. there was a fair inquiry in which charges were explained and evidence of witnesses led in the presence of the petitioner, who was given an opportunity to cross-examine them and also to rebut charges, explain his position and to lead evidence;

2. the rules of natural justice have been substantially complied with; and

3. there was evidence to prove the charges that the petitioner had acted contrary to party discipline and the rules;

the expulsion cannot be said to be invalid.

Cases referred to:

1. *Gamini Dissanayake et al. v. M. C. M. Kaleel et. al. S.C.* (Special Nos.4)11/91 S.C. Minutes of 3.12.91.
2. *Foutaine v. Chesterton* (1968) The Times Aug. 20, 1968; 112 Sol. Jo. 690.
3. *John v. Rees* (1969) 2 WLR 1294, 1333.
4. *The Board of Education v. Rice* (1911) A.C. 179, 182.
5. *Ridge v. Baldwin* (1964) A.C. 40, 132.
6. *The University of Ceylon v. Fernando* 61 NLR 505, 512.
7. *Russell v. Duke of Norfolk* (1949) 1 A.E.R. 109, 118.
8. *General Medical Council v. Spackman* (1943) A.C. 627, 638.
9. *Chulasubadra de Silva v. The University of Colombo and Others* (1986) 2 Sri. LR. 288.
10. *R. v. Deputy Industrial Injuries Commissioner, ex p. Moore* (1965) 1 All E.R. 81, 84.
11. *Ariyaratne Jayatillaka and S. A. Muthu Banda v. M. C. M. Kaleel et al.* S.C. Application Nos. 1 and 2/92 – S.C. Minutes of 28.2.92.

APPLICATION challenging expulsion of Provincial Council Member from U.N.P. membership.

Lalith Athulathmudali, P.C. with *Ranjan Goonaratne, Dr. Ranjith Fernando, Mahendra Amerasekera, Ranjani Morawaka, T. M. S. Nanayakkara, Nalin Dissanayake, Kalinga Indatissa, M. B. Handakumbura, P. Gamini Peris,* and *Janapriti Fernando* for the petitioner.

K.. N. Choksy, P.C. with *L. C. Seneviratne, P.C., S. C. Crosette-Tambiah, Daya Pelpola, S.J. Mohideen, D. H. N. Jayamaha* and *Ronald Perera* for 1st to 4th respondents.

Cur adv vult.

December 11, 1992.

WIJEYARATNE, J.

The petitioner filed this application originally on 15.9.92 and later filed an amended application on 25.9.92 for an order declaring his expulsion from a recognized political party, to wit, the United National Party (hereinafter referred to as the U.N.P.) to be invalid and of no legal effect and that he continues to remain a member of the U.N.P.

The 1st, 2nd and 3rd respondents are the Chairman, the General Secretary, and the General Treasurer respectively of the U.N.P. They are also members of the National Executive Committee and the Working Committee of the U.N.P., and the petitioner has sought permission to proceed against them as representing these bodies too.

The 4th respondent is the U.N.P. itself while the 5th respondent is the Secretary of the Southern Provincial Council and the 6th respondent is the Commissioner of Elections.

The petitioner avers that in 1988 he was elected a Member of the Southern Provincial Council as a member of the U.N.P. He received a letter dated 15.4.92 (P2) from the Hon. Minister Festus Perera, Chairman of the Disciplinary Committee of the U.N.P., calling upon him to show cause in writing for violating the party constitution to which he replied by letter dated 24.4.92 (P3) denying the allegation. Thereafter he received a letter dated 13.5.92 (P4) from the 2nd respondent stating that the Members of the Disciplinary Committee were not satisfied with his reply and stating that a disciplinary inquiry would be held on 19.5.92 at the Party Headquarters.

The petitioner attended this inquiry, which was postponed to 21.5.92, on which date too it was postponed to 25.5.92. On 25.5.92 the inquiry commenced and Kalinga Obeywansa presented some newspaper cuttings and some letters suggesting that the petitioner had connections with the Democratic United National Front (hereinafter referred to as D.U.N.F.). The inquiry was then postponed for 2.6.92 and he states that he was not furnished with copies of proceedings nor of certain new witnesses who were to be called.

At the inquiry on 2.6.92 Kalinga Obeywansa, without any prior notice to him, led the evidence of Dharmasena Mendis, Praveen de Silva, M. M. Wilson, W. Nalaka de Silva and two others, and the inquiry was postponed for 30.6.92, on which date it was postponed to 6.7.92 and thereafter to 24.7.92.

On 24.7.92 the petitioner had led the evidence of two persons as his witnesses, namely, M. S. Amarasiri, Chief Minister of the Southern Provincial Council, and Ranjith Kumarage, M.P., both of whom stated that no complaints had been received against the petitioner.

The petitioner avers that he received a letter dated 20.8.92 (P15) signed by the 2nd respondent stating that the Working Committee had considered the report of the Disciplinary Committee and that the Working Committee had found him guilty and had resolved to expel him.

The petitioner avers that the purported expulsion is invalid and void and of no avail in law, inasmuch as, *inter alia*,

(a) the said expulsion is contrary to the principles of natural justice;

(b) no precise charges were framed and the petitioner was denied the opportunity of adequately preparing his defence;

(c) the petitioner was not given any reason for the expulsion;

(d) the expulsion is *ultra vires* the party constitution and/or the party guidelines for the conduct of disciplinary inquiries. A copy of these guidelines has been annexed to the petition marked P16;

(e) in any event the expulsion is *ultra vires* and/or invalid as it has been based on the evidence of unreliable and unworthy witnesses some of whom were personal enemies, particularly Kalinga Obeywansa who acted as prosecutor and witness;

(f) the petitioner had not been warned previously that his conduct was in violation of the U.N.P. Constitution, that he was not informed that he had been found guilty by the Disciplinary Committee prior to his expulsion by the Working Committee, and that he was not provided with an opportunity of appealing against that decision;

(g) in any event the expulsion is disproportionate to the charges alleged against the petitioner.

The petitioner further avers that he has been informed that the 2nd respondent had written and informed the Southern Provincial Council of his expulsion and that the 5th respondent had communicated the said expulsion to the 6th respondent.

To this application objections dated 30.10.92 have been filed by the 1st to 4th respondents.

They deny that a disciplinary inquiry was held on 19.5.92. They aver that the members of the disciplinary committee were the Hon. Festus Perera, M.P., who was Chairman, Hon. E. P. Paul Perera, M.P., and Hon. John Amaratunga, M.P., who postponed the inquiry for 21.5.92 at the Parliamentary complex.

From the context of P2 (which is annexed to the petition) the petitioner was aware that the disciplinary committee was to inquire into the charge that he had functioned as a member of the D.U.N.F. while being a member of the U.N.P. and a U.N.P. Provincial Councillor in breach of party discipline. The nature of the charges had been explained to the petitioner by the inquiry panel at the commencement of the inquiry.

They aver that the inquiry commenced on 21.5.92 at the Parliamentary complex, at the outset of which the Chairman informed the petitioner of the charges (which were the same that were conveyed to him by P2), and the petitioner had answered by denying the charges.

The notes of inquiry held on 21.5.92, 2.6.92, 30.6.92, 6.7.92 and 24.7.92 marked R1 to R5 (with the translations marked R1a to R5a respectively), together with the documents produced at the inquiry marked P1 to P10, now marked X1 to X10 (with translations marked X1A to X10A), were tendered along with the objections. They admitted conveying this expulsion to the Southern Provincial Council and that the 5th respondent had communicated the same to the 6th respondent.

The 1st to 4th respondents in their objections further aver that –

(a) the disciplinary committee of the party is a sub-committee of the Working Committee, which is empowered to exercise the disciplinary power of the party.

(b) the panel of inquiry consisting of the aforesaid Festus Perera, Paul Perera and John Amaratunga being members of the Working Committee, was appointed to hold an inquiry and report in respect of the petitioner.

(c) the petitioner participated at the inquiry and was made aware of the charges. At no time did he complain that he was unaware of the charges nor did he request copies of the proceedings.

(d) the petitioner was afforded the opportunity of defending himself in leading evidence and cross-examining witnesses.

(e) the petitioner was made aware in advance of the witnesses and at no stage did he complain that he had no opportunity of adquately preparing his defence; on the contrary the petitioner participated at the inquiry without protest.

The 1st to 4th respondents also aver that the panel which conducted the inquiry made its report thereon to the disciplinary committee which having considered the evidence recorded in R1 to R5 and the report R6 made its recommendation (marked R7) to the Working Committee. The Working Committee having considered the

charges and the evidence, the position taken up by the petitioner, the report of the panel R6, decided that the petitioner had violated clauses 3 (1) (a), (b) and (d) and 9 (d) and (g) of the party constitution.

The Working Committee also considered the punishment and decided to expel the petitioner. The minutes of the meeting of the Working Committee has been annexed marked R8.

They aver that the expulsion of the petitioner was lawful and justifiable and was made in the rightful exercise of the powers of the party under the constitution after due and proper inquiry and prayed that the petition be dismissed.

Thereafter the petitioner filed a counter-affidavit on 2.11.92.

In this counter-affidavit he states that the documents produced by the 1st to 4th respondents are not true and accurate records; in particular he states that no proceedings were conducted on 21.5.92 as evidenced by document R3 filed in Application bearing No. C.A. 473/92 of this court, which shows that the three inquiry officers had carried on an inquiry against J. E. P. B. S. Samaratunga, former Chairman of the Central Provincial Council. The 1st to 4th respondents in this case are the same respondents in that case also. This document (R3 in that application) is annexed marked P17 to the present application.

The petitioner in C.A. 473/92 J. E. P. B. S. Samaratunga had sworn an affidavit stating that on 21.5.92, though both he and the petitioner were summoned, only his inquiry was conducted on that day. This affidavait was annexed marked P18 to the present application.

In this counter-affidavit the petitoner also states that though R1 alleges that the charge sheet had been explained only broadly and not specifically, in any event on 21.5.92 no charge sheet was explained to him either broadly or specifically, or otherwise.

In this counter-affidavit the petitioner has also stated that various items have been attributed to him incorrectly and falsely in R1 to R5, some of which are as follows:-

(i) Proceedings of 24.7.92 wherein the petitioner is recorded as having stated "I am satisfied with the manner in which this inquiry was held". This was denied.

(ii) Proceedings of 21.5.92 where it is recorded that "the Chairman informed Mr. P. R.de Silva he was free to bring any witnesses; he was also informed that the following persons would be giving evidence: (1) Berty Kulatunga, (2) N. N. Weeramuni, (3) Wilbert Soysa, (4) P. Praveen de Silva, (5) M. Wilson Soysa (6) Dharmasena Mendis."

The petitioner states that this is false and untrue as no proceedings were conducted on 21.5.92 and on 2.6.92 Kalinga Obeywansa brought these six witnesses to the inquiry without notice.

Then the affidavit goes on to contradict and criticise certain items of evidence tendered against him.

The affidavit goes on to say that the answer of M. S. Amarasiri as to whether the petitioner is the P. R. Silva referred to in the Daily News list (XB) has not been recorded in the proceedings.

Though R1A states that Kalinga Obeywansa's evidence was concluded on 21.5.92, nevertheless on 30.6.92 he was allowed to produce a letter addressed to Mrs. Lora de Zoysa, which is marked as P10 (x10).

The affidavit states that some of the documents he had produced during the proceedings had not been recorded. One such was a dock statement made by the late Buddharakkita Thero, one of the accused in the assassination case of the late Prime Minister S. W. R. D. Bandaranaike, where he has said that it was Kalinga Obeywansa who had fabricated the case against him; this had not been recorded.

The affidavit states that it was contrary to the principles of natural justice to allow Kalinga Obeywansa, who was himself a witness, to bring in names of new witnesses unannounced. As a result he was deprived of the opportunity of getting ready and obtaining legal advice.

It is unfair and unjustifiable for the disciplinary committee to make the report R6 as it is based on inaccuracies and false allegations. Various such details are set out.

The affidavit goes on to say that the alleged disciplinary committee acted in direct violation of the "U.N.P. guidelines for the conduct of disciplinary inquiries" (P16) and he was deprived of a fair hearing and of a fair chance of explaining and contradicting the evidence against him.

Finally the affidavit goes on to state that the three member committee had been incorrectly and illegally empowered to hold this inquiry and it should have been held by the Working Committee or the disciplinary committee, and that the three member committee misdirected themselves on the burden and quantum of proof.

Admittedly this expulsion of the petitioner and his application to this court was made under section 63 (1) of the Provincial Councils Elections Act, No. 2 of 1988, which reads as follows:-

> "Where a member of a Provincial Council ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper his name appeared at the time of his becoming such member, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:
>
> Provided that in the case of the expulsion of a member of a Provincial Council his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Court of Appeal by petition in writing and the Court of Appeal upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Court of Appeal who shall make their determination within two months of the filing of such petition. Where the Court of Appeal determines that the expulsion was valid the vacancy shall occur from the date of such determination."

At the commencement of this argument Mr. Lalith Athulathmudali, P.C. for the petitioner took up the position that Provincial Councils were set up, *inter alia*, under the provisions of Articles 154(A) to 154 (D) of the Constitution. Disqualifications in respect of members of Provincial Councils are set out in section 3 of the Provincial Councils Act, No. 42 of 1987, and the vacation of their seats is provided in section 5 of the said Act. Section 9 of the Provincial Councils Elections Act provide for disqualifications of members by referring back to section 3 of the Provincial Councils Act. There is no additional disqualification created by this section 9 of the Provincial Councils Elections Act.

Part V of the Provincial Councils Elections Act is headed "Filling of Vacancies". It is only section 63 (1) (which falls within Part V of the said Act) that provides for vacation by expulsion. This mode of vacation by expulsion is only found in the Provincial Councils Elections Act which is only procedural and not substantive. Unlike in the case of Members of Parliament where vacation by expulsion is set out in Article 99 (I) (13) (a) of the Constitution, this mode of vacation of a seat by expulsion in the case of Provincial Councillors is not set out in the Provincial Councils Act nor in the Constitution which creates Provincial Councils. Therefore Mr. Athulathmudali argued, to give this provision a substantive meaning would be violative of the Constitution.

He further argued that sections 3 and 5 of the Provincial Councils Act are exhaustive of the circumstances under which a Provincial Council member's seat could be vacated and section 9 of the Provincial Councils Elections Act relates back to these sections. Therefore he argued that there is no parliamentary scheme or intent to give any substantive quality to section 63 (1) of the Provincial Councils Elections Act.

He relied on Articles 3 and 4 of the Constitution relating to the inalienable sovereignty of the People and the franchise and contended that the vacation of a Provincial Council member's seat upon his expulsion from his party, being an important matter, should have been contained in the Constitution itself. If it were to be contained in an ordinary enactment of Parliament, he argued, it

should at least have been enacted in the Provincial Councils Act itself where the other disqualifications are provided and not in the Provincial Councils Elections Act, which is merely procedural. He pointed out that Articles 89 and 91(1) of the Constitution deal with the qualifications and disqualifications of a Member of Parliament. Article 101 of the Constitution provides for Parliament by law to make provision for the registration of electors and various other matters connected with elections, but in its proviso states that no such law shall add to the disqualifications specified in Articles 89 and 91.

He submitted that the petitioner's right as a member of the Provincial Council is vested for five years by Article 154(E) and that right cannot be taken away lightly. It is a rule of interpretation that vested rights cannot be lightly taken away and he relied on the following passage from Bindra on "Interpretation of Statutes" (7th Edn. 1984, p. 218) which reads as follows:-

> "There is a presumption against the taking away of a vested right by any fresh legislation, and a construction which involves the taking away of vested rights ought not to be adopted if the words of the enactment are open to any other construction."

He also pointed out that under section 65 of the Provincial Councils Act the filling of vacancies of Provincial Council members is at the sole discretion of the Secretary of the recognized political party who can nominate anyone and he need not be a person who has contested at the election, but in the case of Members of Parliament the procedure is different, where the Commissioner of Elections appoints the person who has secured the next highest number of preferences at the election. He argued that sections 3 and 5 of the Provincial Councils Act are exhaustive of the conditions under which a member of a Provincial Council can vacate office and this is reiterated in section 9 of the Provincial Councils Elections Act. Therefore he argued that there is no substantive quality given to section 63 (1) of the Provincial Councils Elections Act.

I have carefully considered all these legal submissions. However section 63 of the Provincial Councils Elections Act has been enacted

in pursuance of the power expressly granted to Parliament by Article 154 (Q) (a) which empowers Parliament to provide by law for the election of members of Provincial Councils and the qualification for membership of such councillors.

Implicit in the provision of passing legislation providing for the qualification of membership of Provincial Councils is the provision of passing legislation for disqualifications too.

Bindra in his "Interpretation of Statutes" (7th Edn. 1984 at p.719) quotes from Craies Statutes Law (5th Edn. at p. 238) as follows:-

> "One of the first principles of law with regard to the effect of an enabling Act is that if the Legislature enables something to be done, it gives power at the same time, by necessary implication to do every thing which is indispensable for the purpose of carryng out the purpose in view."

Bindra in the said book goes on to say at page 719:

> "Moreover, if a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some details of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, it is beyond doubt that Courts are at liberty to infer that the statute by necessary implication empowers that the details be carried out".

Hence Parliament has power to enact the Provincial Councils Elections Act and particular section 63 (1).

It should be noted that the proviso to Article 101 of the Constitution which provides that no law shall add to the disqualification specified in Articles 89 and 91 applies only in respect of Members of Parliament and not in respect of Provincial Councillors.

In any event, Article 80 (3) of the Constitution precludes this court from pronouncing upon or in any way calling in question the validity of an Act of Parliament on any ground whatever.

There is a duty cast on this court to uphold and give effect to all provisions of the Constitution and this court is precluded from examining the validity of this objection. I hold that no question involved in the interpretation of the Constitution has arisen in this case necessitating a reference to the Supreme Court under Article 125 (1) of the Constitution.

Next Mr. Athulathmudali made four main submissions, viz.,

(1) Lack of fairness in the expulsion inquiry.
(2) Departure from the U.N.P. guidelines (marked P16) for the conduct of disciplinary inquiries.
(3) No fair report.
(4) Misdirection on the burden of proof and the quantum of proof.

He also submitted that if his application is allowed the U.N.P. hierarchy could hold another inquiry.

It is well to note that section 63 (1) of the Provincial Councils Elections Act bears almost the same wording as Article 99 (13) (a) which is applicable in respect of Members of Parliament. In the case of expulsion of Members of Parliament, the expulsion can be challenged by applying to the Supreme Court by a petition to be heard by three Judges of the Supreme Court.

It should be kept in mind that the question to be determined in both instances is whether the "expulsion was invalid". The meaning of these words has not been defined either in the Constitution or the Provincial Councils Elections Act.

In 1991 eight Members of Parliament were expelled by the U.N.P. and by agreement eight petitions were heard together by three Judges of the Supreme Court in *Lionel Gamini Dissanayake et al v. M. C. M. Kaleel et al* [1]. Their judgments afford considerable guidelines in the matter before us. In his judgment M. D. H. Fernando, J. stated as follows:

> "Our 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 a declaration, though it is clearly not a re-hearing. Are we concerned only with the decision making process, or must we also look at the decision itself? Article 99 (13) (a) requires us to decide whether the expulsion was valid or invalid: some consideration of the merits is obviously required... Had these proceedings been purely by way of judicial review, it may well be that we would have to shut our eyes to the merits of the decision, and look only at the defects in the decision making process. But it is accepted that our jurisdiction is not restricted. The burden, if any must be on the Respondents, for it is the denial of natural justice by them which has resulted in these proceedings."

Kulatunga, J. in the same case stated:

"The right of a M.P. to relief under Article 99 (13) (a) is a legal right and forms part of his constitutional rights as a M.P. If his complaint is that he has been expelled from the membership of his party in breach of the rules of natural justice, he will ordinarily be entitled to relief; and this Court may not determine such expulsion to be valid unless there are overwhelming reasons warranting such decision. Such decision would be competent only in the most exceptional circumstances permitted by law and in furtherance of the public good the need for which should be beyond doubt. As Megarry, J. said in *Fountaine v. Chesterton* [2] (*surpa*) 'If there is any doubt, the applicability of the principles of natural justice will be given the benefit of that doubt' (cited by Megarry J. in *John v. Rees* [3]) and the expulsion will be struck down."

To these observations, with which I am in respectful agreement, I wish to add that by such an expulsion a Provincial Councillor (and also an M.P.) loses not only his office as a member of that body, but also his salary, allowances and various other entitlements. It is a matter of great importance to him. In deciding the question whether the expulsion was valid, the reasons and justification therefor should also have to be looked into; also whether there was a fair and proper inquiry having regard to the principles of natural justice, prior to the expulsion.

The judgment of M. D. H. Fernando, J. quoted above suggests that the burden is on the respondents to show that the expulsion was valid.

Kulatunga, J. held that if the expulsion was **in breach of the rules of natural justice** the member will ordinarily be entitled to relief unless there are overwhelming reasons in the most exceptional circumstances warranting the expulsion.

Mr. Athulathmudali submitted that it being a matter of status, the proof should be beyond reasonable doubt.

Section 63 (1) of the Provincial Councils Elections Act provides for an expelled member to apply to this court for a determination that the expulsion was invalid. The normal rule is that he who asserts must prove, and on this basis the petitioner must establish that the expulsion was invalid. The Supreme Court in the judgments quoted above did not hold that in normal circumstances where the rules of natural justice have been followed, the proof that the expulsion was valid should be established beyond reasonable doubt, but indicated that the burden was on the respondents to justify the expulsion. Therefore I cannot accept Mr. Athulathmudali's submission that proof should be beyond reasonable doubt. In my view it would be sufficient in normal circumstances for the respondents to satisfy this court that the expulsion was valid.

The same principles applicable to Administrative Law are applicable in this case. In the well-known case of *The Board of Education v. Rice* [4] Loreburn, L.C., stated as follows:-

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments of officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the

law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. "

In another leading case, namely that of *Ridge* v. *Baldwin* [5], Lord Hodson stated that three features of natural justice stand out –

(1) The right to be heard by an unbiased tribunal;
(2) The right to have notice of charges of misconduct;
(3) The right to be heard in answer to those charges.

Wade on "Administrative Law" (5th Edn. 1982 at p.481) states as follows :–

"What is essential is substantial fairness to the person adversely affected. But this may sometimes be adequately achieved by telling him the substance of the case he has to meet, without disclosing the precise evidence or the source of information."

These matters were considered again by the Privy Council in the case of *The University* of *Ceylon v. Fernando* [6].

"These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker L.J. (as he then was) said in *Russell v. Duke of Norfolk*,[7] there are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of

the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with, and so forth. In the earlier case of *General Medical Council v. Spackman*[5] Lord Atkin (at page 638) expressed a similar view in these words: 'some analogy exists, no doubt, between the various procedures of this and other not strictly judicial bodies, but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of misconduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn L.C. in *The Board of Education v. Rice*[4] afford a complete guide to the General Medical Council in the exercise of their duties.

With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in *Board of Education v. Rice* (*supra*) still affords as good a general definition as any of the nature of and limits upon the requirements of natural justice in this kind of case."

Getting on to the facts of this case, a serious allegation has been made by the petitioner that R1 or R5 do not contain true and accurate record of the proceedings.

According to the petitioner no inquiry against him took place on 21.5.92. Reliance was placed on the affidavit mark P18, which was affirmed to by J. E. P. B. S. Samaratunga, former Chairman of the Central Provincial Council, who too had been dismissed in like manner by the U.N.P. He had filed an application in this court bearing No. 473/92 similar to this application against the very same respondents (except that the 5th respondent was the Secretary of the Central Provincial Council).

In this affidavit P18 dated 2.11.92 he has stated that though he was summoned for the first inquiry to be held at 1.30 p.m. on 21.5.92, his inquiry began only at 3 p.m. and concluded at about 4.30 p.m., and that the disciplinary inquiry against P. R. de Silva (the petitioner) was not held on that day.

Mr. K. N. Choksy referred to the fact that Samaratunga in his own counter-affidavit dated 10.8.92 filed in his own case has stated in paragraph 7: "it was agreed that the inquiry would commence on the 21st of May 1992 at **1.30 p.m.**". In paragraph 8 he has gone on to say: "on 21st May 1992 the said purported inquiry commenced at **1.30 p.m.**".

When Samaratunga affirmed to the counter-affidavit dated 10.8.92 for the purpose of his own application, no doubt his memory would have been fresher. Therefore what he stated in his counter-affidavit dated 10.8.92 in his own application No. 473/92 (which record we have perused at the hearing) has to be accepted in preference to his affidavit dated 2.11.92 (P18) filed in this case. Therefore I can come to the conclusion that this inquiry against Samaratunga commenced at 1.30 p.m., lasted for about 1-1/2 hours (as stated by him) and concluded at about 3 p.m. Then of course the inquiry against this petitioner could have commenced at 4 p.m. (as stated in R1A filed by the 1st to 4th respondents).

It was urged by Mr. Athulathmudali, relying on the Hansard of 21.5.92, that the members of the inquiry panel were required for voting in Parliament.

Mr. Choksy submitted that the Hansard shows that just before the day's adjournment at 3.25 p.m. the division was called for and taken. Hence if the Samaratunga inquiry was concluded at 3 p.m., there was ample time for the members of the inquiry panel to come from the inquiry room to the chamber of Parliament for the casting of their vote shortly before 3.25 p.m. Therefore I cannot accept the contradictory affidavit filed by Samaratunga. I accept as recorded in R1 and sworn to by Festus Perera in his affidavit dated 27.10.92 filed in this case that the panel commenced the inquiry against the petitioner at 4 p.m. on 21.5.92.

I reject the petitioner's allegation that his inquiry did not commence on 21.5.92.

Samaratunga in his own application bearing No. 473/92 had made similar allegations in respect of the inquiry held against him as in this case (namely, it was contrary to the principles of natural justice; no

precise charges were framed; no reasons given; and that the expulsion was *ultra vires* the party constitution and/or party guidelines).

It is noteworthy that Samaratunga had by a letter dated 27.5.92 (marked "X" in that case) sent to Festus Perera in his own official note head stated as follows:–

> "I take this opportunity to sincerely thank you for the kind attitude and the pleasant manner in which you conducted my disciplinary inquiry, and also proud indeed of the impartiality in the proceedings.
>
> Whatever decision you take, I will be grateful and shall repeat that I will not forget your kind impartial manner adopted at the inquiry".

At the hearing we were informed that consequent to the production of this letter Samaratunga's counsel had withdrawn his petition and the bench of three Judges in that case had made order on 19.8.92 dismissing the petition without costs.

The inquiry against Samaratunga was conducted in an impartial manner by Festus Perera as evidenced by the splendid compliment paid by Samaratunga himself in the writing quoted above.

Festus Perera has sworn an affidavit dated 27.10.92 where he swears that documents R1 to R5, together with annexures X1 to X10, are true and accurate copies of the proceedings of the inquiry held by the panel and the documents marked at the inquiry, and that R6 is a true and accurate copy of the report of the panel of the disciplinary committee.

Apart from the bare statement of the petitioner, there is nothing to indicate that the proceedings have been falsified. The petitioner's attempt to impugn the proceedings by submitting Samaratunga's affidavit has failed. Therefore these allegations cannot be accepted.

There is reference to the dock statement made by the late Buddharakkita Thero, a convicted accused, in the Prime Minister Bandaranaike assassination case, where he had alleged that Kalinga Obeywansa had fabricated the case against him. This dock statement has no value whatsoever because it was disbelieved and discredited; hence he was convicted in that case. If this dock statement was believed or at least had created a reasonable doubt as to the truth of the prosecution case, Buddharakkita Thero would have been acquitted. Hence this dock statement even if it had been produced had no value whatsoever and need not have been recorded at all.

The letter dated 8.6.92 addressed to Laura de Zoysa by P. M. Premachandra, General Secretary of the D.U.N.F. (marked P10) (X10) is a letter between third parties (*res inter alios*) and does not affect the petitioner in this case and is irrelevant. However, this letter has not influenced the inquiry panel in their decision.

A perusal of the proceedings of R1 (translation R1A) shows that the inquiry commenced on 21.5.92 at 4 p.m. at the Parliamentary complex and that the charges were broadly as follows:–

(1) Mr. P. R. de Silva functioning as a member of the D.U.N.F.

(2) Formation of organizations and obtaining membership for the D.U.N.F.

(3) Functioning as a member of the Galle district committee of the D.U.N.F.

At this stage the petitioner had answered to the charges stating that he did not work against the U.N.P. and that he was not accepting the charges. This clearly shows that the charges were explained to him and he even replied to the charges.

The charges in an inquiry of this type need not be framed with the same precision as in an indictment in a criminal trial in the High Court.

Paragraph 3 of the U.N.P. Guidelines for the conducting of disciplinary inquiries (P16) filed with the application states that if the explanation submitted is unsatisfactory or unacceptable and a further inquiry is necessary, a charge sheet should then be prepared by the panel and forwarded to the member.

Mr. Athulathmudali strongly urged that no charge sheet had been prepared by the panel and forwarded to the petitioner in this case and that the guideline (P16) was disregarded.

By letter dated 15.4.92 (P2) the petitioner was informed of the charges against him. The first paragraph in this letter P2 explains the gist of the charges. The petitioner himself has answered to these charges by his letter dated 24.4.92 (P3) where he had denied the charges. He had nowhere asked for further particulars nor stated that the charges were vague.

In the case of *Sloan v. General Medical Council* the Privy Council upheld an order of the General Medical Council to remove the name of the appellant from the medical register notwithstanding the apparent vagueness of the charge.

As laid down by the Supreme Court in the case of *Chulasubadra de Silva v. The University of Colombo and Others*[9], where a party is made aware of the particulars of the offences she was alleged to have committed, that was sufficient information of the charge against her.

In this case the petitioner had been informed well in time of the gist of the charges against him. Therefore there is no substance in this contention.

The petitioner alleges that he was not informed that certain witnesses would be called to give evidence against him. At the end of the day's proceedings of 21.5.92 (marked R1A) there is a record to the effect that the Chairman (Festus Perera) informed the petitioner

that the following persons would be giving evidence: (1) Berty Kulatunga, (2) N. N. Weeramuni, (3) Wilbert Soysa, (4) P. Praveen de Silva, (5) M. Wilson Soysa, and (6) Dharmasena Mendis.

In paragraph 6 of his counter-affidavit the petitioner says that he could have used the documents P9 and P10 to cross-examine witness Dharmasena Mendis. However P9 is dated 18.6.92 and was not in existence on 2.6.92 when Dharmasena Mendis gave evidence (vide R2A).

As regards P10 the petitioner could have himself questioned Dharmasena Mendis regarding the sending of P10. Regarding the allegation in paragraph 22(b) of his petition that the witness Praveen de Silva's father (Victor de Silva) was detected stealing goods belonging to Revatha Junior School office and that the petitioner had helped his sister, who was the Principal of that school, to take him into custody, resulting in a case being filed in the Balapitiya Magistrate's Court against his father, he could well have cross-examined Praveen de Silva on this matter as these are facts within his knowledge.

Paragraph 5 of the Guidelines for the conduct of disciplinary inquiries (P16) specifically says that a member is not entitled to be represented by lawyers.

In *Enderby Town Football Club v. The Football Association Ltd.* Lord Denning posed the question whether a party who is charged before a domestic tribunal is entitled as of right to be legally represented and said that much depends on what the rules say about it.

Here in this case the rules forbid such legal representation.

A point has been made that the petitioner was not furnished with copies of the inquiry proceedings. It is doubtful whether the petitioner was, as of right, entitled to obtain copies of the proceedings as he

was present throughout the inquiry. As the petitioner himself was present right throughout the entire inquiry, he could have kept his own notes.

Mr. Athulathmudali has also submitted that there was a misdirection on the burden and quantum of proof. It should be kept in mind that the strict rules of evidence applicable in a court of law do not govern this matter. Even hearsay evidence is admissible though the weight attached to such evidence can vary.

In Wade's "Administrative Law" (5th Edn. 1982) at page 805 it is stated as follows:–

> "A statutory tribunal is not normally bound by the legal rules of evidence. Thus in an industrial injury case the commissioner was entitled to receive evidence at the hearing about previous medical reports which technically would have been inadmissible under the rule against hearsay". (*R. v. Deputy Industrial Injuries Commissioner ex p. Moore*[10]).

Diplock, L.J. in this case at page 84 stated as follows:–

> "... those technical rules of evidence, however form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The

supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his".

The inquiry panel in its report, R6, dated 29.7.92 has examined the evidence and stated that on the oral and documentary evidence they are satisfied that the petitioner is guilty of the charges. There has been no misdirection on the quantum or burden of proof.

There are newspaper extracts where the petitioner's name appears as a member of the D.U.N.F., but the petitioner has made no attempt to refute them.

One is X6, which is a list of the Working Committee of the D.U.N.F. published in the Dinamina newspaper of 11.3.92.

Another is X8, which is the list of the Galle District Organization of the D.U.N.F. published in the Daily News of 20.5.92.

In X9, which is an extract from the Dinamina newspaper of 20.5.92 giving the list of members of the Galle District Organization, the name of P. R. Silva appears. The petitioner has tried to make out that it was some other person and not himself. He was questioned several times but he was unable to identify any other person who bore the name P. R. Silva who was engaged in political activities in the South. I hold that this is a reference to the petitioner.

It had been established that the petitioner took no steps to refute these newspaper reports and to disclaim any connection with the D.U.N.F.

Apart from that, at the inquiry before the three member panel, there was the direct evidence of Wilson Soysa, who says that the petitioner gave him two forms (P7) to enrol him as a member of the D.U.N.F. and these two forms were produced at the inquiry. He was not able to adduce or even suggest any reason why Wilson Soysa should give false evidence against him.

Then there is the evidence of Nalaka Weeramuni, who says that he was the petitioner associating with the members of the "Eight Group" (Ate Kalliya), which is a coterie of the D.U.N.F. He had also seen the petitioner participating in a D.U.N.F. meeting at Kalutare. He had seen the petitioner on the stage at that meeting.

These are the main items of evidence against the petitioner. There are other items of evidence when taken as a whole clearly reveal that the petitioner has acted in violation of party discipline by promoting the D.U.N.F. and trying to enrol members to the D.U.N.F. while being a Provincial Councillor on the ticket of the U.N.P.

The fact that Kalinga Obeywansa took a keen interest in this inquiry against the petitioner is immaterial if the allegations have been proved by independent witnesses, which has been done in this case.

At the hearing it was accepted that the inquiry panel consisting of Festus Perera, E. Paul Perera and John Amaratunga are all lawyers. Being lawyers they would have been aware of the necessity to comply with the principles of natural justice and to act fairly.

They have given their report R6, which is dated 29.7.92, which has dealt with the evidence and come to the conclusion that the petitioner has violated clauses 3 (1) (a), (b) and (d) and clauses 9 (d) and (g) of the party constitution and recommended disciplinary action against him.

Briefly stated, these clauses 3 (1) (a), (b) and (d) enjoin members to accept the principles, policy and code of conduct of the party and to conform to its constitution and standing orders; also **not take part in any political or other activities which might conflict with these undertakings.**

Clause 9 (d) stated that a candidate for election on the party ticket has to give a pledge that if he succeeds he will conform to the

principles, policy, programme and code of conduct of the party and that if he fails to do so the Executive Committee shall take all necessary action for the punishment of the offender.

Clause 9 (g) states that any candidate who, after election, fails to act in harmony with the principles, policy, programme, rules of conduct and standing orders, shall be considered to have violated the constitution.

In the Supreme Court decision mentioned earlier and also in another similar Supreme Court decision, namely, *Ariyaratne Jayatillake and S. A. Muthu Banda v. M. C. M. Kaleel, et al*[1] it was held that the National Executive Committee (which has disciplinary power under Clause 8 (3) of the party constitution) can vest such power in the Working Committee.

On 21.5.92 at 4.00 p.m., at the commencement of the inquiry, the Chairman of the three member panel, Festus Perera, had informed the petitioner that this inquiry was being held under the authority of the Disciplinary Committee and the Working Committee – vide R1A. It may be that, because these three members being lawyers, they were authorised to hold this inquiry.

The Working Committee had considered the charges, the evidence, the position taken up by the petitioner, the report R6, and the recommendation of the disciplinary committee and decided that the petitioner had violated the aforesaid clauses of the party constitution and decided to expel the petitioner.

There is ample evidence to justify these findings.

One of the grounds taken up in the petition is that in any event the expulsion is disproportionate to the charges as the petitioner had been a loyal member of the U.N.P. for a long period of 25 years. The question of appropriate punishment is a matter eminently within the discretion of the party. Every political party likes to retain and enlarge its membership. No political party would expel any of its members, particularly a long-standing member, unless there is a very good reason to justify doing so.

Having regard to the charges and the evidence in this case, I cannot say that the expulsion is disproportionate to the charges which have been proved.

I am satisfied that in this case there was a fair inquiry where the charges were explained and evidence was led in the presence of the petitioner who was given an opportunity to cross-examine these witnesses. The petitioner was also given an opportunity to rebut the charges and to explain his position and to lead evidence. The rules of natural justice have been substantially complied with and there was ample evidence to prove the charges.

I hold that the expulsion was valid and that the petitioner is not entitled to any relief under section 63 (1), and the petition has to be dismissed.

There is one other matter to which reference must be made. Section 63 (1) of the Provincial Councils Elections Act requires this determination to be made within two months of the filing of the petition. In this case the petition was filed on 15.9.92. The dates of argument were 6th, 11th, 12th and 13th of November 1992 which were fixed to suit busy counsel. Written submissions were tendered on 20.11.92. Therefore it was well nigh impossible to make this determination within two months of the filing of the petition.

At the hearing counsel agreed that this provision was directory and not mandatory though every effort should be made by court to make this determination within two months and this decision should not be taken as a precedent.

For these reasons I dismiss this application with costs payable by the petitioner to the 1st, 2nd, 3rd and 4th respondents.

PALAKIDNAR, J. P/CA – I agree.

WEERASEKERA, J. – I agree.

Application dismissed.