

UPALIRATNE AND OTHERS  
v.  
TIKIRI BANDA AND OTHERS

SUPREME COURT.

FERNANDO, J.

AMERASINGHE, J. AND

DHEERARATNE, J.

S.C. (F.R.) APPLICATION NO. 86/95

MAY 29, JULY 20, 21 AND 25, 1995.

*Fundamental Rights – Ousting of Time-Keepers appointed by the Central Province Private Bus Workers Co-operative Society by unauthorised persons – Role of State Officials and Police – Articles 12(1), (2), 17 and 126 of the Constitution – Executive and administrative action – Rules 44(1), 44(1) (c) of the Supreme Court Rules.*

The Central Province Private Bus Workers Co-operative Society (21st respondent) was a duly registered body under the Co-operative Societies Act, No. 5 of 1972. It was formed, *inter alia*, for the purpose of providing the Transport Ministry of the Central Provincial Council with certain services such as ensuring that private omnibuses arrived and departed on time and providing the Transport Ministry with data gathered from the field through "Time-Keepers" which assisted the Ministry in regulating private omnibus operations. In terms of clause 4 of a contract entered into between the Society and the Council on 21 January 1993 and amended on 30 March 1993, subject to certain terms and conditions, the Council agreed to pay for the services it had agreed to perform. The Society in turn paid its members on a monthly basis for the services performed by them. On 14 February 1995, 35 members of the Society including the three petitioners were engaged in duties for their Society in Kandy as "Time-Keepers" at various points. They had identity cards where their names and distinctive identification numbers were given.

From about 14 February 1995 the 7th to 19th respondents usurped the jobs and powers, functions and duties of the petitioners and were unlawfully purporting to continue in such employment. The respondents position is that they were given to understand that the Time-Keepers posts at the Kandy Bus Stand had fallen vacant and they, except 8th, 9th and 18th respondents moved in individually and commenced work but did not do so unlawfully or forcibly.

The petitioners alleged that on 14 February 1995 a group of over 100 persons armed with iron rods and poles arrived at the Kandy Bus Stand in the morning and assaulted and/or abused and/or intimidated the petitioners and their

colleagues and prevented them from performing their legitimate duties and forcibly and unlawfully took over and were functioning as Time-Keepers.

**Held:**

(1) The 8th, 9th and 18th respondents have been mistakenly made parties to these proceedings. Their inclusion was due to mere error and not on account of any attempt to deceive and mislead the Court. The preliminary objection that the petition should be rejected on this ground fails.

(2) There is no obligation to tender an affidavit from any one or more of the petitioners. What is required is evidence of the facts submitted through affidavits and other documents as are available to them (Rule 44(1) (c)). The contention that all the petitioners have not given affidavits and there is non-compliance with Rule 44(1) also fails.

(3) The respondents had no right to the specified status of Time-Keepers and therefore their so called "moving in" and commencement of work as Time-Keepers was unlawful and void of legitimacy. It was certainly not open to any person or group of persons to take the law into their own hands and arbitrarily and unlawfully drive away the officially recognized Time-Keepers from their places of work, intrude upon and infringe their rights and encroach upon their legitimate domain, thereby creating the vacancies into which the new Time-Keepers "moved in".

**(4) The alleged involvement of the first Respondent R. J. Tikiri Banda, Co-ordinating Secretary to Hon. Colonel Anuruddha Ratwatte, M.P., and Minister of Irrigation, Power and Energy, and Deputy Minister of Defence, the second respondent.**

The first respondent openly directed and co-ordinated the activities of the illegal gang of over 100 persons who invaded the Bus Stand and assaulted and/or abused and/or intimidated the petitioners and their colleagues and prevented them from performing their legitimate duties at the Bus Stand in the Kandy Town on 14 February 1995 and forcibly and unlawfully took over and were now performing the functions of Time-Keepers.

Having regard to all the circumstances, it seems more probable than not that Tikiri Banda played a key role in the unlawful eviction of the Time-Keepers who were members of the Central Bus Workers' Co-operative Society and in placing other persons in substitution. He seems to have been the master-mind who planned and directed the enterprise in question. He was particularly and specially marked for espousing the cause of the new Time-Keepers and singularly and

conspicuously daring to implement by bold and extreme and unlawful measures apply described as an act of thuggery, a scheme to provide employment for certain favoured persons. The evidence sufficient entangle Tikiri Banda and he has been unable to extricate himself.

**(5) The alleged involvement of the Second Respondent the Hon. Colonel Anuruddha Ratwatte, M.P., Minister of Irrigation, Power and Energy, and Deputy Minister of Defence.**

Although the second respondent may have planned to provide employment for certain persons the ousting of the Time-Keepers by unlawful means was not an inevitable or necessary eventuality of his design. Its execution was a completely different matter. It has not been established that there involvement of the police, the 1st respondent and the use of official vehicles could not have taken place without the knowledge, involvement and acquiescence of the second respondent. The use of official vehicles does add weight to the submission that there was State action and the second respondent may have been ultimately accountable as the Minister in charge of the various departments for the use of official vehicles but it has not been established that he personally ordered or sanctioned their use. Nor can he be held vicariously liable for the unauthorised acts of his officers, including those of his Co-ordinating Secretary Tikiri Banda, although he may have pretended to have been acting with his authority.

**(6) The alleged involvement of the Peoples Alliance**

The new Time-Keepers may have been the beneficiaries of a spoils system of some sort favouring a certain group of persons. However, it has not been established that the ousting and replacement of the Time-Keepers depended on political affiliations and therefore the claim that Article 12(2) of the Constitution was violated an account of discrimination based upon political opinion must fail.

**(7) The alleged involvement of the 7th to 19th respondents**

The 8th, 9th and 18th respondents were mistakenly named as respondents and they were not in any way involved in the events of 10 and 14 February 1995.

Each and everyone who took office as Time-Keepers at the Kandy Bus Stand on and after 14 February 1995 were and continue to be in unlawful occupation of such offices and to that extent are responsible for depriving the former Time-Keepers of their employment and for unlawfully obstructing the Central Provincial Council and its Ministry of Transport in particular, from discharging its legitimate duties. The alleged operations of 10 and 14 February were for the purpose of placing the new Time-Keepers in occupation of the positions held by members of

the Co-operative Society. The new Time-Keepers were the beneficiaries of the unlawful operations. They are obstacles in the way of the discharge of the duties and functions of the duly appointed and only legitimate Time-Keepers.

Not all the new Time-Keepers may have been personally involved in the acts of "thuggery" although some of them like Joseph Deva the 10th respondent may have been involved. Joseph Deva's position that the new Time-Keepers including himself came to occupy their positions without force and that they were working together with the old Time-Keepers is not supported by the evidence.

Although some or even most of the new Time-Keepers may not have assaulted and intimidated the old Time-Keepers, they had all concurred and combined privity with the more active and conspicuous participants, including officers of the State, to illegally and reprehensibly oust the old Time-Keepers and to take their places and continue to unlawfully function as Time-Keepers. They did not happen to be available to fill the vacancies in fortuitous circumstances.

#### **(8) The alleged involvement of the Police**

So far as the events of 10 February 1995 are concerned where locks had been broken and some persons had unlawfully entered the premises, the Police while realizing the importance of taking appropriate action to remove the unauthorized persons took no steps to remove the trespassers and the events of the day had been entrusted to a mere Reserve Constable without any supporting staff. However the attempt to oust the Time-Keepers on 10 February did not succeed despite the absence of the assistance of the Police. Yet the second attempt of 14 February 1995 was a complete success. Sub-Inspector M. R. Vijitha Kumara the 5th respondent was well identified in the incident of 14 February 1995 and he was seen forcibly dragging Time-Keepers from their sheds. In addition to him, Police Constables Nos. 16520 and R 11064 and Police Officer "Pol Abey" who arrived in an Irrigation Department vehicle were identified as being present at the scene of the incident. Police Vehicle No. 32 - 4563 carrying about half a dozen police officers dressed in civil clothes were also identified.

The fact that persons were trespassing on the premises of the Time-Keepers, assaulting and intimidating people in unlawful behaviour cannot be explained away by stating that the bus stand is a public place. This explanation of P. B. Ekanayake Asst. Supdt. of Police the third respondent had whitewashing as its principal object. He was trying to cover up the unlawful activities in question. Police had taken no action on the complaints of assault and trespass.

#### **Per Amerasinghe, J:**

"The Police function fulfils a most fundamental obligation of Government to its constituency. Public safety, the maintenance of public order and the preservation of peace and tranquility depend not only on the existence of adequate laws but also on the way in which it is applied.

By necessity the State has cloaked policemen with substantial discretionary power. The Police may classify persons and draw lines in the application of laws, but discrimination must not be based upon impermissible criteria or arbitrarily used to favour or burden a group of individuals. In the matter before this Court, the enforcement of the law against those who were alleged to have violated the law, and the failure to afford protection to those who were in need of protection are unsupported by any neutral justification and were either totally irrational or entirely motivated by a desire to achieve some impermissible purpose. If I might borrow the words of Matthews, J. in **Yick Wo**, the police have used their powers 'with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of "Article 12(1) of the Constitution".

Article 12(1) of the Constitution was violated and continues to be violated by the Police. The Police were implicated because of the role they had played in ousting the old Time-Keepers and in unlawfully installing and keeping in office a new group of people.

#### (9) State responsibility

The acts of the first respondent are those of a State Officer for the purpose of determining whether he performs executive or administrative functions and are fairly attributable to the state and therefore engaged state responsibility for the purposes of Articles 17 and 126 of the Constitution. He may have exceeded the scope of his authority. However, when a public officer takes action relating to his office, those actions should be considered to be executive action even if they exceed the scope of his authority, for he acts under colour of his office.

The state is also accountable because it has not merely been passive and tolerated the unlawful ousting of the old Time-Keepers by private persons, yielding readily to the influence of others and by its disinclination to act but also because it has associated itself with it through the positive action, encouragement and assistance of the Police force and its officers. The replacement of the Time-Keepers was brought about by the significant aid and rendered by state officials, including the first respondent the want of adequate action of the police in relation to the events of 10 February 1995 and the active role played by the Police on 14 February, 1995 and by their subsequent lack of action.

#### Cases referred to:

1. *Jayasinghe v. Principal, Anula Vidyalaya and Others* S.C. Application 81 of 1994 S.C. Minutes 26 May 1994.
2. *Railway Express Agency Inc. v. New York* 336 US 10-6 (1949).

3. *Yick Wo v. Hopkins* 118 US 356 (1886).
4. *Perera v. University Grants Commission* FRD Vol. 1 p. 103.
5. *Neal v. Delaware* 25 Law. Ed. 567.
6. *Dennis v. Sparks* 449 US 24 (1950).
7. *Tower v. Glover* 467 US 914 (1984).
8. *Lugar v. Edmonson Oil Co. Inc.* 457 US 922, 938 – 939.
9. *Mohammed Faiz. v. Attorney-General and Others* SC Application 89/91 S.C. Minutes of 19 November 1993.
10. *Screws v. United States* 325 US 91 (1945).
11. *Griffin v. Maryland* 378 US 130 (1964).
12. *Somawathie v. Weerasinghe* (1990) 2 Sri LR 121.

**APPLICATION** for relief in respect of violation of Fundamental Rights.

*L. C. Seneviratne, P.C.* with *Nigel Hatch* for petitioners.

*Nihal Jayasinghe D.S.G.* for 2, 3, 4, 5 and 22nd respondents.

*Dr. Jayatissa de Costa* with *E. A. Upatissa* for 1st respondent.

*Gamini Perera* with *P. S. H. de Silva* for 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18 respondents.

*Cur. adv. vult.*

September 05, 1995.

**AMERASINGHE, J.**

The Central Province Private Bus Workers' Co-operative Society – the 21st Respondent was a duly registered body under the Co-operative Societies Act, No. 5 of 1972. (P1A). It was formed, *inter alia*, for the purpose of providing the Transport Ministry of the Central Provincial Council with certain services. (P1 Clause 3). The Society, *inter alia*, ensured that private omnibuses arrived and departed on time and provided the Transport Ministry with data gathered from the field through "Time-Keepers" which assisted the Ministry in regulating private omnibus operations. (P12). In terms of clause 4 of a contract entered into between the Society and the Council on 21 January 1993, and amended on 30 March 1993, subject to certain terms and conditions, the Council agreed to pay a sum of Rs. 302,850/- per month to the Society for the services it had agreed to perform. The Society in turn paid its members on a monthly basis for the services performed by them (P15).

On 14 February 1995, thirty-five members of the Society, including the three Petitioners, were engaged in duties for their Society in Kandy as "Time-Keepers" at various points. The names of the members, their distinctive identification numbers (each member had an identity card issued by the Society – para. 4 of P9) and work stations on 14 February 1995 are set out in P3.

The Petitioners in paragraph 20 of their Petition alleged that "from or about 14.2.1995 the 7th to the 19th Respondents whose names and identities the Petitioners subsequently became aware of, have usurped the jobs and powers and functions and duties of the Petitioners ... and are unlawfully purporting to continue in such employment."

In paragraph 19 of his affidavit dated 19 May 1995, the First Petitioner stated that the identities of other persons who had 'usurped the functions of Time-Keepers' had been ascertained after the filing of the application of the Petitioners and submitted a list of the names and addresses of eighteen persons. (P16).

The 7th, 8th, 11th, 12th, 13th, 14th, 15th, 16th, 18th and 19th Respondents in their affidavit dated 23 April 1993 have pointed out that the 9th Respondent had died in 1978 and that the 8th respondent is employed as a Technical Officer at Yatiyantota; and that the 18th Respondent is a permanent employee of the Kandy Municipal Council. The Minister of Transport in paragraph 4 of his affidavit excludes the 8th and 9th Respondents from the category of those who had forcibly taken over the functions of the Time-Keepers but does not mention the 18th Respondent. The statements of the Respondents who did take over the functions with regard to the 8th, 9th and 18th Respondents are supported by other documentary evidence, and I hold that the 8th, 9th and 18th Respondents have been mistakenly made parties to these proceedings. However, I am unable to accept Mr. Perera's submission that the rest of the averments of the petitioners must therefore be disbelieved. Nor am I able to accept Mr. Jayasinghe's submission raised by way of a preliminary objection that the petition should be rejected on the basis of the decision of this Court in *Jayasinghe v. Principal, Anula Vidyalaya and Others* <sup>(1)</sup>. The Petition was rejected in that case

because on the face of the affidavit and petition the Petitioner's statements were manifestly false and necessarily known to the Petitioner to be untrue. In the matter before us, the First Petitioner in Paragraph 15 of his affidavit dated 18th May 1995 admits the mistakes of naming Maithri Bandara Wijesinghe as the 8th Respondent and S. Bandara Wijesinghe as the 9th Respondent, and explains that the mistakes were made in the process of "urgently collecting material to file the instant application through inadvertence." I am satisfied that the inclusion of certain Respondents was due to mere error and not on account of any attempt to deceive or mislead the Court and I therefore hold that the preliminary objection cannot be sustained.

Mr. Jayasinghe raised another objection *in limine* : He submitted that "the Petitioners cannot have and maintain this application and/or that the application is not properly constituted due to non-compliance with Rule 44(1) in that all these Petitioners have not given affidavits." The obligation of a Petitioner is to tender in support of the petition "such affidavits and documents as are available to him." (Rule 44(1) (c)). There is no obligation to tender an affidavit from any one or more of the Petitioners. What is required is evidence of the facts submitted through affidavits and other documents. I therefore overrule the objection.

The 7th, 8th, 11th, 12th, 13th, 14th, 15th, 16th, 18th and 19th, Respondents, in paragraph 11 of their affidavit dated 23 April 1995 admit the fact that they did take over the work of Time-Keepers and have continued to function as Time-Keepers. This position was confirmed by Mr. Gamini Perera who appeared for them. How did they come to function as Time-Keepers? The explanation of Mr. Jayasinghe, that the new Time-Keepers had formed a Co-operative Society to function as Time-Keepers was abandoned by him when it was pointed out that not only was there no evidence of that but also that the Respondents concerned were at great pains to assert that they did not act collectively as an organized group. They had to do so in their attempt to deny the charge of complicity in what the Petitioners alleged in paragraph 26 of their petition was a "diabolical plan to forcibly take over the functions of Time-Keepers." In response to paragraph 20 of the Petition, in which the Petitioners



stated that "from or about 14.2.1995 the 7th to the 19th Respondents ... have usurped the jobs and powers, functions and duties of the petitioners ... and are unlawfully and purporting to continue in such employment," the Respondents concerned, in paragraph 11 of their affidavit of 23 April 1995 stated as follows:

"We deny averment No. 20 and respectfully state that on being given to understand that the Time-Keepers posts at the Kandy Bus Stand have fallen vacant, we, except 8, 9 and 18th Respondents, moved in individually and commenced work. Since then we continued to perform [the] normal functions of Time-Keepers thereat without objections and/or hindrance. We did not unlawfully commence work and purported to continue in such employment as we have not gone there unlawfully and/or forcibly."

That was the position supported by learned Counsel who appeared for the new Time-Keepers. Mr. Perera did not attempt to explain how the thirty-five Time-Keepers of Kandy came to suddenly vacate their posts without attributed or assignable cause. Nor was he able to explain how the new Time-Keepers "were given to understand" that the posts had fallen vacant and at the opportune time happened to come upon the good news and seized the opportunity of becoming Time-Keepers. The legitimacy of the actions of the new Time-Keepers was challenged by the Petitioners who, in paragraph 20 of their Petition, said that the Respondents' concerned had "usurped" their jobs, powers, functions and duties and that they were "unlawfully purporting to continue in such employment."

Assuming that a post falls vacant, does it entitle any person to "move in" and fill that vacancy? The harm and evil consequences wrought by such a course of action are so plain that a person capable of ordinary reasoning and reflection should not require elaboration. Further explanation, however, may not be out of place in the extraordinary circumstances of this case.

The Transport Ministry of the Central Provincial Council has a duty to regulate the transport services of the Province. The special business of assisting the Ministry with regard to certain specified

matters and manner of performance was, by a contract (P2), entrusted to the Central Province Bus Workers' Co-operative Society. The Society discharged its duties through its members. The status – the legal standing and position – of the Time-Keeper of the Central Province had to be determined by their membership of that Co-operative Society. As long as the contract between the Council and the C.P.B.W. Co-operative Society remained in force, only members of that Society legally enjoyed the right to function as "Time-Keeper". And, understandably, that is why the Minister of Transport of the Central Provincial Council, Mr. Keheliya Rambukwella, – the 20th respondent – (See paragraph 9 of the affidavit of Mr. Rambukwella dated 10 May 1995) – in an attempt to resolve this matter, "offered to obtain employment for the said group of persons who had unlawfully usurped the functions of Time-Keeper **provided they joined the [Central Province Private Bus Workers' Co-operative] Society.**" (The emphasis is mine.). (See also paragraph 12 of the affidavit of the President and Secretary of the Co-operative Society and the first and third Petitioners – P13 quoted below.).

The new Time-Keeper insist that they did not "unlawfully commence work" and that they had "not gone there unlawfully". I must say that I have no difficulty or doubt in holding that they had no right to the specified status of 'Time-Keeper' and therefore that their so-called "moving in" and commencement of work as 'Time-Keeper' was unlawful and void of legitimacy.

The new Time-Keeper claimed that after their assumption of office they had "continued to perform [the] normal functions of Time-Keeper without objections and/or hindrance". The discharge of the duties of Time-Keeper as a normal, regular matter could only be performed in a manner conformable to the standards, terms and conditions agreed to between the Provincial Council, which was responsible for regulating transport services, and the Time-Keeper. The "normal duties" were services attached to official employment under constituted authority. Any variation, as the Minister of Transport explained at the Governor's meeting held on 13 March 1995, required the approval of the Board of Ministers of the Council. (Para. 6 of Document A). There was no connection between the Council and the new Time-Keeper. The new Time-Keeper had no obligations or

directions or standards, or terms or conditions relating to the performance of their duties; there could be no monitoring or control of their activities, for there was a total lack of accountability to the Council or to anyone else. As a result, the Director of Transport, in his report to the Minister of Transport (P12), complained of the "serious situation" that had arisen and listed several reasons for that conclusion including the fact that

- \* "the regulatory functions cannot be exercised;"
- \* "management information essential from the field cannot be obtained";
- \* "buses that default in payment of various dues cannot be checked".
- \* "renewal of route permits could be neglected by the bus operators and that would seriously affect the PC's revenue."

The Minister of Transport of the Central Provincial Council, Mr. Keheliya Rambukwella, in paragraph 14 of his affidavit dated 10 May 1995, stated that "as a result of the action of the said usurpers ... grave and irreparable loss ha[s] been caused to those Time-Keepers affected and the members of the public who use the bus transport services inasmuch as *inter alia*, the regulatory functions exercised by the [Central Province Private Bus Workers' Co-operative Society] through the said Time-Keepers have been jeopardized and affected." In his letter to the Deputy Inspector-General of Police (P10A) dated the 16th of February 1995, Mr. Rambukwella refers to the "Crisis situation in the Bus Stands in Kandy Town." Having explained the role of the Co-operative Society and having adverted to the fact that "unlawful individuals had invaded the bus stands in Kandy town ... and chased out the members of the Co-operative Society", "the legal agent" of the Ministry of Transport of the Central Provincial Council, "who were performing their legitimate duties", Mr. Rambukwella stated as follows:

"05. You would observe the lawlessness involved in this instance. Yet I was shocked to learn that some of the Police Officers were also aiding and abetting the intruders.

06. It is no secret that the intruders have invaded the bus stands to earn money from the bus operators. Before long, the bus operators would rise against this exploitation. Those who have been ousted will also fight to come back to their legitimate place of work and they have an understandable cause for it. Thus there will be three parties, vociferous and aggressive. At any moment, breach of peace is imminent and most probably with damages to buses. The innocent passengers, especially school children, in busy and crowded points like the Market, bus stand and Goods Shed bus stand etc. will be the helpless victims of a violent crisis.

07. In addition to these serious repercussions as far as the bus stands are concerned, there is the irredeemable adverse effect on the law enforcing capacity of the Provincial Council and consequently of the Police, because the entire transport management system is threatened. Hence a total break down of the administration would be unavoidable.

08. You would undoubtedly understand the seriousness of this situation. What would be the implications of the passivities on the part of the Police and the alleged support to the intruders?

09. I have therefore to request you emphatically that immediate steps should be taken to remove the intruders from the bus stands, allow the legitimate employees to function in their places of work and provide protection to them. I should be thankful for your immediate response as to what steps are being taken."

The gravity of the situation is reiterated by Mr. Rambukwella in his letter to the Governor of the Central Province dated 1st March 1995 (P10B) and in the report Mr. H. M. Somatilake, the Director of Transport of the Provincial Council (P12).

Moving into the vacant posts was indeed, and as might reasonably have been expected, fraught with mischief. I shall refer to this matter again in dealing with the question of the involvement of the police, in relation to Mr. Jayasinghe's submission that the incident was a trivial matter.

In my view the claims of the new Time-Keepers that they had assumed office lawfully, that they were performing the normal functions of Time-Keepers, and that they were doing so without objections cannot be accepted. They profess and claim that because of their outward bearing and deportment as Time-Keepers, they are entitled to continue to be Time-Keepers. They are not. In my view the response that the new Time-Keepers "purported" to continue "in such employment" is a devious way of pleading off from the imputation of the Petitioners that they were usurpers. It was not a satisfactory response to the averments in paragraph 20 of the Petitioners' affidavit challenging the legitimacy of the assumption and continuation in office of the new Time-Keepers.

As for remuneration, Mr. Gamini Perera, said that the owners of the buses paid the new Time-Keepers. He did not think this resulted in a conflict of interests that impeded their regulatory functions and said that the previous Time-Keepers too had been paid by the owners. Dr. de Costa, Mr. Jayasinghe and Mr. Perera suggested that it was the practice of extorting money from the owners that had led to their removal by what Dr. de Costa described as "an act of thuggery" perpetrated by certain members of the public. The report of Assistant Superintendent of Police D. B. Ekanayake (3R3 page 5) seems to support the view that there was indeed such a notion; but there is no indication of how he arrived at that conclusion. On the other hand, his own belief was that the matter of the Time-Keepers appears to have had a political basis, although even then, as we shall see, the picture is not altogether clear and, on the evidence now available, he may have been mistaken. As I have pointed out, the established system provided for the payment on a monthly basis by the Co-operative Society. With regard to what they directly obtained from bus owners is set out in paragraph 21 of the petition as follows: "Furthermore, the petitioners and those affected have also been deprived of earning a **proportionate part of the sum of around Rs. 500 per day** which was paid to them as a matter of practice by the Bus Operators for the services rendered." (The emphasis is mine). Was this an objectionable practice? I think it was, both because it was expressly prohibited by Clause 11 of the contract, as well as, as a matter of principle, regardless of the amount involved. It was then for the Director of Transport and President and Secretary of the Society to

take disciplinary action against the members of the Society concerned in terms of the machinery provided by the contract. (See clauses 8, 9 and 10).

As Assistant Superintendent of Police Mr. D. B. Ekanayake found after his investigations (3R3 at p. 4 in fin. - 5), the Time-Keepers who were ousted were acting in accordance with the terms of a lawful contract of employment. It was certainly not open to any person or group of persons to take the law into their own hands and arbitrarily and unlawfully drive away the officially recognized Time-Keepers from their places of work, intrude upon and infringe their rights, and encroach upon their legitimate domain, thereby creating the vacancies into which the new Time-Keepers "moved in". Mr. Ekanayake in his report attempted to give a harmless, innocent and fair appearance to the faults and blemishes of the 14th February and cover up, conceal and gloss over them. He stated in his report (3R3 at p. 5) that because the bus stand was a public place, the presence of the new Time-Keepers was not unlawful. The matter for investigation was not the right of members of the general public to be at the bus stand but how and why the legitimate Time-Keepers were forcibly ousted by a certain group of persons who were not at the bus stand as passengers but involved in one way or another with the ousting and replacement of Time-Keepers. I shall refer to this matter again in dealing with the question of the involvement of the police.

Learned Counsel for the Respondents did not deny that the new Time-Keepers had occupied and do continue to occupy the vacancies created after the forcible eviction of the Petitioners; but, understandably, they sought to demonstrate that each of their clients had no hand in the forcible eviction.

It is convenient to deal with the matter of involvement and responsibility under six heads:

- (1) The alleged involvement of the First Respondent;
- (2) The alleged involvement of the Second Respondent;
- (3) The alleged involvement of the 7th to 19th Respondents;
- (4) The alleged involvement of the Police;
- (5) The alleged involvement of the Peoples' Alliance; and
- (6) State responsibility.

## **THE ALLEGED INVOLVEMENT OF THE FIRST RESPONDENT:**

The First Respondent is Mr. R. J. Tikiri Banda, Co-ordinating Secretary to Hon. Colonel Anuruddha Ratwatte, M.P. and Minister of Irrigation, Power and Energy, and Deputy Minister of Defence, the Second Respondent.

In paragraph 15 of the Petition it is alleged that on 14 February 1995 "a group of over 100 persons armed with iron rods and poles arrived at the Kandy Bus Stand in the morning and assaulted and/or abused and/or intimidated the Petitioners and their colleagues and prevented them from performing their legitimate duties at Bus Stands in the Kandy town and have forcibly and unlawfully taken over and are now performing the functions of Time-Keepers from 14.2.1995 at the Kandy Bus Stand." In paragraph 18 of the Petition it is alleged that the First Respondent "was openly directing and co-ordinating the activities of the said illegal gang on 14.2.1995 at the said Bus Stand..."

The averment in paragraph 18 of the petition is supported by paragraph 19 of the affidavit of the First petitioner, Mr. K. G. Upaliratne, dated 14 March 1995, and reiterated by him in paragraph 5 of his affidavit dated 18 May 1995.

In paragraph 19 of the Petition, the Petitioners alleged that the First Respondent "had threatened K. G. Upaliratne (1st Petitioner) at the Kandy Police Station on 14.2.1995 near the gate of the said Police Station when the Petitioner had gone to the Police Station to make a complaint in relation to these incidents." The First Respondent makes a general denial of the averments in paragraph 19 of the Petition and claims that he was at Wategama at a meeting from 10.00 hours to 14.00 hours but does not specifically mention the incident outside the Police Station.

In his statement to the police on 18.2.95 (P14) Mr. Upaliratne stated that when he and others were outside the Police Station into which their President and Secretary went to make a complaint, the Co-ordinating Secretary of Mr. Anuruddha Ratwatte, "Tikiri", went inside the Station and came out and said that the former Time-Keepers had "eaten enough" for 17 years and had been thrown out

as it was time for "our people to eat." In the same statement to the Police (P14 page 3), referring to an incident on 17 February 1995, Mr. Upaliratne stated that "Tikiri" arrived in a "Pajero" bearing the Registration No. 64 – 3201 and asked him to tell the President and Secretary of the Society to meet him.

In paragraphs 7 and 8 of his affidavit dated 14 March 1995 (P8), Mr. A. P. K. Liyanage, after describing various incidents that occurred on 14 February 1995, including an assault on one of the Time-Keepers, stated as follows:

"7. I state that when I saw these incidents I returned to my shop. I then saw Mr. Tikiri Banda, the Co-ordinating Secretary to the Hon. Colonel Anuruddha Ratwatte, M.P., Minister of Irrigation and Deputy Minister of Defence, with others alongside the said Irrigation [Department] Pajero giving directions to various persons and the operations that went on.

8. I state that the said Tikiri Banda was directing persons to the several sheds occupied by the several Time-Keepers as their offices. I saw the said persons who were being directed as aforesaid forcibly evict the Time-Keepers working there and forcibly occupy those sheds."

In paragraph 12 of his affidavit, Mr. Liyanage stated that the vehicle bearing the Registration No. 64 – 3201 was "involved in the violent operation". In the written submissions made on behalf of the First Respondent it is stated that "This is the Registered number of the vehicle normally used by the 1st Respondent for his official travelling."

In their affidavit dated 14 March 1995 (P9), Mr. N. P. S. S. Nissanka, the President, and Mr. R. M. T. B. Ranatunga, the Secretary, of the Central Province Private Bus Employees Co-operative Society, after describing the forcible ousting of the members of their Society by an armed gang of persons, stated in paragraph 6 that "We have now become aware that the said gang of unauthorised persons had the direct assistance of ... the 1st Respondent, Mr. Tikiri Banda the Co-ordinating Secretary of the Hon. Minister of Irrigation and Deputy Minister of Defence..."



In his report to the Senior Superintendent of Police dated 23 February 1995 (3R3 at p. 3) the Assistant Superintendent of Police, Mr. D. B. Ekanayake, reference is made to the fact that one Mr. Tuan Mehroon had said that, although he could not identify those who committed the acts of assault, one of such persons referred to another person who was present as "Tikiri Aiya".

Dr. de Costa submitted that "Tikiri" was a commonly used term of affection to describe a younger person. If that were so, "**Tikiri Aiya**" was not such a reference but perhaps a reference to an **older** person named "Tikiri". Or was the term 'Aiya' used out of courteous regard to describe a person who bore the name "Tikiri" to whom deference was due on account of his position? Dr. De Costa also submitted that "Tikiri Banda" and "Tikiri Bandara" were common names in the Kandy Region and that therefore Mr. Tuan Mehroon's observations cannot be used to implicate the First Respondent. In his statement to the Police (P14) Mr. Upaliratne referred to the man who explained the reasons for ousting the Time-Keepers as the Co-ordinating Secretary to Colonel Anuruddha Ratwatte and known as Tikiri. Mr. Liyanage's identification of the First Respondent by name and designation removes any reasonable doubt as to the identity of "Tikiri Aiya" and "Tikiri" in the matters relating to this Petition.

There is no explanation with regard to the Irrigation Department vehicle beside which the First Respondent was alleged to have been standing and issuing directions. However, with regard to the allegation that the vehicle bearing Registration No. 64-3201 was used in the operations of 14th February, Mr. Tikiri Banda submitted affidavits from the Proprietor of Piyasiri Welding Workshop and Motor Works (1R2) and from the driver of the vehicle (1R3) in support of his averment that from 12 February 1995 to 16 February 1995 the vehicle concerned was off the road for gear box repairs. The vehicle, as we have seen, was used by Mr. Tikiri Banda on the 17th of February. Was that vehicle really off the road from 12-16 February 1995? Why were the running charts not made available? In any event, there is no evidence that the non availability of his usual vehicle immobilized Mr. Tikiri Banda on the 14th of February.

Mr. Tikiri Banda stated that he did not direct persons as alleged in paragraph P8 of Mr. Liyanage's affidavit "forcibly or otherwise to evict the Time-Keepers working there and forcibly [occupy] those sheds." Mr. Tikiri Banda, in paragraph 10 of his affidavit dated 21 April 1995 states that he "neither openly nor under cover was directing, any activities on 14.2.1995 at any time at the said Bus Stand as alleged."

His position was that he was at Wattagama on that day attending "a special meeting with officers for the purpose of granting loan facilities to lower income persons in the area", and that he "was fully engaged at this meeting from 10.00 hours to 14.00 hours on the said date at Wattagama." In support of this, he submitted an affidavit from Mr. R. A. P. Ranasinghe (1R1).

The affidavit of Mr. Ranasinghe is vague and ambiguous and less than satisfactory. Who were the "officers" attending the meeting? Were they Government officers attending a meeting, notwithstanding the fact that the 14th of February was a "Poya" day and therefore a public holiday? Or were they officers of the Pata Dumbara Joint Development Foundation? What was this foundation? Was it a Government body? Was it a Non-Governmental Organization? Was there such a body at all? According to Mr. Tikiri Banda, Mr. Ranasinghe was the General Secretary of that body but according to Mr. Ranasinghe, its Chief Secretary. What is the Correct position? According to both Mr. Tikiri Banda and Mr. Ranasinghe the meeting was held on the ground floor of 149 Panwila Road, Wattagama. Mr. Ranasinghe, in his affidavit states that his residence was at the same place on the upper floor. For what was the ground floor ordinarily used? both Mr. Ranasinghe and Mr. Tikiri Banda refer to the meeting as a "special meeting". A special meeting of what body of persons? What was it that made it "special"? The presence of Mr. Tikiri Banda? The presence of the Co-ordinating Secretary to the Minister of Irrigation, Power and Energy and Deputy Minister of Defence does seem unusual in that the meeting had nothing to do with Irrigation, Power, Energy or Defence. It was, according to Mr. Ranasinghe, concerned with loans for **housing**. How did Mr. Tikiri Banda come to be involved in the matter of granting housing loans to low-income earners? If this was a matter involving the Government's programme of work, how could he claim, as Dr. de Costa urged on

his behalf, that, as a Co-ordinating Secretary, he was not performing the duties and functions of a State Officer? Mr. Tikiri Banda states that he was "fully engaged at this meeting from 10.00 hours to 14.00 hours." He does not explain what his role was at the meeting. Mr. Ranasinghe states that the meeting was held from 10.00 a.m. to 2 p.m. but he does not expressly and plainly state that Mr. Tikiri Banda was in attendance at the meeting from 10 a.m. He merely states that the subject matter of the meeting was initiated, and/or that the meeting was held under the guiding influence of Mr. Tikiri Banda whose patronage was available till the end of the meeting. Learned counsel for Mr. Tikiri Banda did not insist that the first Respondent was at the meeting from the beginning to the end. Indeed, he volunteered the explanation that "sometimes people have to wait for hours and hours till important people come". Did the meeting commence and proceed till Mr. Tikiri Banda arrived later? If that had been the case, Mr. Tikiri Banda could have left Kandy after the events had taken place at the Kandy Bus Stand. At some point of time after the ousting of the Time-Keepers, the Petitioner was threatened on the 14th of February outside the Police Station by Mr. Tikiri Banda. (See paragraph 20 of the Petition and the statement to the Police made by Mr. Upaliratne on 18th February 1995 (P. 14)). Did Mr. Tikiri Banda leave Kandy at all on the 14th of February? Mr. Ranasinghe at least had official contact with Mr. Tikiri Banda. both of them, according to their affidavits, were residents of Wattegama. Was it improbable that Mr. Ranasinghe provided Mr. Tikiri Banda with an affidavit to help him in this matter?

On the other hand, Mr. Liyanage had no connections either with the petitioners or with the respondents. No explanation was offered either by the First Respondent in his affidavit nor by learned Counsel as to why Mr. Liyanage, a neutral person, said what he did about the First Respondent.

If, as Mr. Tikiri Banda suggests, he had nothing to do with the events of 14th February, why did he not confine himself to the matters implicating him? why was he concerned with providing support in his affidavit for the case of the new Time-Keepers? For example, why was it necessary for him to say that he did not admit the purpose for which the Central Province Bus Workers Co-operative Society was

formed? Why does he deny that P2 – the copy of the contract between the Co-operative Society and the Ministry of Transport filed in these proceedings – was a “true copy”? On what basis does he say this? An Attorney-at-Law has certified it to be a true copy. Had Mr. Tikiri Banda perused the original so as to be in a position to declare the copy filed to be inaccurate, how could he deny, as he says, “in toto” the contents of paragraph 8 of the Petition which pertains to the matters dealt with in that contract? Was he challenging these averments because the unlawfulness of the assumption and retention of office by the new Time-Keepers is based on an admission of the existence and validity of P2 and the stated purposes and objects of the Society? How can he truthfully deny the contents of paragraph 11 of the Petition, as he says, “in toto”? The Petitioner in paragraph 11 stated that “consequent upon the General Elections at the Presidential Elections of August and November 1994 the Peoples Alliance Government assumed power and the 2nd Respondent who is a Member of Parliament from the Kandy District and Chief National Organizer of the Sri Lanka Freedom Party was appointed *inter alia* as Minister for Irrigation and Deputy Minister of Defence. The Central Provincial Council, however remained under the political control of the U.N.P.”. If Mr. Tikiri Banda disputed the question of the political control of the Central Provincial Council, why did he, as his Minister did, not deny **that** averment and **admit the rest**? How could he as a Co-ordinating Secretary to the Minister of Irrigation and Deputy Minister of Defence, truthfully deny the rest of the averments? He denies “in toto” the averments contained in paragraph 12 which narrates the events of 10 February 1995. Likewise he denies “in toto” the averments contained in paragraph 13, 14, 15, 16 and 18. Being unaware of those events is one thing; but positively asserting that they did not happen is another matter. In not confining himself to meeting the averments in paragraph 19 of the Petition and merely stating that he was unaware of the matters alleged in the rest of the averments, the 1st Respondent took upon himself additional burdens which he has not discharged and which creates serious doubts with regard to his veracity. In sum, it seems to me that, although the First Respondent did not want to be implicated in the events of 14th February, fearing perhaps that he may be exposed

to sanctions for the infringement of the law, he did not also want to give the impression in his affidavit that he had altogether abandoned his support for the new Time-Keepers and left them in the lurch. He wanted to be the hero of the events of February 14th. Indeed, having regard to all the circumstances, it seems more probable than not that Mr. Tikiri Banda played a key-role in the unlawful eviction of the Time-Keepers who were members of the Central Bus Workers' Co-operative Society and in placing other persons in substitution. He seems to have been the mastermind who planned and directed the enterprise in question. In his attempt to avoid being implicated in the events of 14th February he states in his affidavit: "I am known to most of the residents in Kandy but only the affirmant of P8 has stated that I was seen." Kandy is inhabited by many people and Mr. Tikiri Banda's claim to be known by "most" of the inhabitants may have been extravagant and cannot reasonably have been intended to be taken literally. However, he was sufficiently well known to enable some members of the public to identify him. It was not, as he claims, only Mr. Liyanage who identified him personally but also Mr. Upaliratne and the other Petitioners. There is also the evidence of Mr. Tuan Mehroon pointing a finger at him. Mr. Tikiri Banda offers no explanation in his affidavit why Mr. Upaliratne and the other Petitioners implicated him. However, in the written submissions made on his behalf, it was stated that the allegations made against the First Respondent "have been motivated by political envy (sic.)" That explanation was not pursued by learned Counsel for the First Respondent during the hearing. This was understandable, for political fidelity does not provide an explanation of the events in question.

Why was Mr. Tikiri Banda particularly and specially marked? It was for espousing the cause of the new Time-Keepers and singularly and conspicuously daring to implement by bold and extreme and unlawful measures, which his Counsel aptly described as an act of "thuggery", a scheme to provide employment for certain favoured persons. I am now concerned with the sole question of involvement. The significance of his involvement in relation to State responsibility will be dealt with later. What we are presently concerned with is

whether he could be implicated in the events complained of. In my opinion the evidence sufficiently entangles him and he has been unable to extricate himself.

### **THE ALLEGED INVOLVEMENT OF THE SECOND RESPONDENT:**

The Second Respondent is the Hon. Colonel Anuruddha Ratwatte, M.P., Minister of Irrigation, Power and Energy and Deputy Minister of Defence.

As far as the Petition is concerned, the alleged involvement of the Second Respondent is based upon –

- (1) the averment (Paragraph 17) that “a vehicle of the Irrigation Department which is under the 2nd Respondent Minister” had been used in the operations of 14th February 1995;
- (2) that Mr. R.J. Tikiri Banda, the 1st Respondent, was the Co-ordinating Secretary to the 2nd Respondent; and
- (3) that “the involvement of the Police” (for whose work and conduct, the 2nd Respondent was responsible to the extent that he was the Deputy Minister in Charge of the subject of the Police), and the use of vehicles belonging to persons or institutions under the eventual control of the 2nd Respondent “Could not have taken place without [his] knowledge, involvement and acquiescence.”

The President and Secretary of the Co-operative Society in their affidavit of 14 March 1995 (P9), after referring to the ousting of their members, alleged that “this illegal operation could not have taken place without the knowledge, consent and acquiescence of the 2nd Respondent, the Hon. Minister for Irrigation and Deputy Minister of Defence.”

Referring to a meeting on 13 March 1995 convened by the Governor of the Central Province to discuss the matter, the president and Secretary of the Society and the 1st and 3rd petitioners in their affidavit of 27 March 1995 (P13) stated as follows:

"9. Mr. Jayaratne Bandara who throughout the said meeting acted as the spokesperson for [the new Time-Keepers] and who we have credible grounds to believe is the Co-ordinating Secretary of the 2nd Respondent Minister stated that for 17 years there was a group of unemployed persons for whom employment had been promised after the defeat of the U.N.P. at the last general elections. .

10. The said Jayaratne Bandara further stated that they acted on the instructions of the 2nd Respondent Minister and the 6th Respondent Member of Parliament with regard to what happened on 10.2.1995 and 14.2.1995. He admitted that as they failed in their objective, namely the forcible ouster of the petitioner and those affected on 10.2.1995 that they returned with a larger group on 14.2.1995 and achieved their objective which was the ouster of those hitherto employed as Time-Keepers and the forcible placing of their supporters in such employment.

11. We state that the Hon'ble Governor on more than one occasion expressly clarified from the said Jayaratne Bandara as to whether what had taken place was done on the instructions [of] the 2nd Respondent Minister and the 6th Respondent Member of Parliament. The said Jayaratne Bandara expressly replied in the affirmative and confirmed that this was the case.

12. The Hon. Keheliya Rambukwella stated that this issue should be settled and said he would obtain employment for the said group of usurpers if they joined the 21st Respondent Co-operative Society ...

13. The Hon'ble Governor stated that this was perhaps the best solution to the problem. The Police representatives present there at inquired whether those who had been forcibly evicted and the usurpers could not work together as Time-Keepers.

14. We replied that we had no objections as aforesaid to the usurpers being employed provided that those who were legitimately employed as Time-Keepers got their jobs back. However, the said Jayaratne Bandara emphatically stated that both groups could not work together and stated in Sinhala that snake and mongoose could not work together.

15. Thereupon the Hon'ble Governor told the said Jayaratne Bandara that the approach he was adopting was incorrect. Mr. Jayaratne Bandara then stated that he had no authority to agree to what was proposed at this meeting without asking the 2nd Respondent Minister. No date was fixed for a further meeting."

Neither P13 nor Document A are verbatim records of the meeting; and therefore some details may have been omitted from P13 and Document A. The matters referred to at paragraphs 9 – 15 of P13 are not at variance with the official minutes of the meeting with the Governor (Document A). However the matters referred to in paragraph 11 of P13 are not referred to in Document A. Nor is the reference in paragraph 15 of P13 to Mr. Jayaratne Bandara's statement that he required the authority of the Minister to agree to the proposal mentioned in the minutes. Paragraph 4 of Document A states as follows:

1995.02.14 වැනිදා සිට බස් නැවතුම් පොළවල පාලන කටයුතු කරගෙන යන පිරිසේ නියෝජිතයෙකු වශයෙන් පෙනී සිටින එච්. එච්. ජී. ජයරත්න බණ්ඩාර මහතා කරුණු ඉදිරිපත් කරමින් 1979 කාලයේ පෞද්ගලික බස් රථ සේවයට දේශපාලන බලපෑම් නොතිබුණ බවත්, 1985 වර්ෂයේ දේශපාලන වෙනස්වීම් හේතුකොට ගෙන එවකට පැවති සමිතියේ සේවකයින් 35 දෙනෙක් අස්කර දමා අළුතින් සාමාජිකයින් බඳවා ගත් බවත්, මේ හේතුව නිසා 1994 මැයි මාසයේ ගරු අනුරුද්ධ රත්වත්තේ මැතිතුමා, ගරු ලක්ෂමත් කිරිඇල්ල මැතිතුමා සහ ගරු එදිරිවීර වීරවර්ධන මැතිතුමා යන මැති ඇමතිවරුන්ගේ අනුශාසකත්වයෙන් ස්වේච්ඡා සංවිධානයක් පිහිටුවා ගෙන තමන්ට සිදු වූ අසාධාරණකම් මහ හරවා ගැනීමට ක්‍රියා කළ බවත් සඳහන් කළේය. 1985 වර්ෂයේ අභිමි වූ රැකියා නැවත ලබාගැනීම සඳහා පියවර ගැනීමට සිදු වූ බව කී ඒ මහතා තම කණ්ඩායමද සමිතියක් වශයෙන් සංවිධානය වීමට අදහස් කරගෙන සිටින බවත්, දැනට තම කණ්ඩායම බස්නැවතුම් පොළ රාජකාරි කිසිම ප්‍රශ්නයක් නොමැතිව කරගෙන යන බවත් කියා සිටියේය. තම කණ්ඩායම 45 දෙනෙකුගෙන් සමන්විත බවත්, එක් අයකු මසකට රු. 2500/-, 3000/- ක් අතර ආදායමක් උපයන බවත් මහ වැඩිදුරටත් පෙන්වා දුන්නේය.

Learned Counsel for the Petitioners maintained that the ousting of the old Time-Keeper and the replacement by another group of persons was not fortuitous. The vacancies into which the new Time-Keeper had moved in had not occurred by chance. It was, he said,



a part of a "diabolical plan to forcibly take over the functions of Time-Keepers in the Central Province with the aid and assistance of powerful political elements in the present P. A. Government and with the illegal aid and cover of Police protection to certain group." This is the position set out in paragraph 26 of the Petition and, strange as it may seem, it is not an averment denied by the Second Respondent in his affidavit. Learned Counsel for the 2nd Respondent did not offer any explanation for this; nor did he explain paragraph 4 of Document A. Mr. Jayasinghe merely said: "We do not know who Jayaratne Bandara is". This came as a disappointing response, for Mr. Jayaratne Bandara's role is mentioned in the affidavit P13 of 27 March 1995, which, according to the Journal entries of this Court was filed on 29 March 1995. On 20 March 1995, when the application for leave to proceed was considered, learned Counsel for the Petitioners stated that "certain discussions took place on 13.3.95 in the Office of the Governor of the Central Province and that matters which transpired at that discussion further establish the complicity of the 2nd and 6th Respondents in the matters complained of in the Petition." Nothing had been done to ascertain what had taken place at the meeting with the Governor. The minutes of the meeting with the Governor were submitted by learned Counsel for the Petitioner during the argument at which Mr. Jayasinghe was present. Although there was sufficient time to do so, no effort had been made to ascertain who Mr. Jayaratne Bandara was. In the absence of an express denial or explanation to the contrary, the averment that Mr. Jayaratne Bandara was a Co-ordinating Secretary of the Minister stands uncontradicted. There is no denial that Mr. Jayaratna Bandara did attend the Governor's meeting, and both P13 and Document A support the view that Mr. Jayaratne Bandara was the spokesperson for the new Time-Keepers. He was by no means an ordinary person.

In paragraph 5 of his affidavit, Mr. Keheliya Rambukwella, the Minister of Transport of the Central Provincial Council, said that he was informed that the group of persons who had attacked the Time-Keepers "had the political patronage of the 2nd Respondent." His informants were the President and Secretary of the Co-operative Society.

Neither the Petitioners in their Petition nor the President and Secretary of the Co-operative Society in their affidavit dated 14 March 1995 (P9) alleged that the Second Respondent either arranged or instigated or actively participated in the illegal and unlawful operations complained of. Although in paragraph 11 of their affidavit dated 27 March 1995 (P13) the First and Third Respondents stated that at the meeting convened by the Governor, the Governor had been informed "On more than one occasion", by Mr. Jayaratne Bandara that "what had taken place was done on the instructions [of] the 2nd Respondent Minister", yet this is not borne out by the official minutes of the meeting. (Document A). I have said that not everything stated at the meeting was recorded in the minutes. However, even if Mr. Jayaratne Bandara had said that he acted on the instructions of the Second Respondent and that he could not agree to the proposed solution without the concurrence of the Second Respondent, it was by no means conclusive evidence of the fact that the incidents of 10 and 14 February had the secret approbation of the Second Respondent, much less that they were the outcome of his instructions. Mr. Jayaratne Bandara appears to have been acting for and on behalf of those who had performed the evil deeds of 10 and 14 February and/or benefitted from them. He may have been a Co-ordinating Secretary to the Second Respondent, yet, there is nothing to show that he had been commanded or requested or permitted to speak or act on behalf of the Second Respondent. In paragraph 16 of his affidavit the Second Respondent states that "even if the said perpetrators had used my name the same had been done without my knowledge, consent or concurrence and I specifically deny any association with the said perpetrators of the alleged incident." The repeated use of the word 'perpetrators' in my view signifies the Second Respondent's condemnation of the unlawful acts in question. Had there been any misunderstanding on the part of the Third, Fourth and Fifth Respondents and other police officers, there should now be no doubt they were not expected by the Second Respondent to support or protect the First Respondent or the new Time-Keepers or those who ousted the old Time-Keepers.

The Second respondent in his affidavit drew attention to the fact that Mr. Upali Weeratunge in his letter dated 12 February 1995, addressed to the Second Respondent (P5), after stating that about

200 persons had attempted to oust them alleging that they were "Minister Anuruddha Ratwatte's men" and that they were taking over the functions of Time-Keepers, had gone on to say that upon investigation, they were of the opinion that the Second Respondent did not have any connection with and had not approved what had taken place. Mr. Weeratunge was writing on behalf of all the former Time-Keepers. There may well have been a proposal to redress the grievances of certain persons in which the Second Respondent had an interest. He may have actively sought to bring relief to a group of disadvantaged persons, as Mr. Jayaratne Banda said at the Governor's meeting. However, there was nothing to show that the Second Respondent was privy to the so-called "diabolical plan" or that he participated in any way in the events of the 10th or 14th of February. The strategem may have been an outcome of the proposal to find employment for certain persons; but the devising of the expedients and the execution of the design were matters for which the Second Respondent was not responsible. If the Second Respondent intended assisting certain unemployed persons, what he wanted to accomplish was brought about unlawfully, and therefore, as far as he was concerned, ill done. I reject the suggestion that, merely because the Second Respondent may have planned to provide employment for certain persons, the ousting of the Time-Keepers by unlawful means was an inevitable or necessary eventuality of his design. Its execution was a completely different matter. In my view it has not been established, as alleged by the Petitioners, that "the involvement of the police, the 1st Respondent and the use of [official] vehicles ... could not have taken place without the knowledge, involvement and acquiescence of the Second Respondent Minister ..." The use of official vehicles does add weight to the submission that there was State action, and the Second Respondent may have been ultimately accountable as the Minister in Charge of the various Departments for the use of official vehicles, but it has not been established that he personally ordered or sanctioned their use. Nor can he be held vicariously liable for the unauthorized acts of his officers, including those of his Co-ordinating Secretary, Mr. Tikiri Banda, although they may have pretended to have been acting with his authority.

## THE ALLEGED INVOLVEMENT OF THE PEOPLES' ALLIANCE:

In paragraph 26 of the Petition it is alleged that the forcible take over was a part of a "diabolical plan" to take over the functions of the Time-Keepers "with the aid and assistance of powerful political elements in the present PA Government." The Central Private Bus Workers' Co-operative Society wrote a letter (P6A) under the hands of its President and Secretary, addressed to the President of the Republic, stating that although those who were attempting to oust them had claimed to be entitled to do so because they were supporters of the Peoples' Alliance, yet they were perhaps unaware of the effort and support rendered by the members of the Society at the past General and Presidential Elections to bring the Peoples' Alliance into power. In paragraph 7 of the minutes of the meeting with the Governor, Mr. Upali Weerátunge, a member of, and a spokesperson for, the Co-operative Society, is reported to have said that he and many members of the Society supported the PA and therefore regretted what had happened. In Mr. Upaliratne's complaint to the Police (P14) he stated that "Tikiri", having said to him and certain others that they had "eaten enough during seventeen years", addressed Sarath Weeratunge, Upali Weeratunge, Niyandigala and others and said, "You have no problem. You are our men. You should work." Niyandagala (No. 9), S. Weeratunge (No. 18) and Upali Weeratunge (No. 23) were ousted despite their political loyalties. (See P3. See also 3R3 – the Report of Mr. D. B. Ekanayake where Niyandagala (No. 7), Upali Weeratunge (No. 23) and S. Weeratunge (26) are listed as complainants.) Indeed, the petitioners themselves did not state that the alleged discrimination was against persons who were not members of the Peoples' Alliance. What they said was that Mr. Keheliya Rambukwella was a member of the Board of Ministers of the Central Provincial Council which was comprised "mainly of members of the United National Party which is the principle party in opposition to the current Peoples' Alliance government".

The new Time-Keepers may have been the beneficiaries of a spoils system of some sort favouring a certain group of persons. However, it has not been established that the ousting and replacement of the Time-Keepers depended on political affiliations

and therefore the claim that Article 12(2) of the Constitution was violated on account of discrimination based upon political opinion must fail.

## **THE ALLEGED INVOLVEMENT OF THE 7TH TO 19TH RESPONDENTS**

I have already pointed out that the 8th, 9th and 18th Respondents were mistakenly named as Respondents and I hold that they were not in any way involved in the events of the 10th and 14th of February 1995.

The case of the Petitioners against the 7th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 19th Respondents is that they and others whose names and addresses appear in P16, "usurped" their functions as Time-Keepers. For the reasons given, I am of the view that each and everyone who took office as Time-Keepers at the Kandy Bus Stand on and after the 14th of February 1995 were and continue to be in unlawful occupation of such offices and to that extent are responsible for depriving the former Time-Keepers of their employment and for unlawfully obstructing the Central Provincial Council, and its Ministry of Transport in particular, from discharging its legitimate duties. In my view the alleged operations of the 10th and 14th of February were for the purpose of placing the new Time-Keepers in occupation of the positions held by members of the Co-operative Society. The new Time-Keepers were the beneficiaries of the unlawful operations. They are the obstacles in the way of the discharge of the duties and functions of the duly appointed and only legitimate Time-Keepers.

The Petitioners have not alleged that the new Time-Keepers were personally involved in the acts of "thuggery", although some of them may well have been involved. Mr. Joseph Deva, the tenth Respondent, for instance, may have been one of them. In his statement to the Police on 18th February 1995 (P14) the First Petitioner stated that "Deva" was among those persons who assaulted him. In the Report of Mr. D. B. Ekanayake, A.S.P. (3R3) it is stated that Mr. Sarath Bandara complained that he was forcibly expelled by about 40 people among who was "Deva of

Deiyanawela". (See also the notes of R.P.C. 10416 Dharmaratne of 11 February 1995 in 3R2). However, Mr. Joseph Deva, when he was produced before the Officer-in-Charge of the Police Station on 19 February 1995, denied that the complainants had been chased away or abused. He said: "We too work there. We work on good terms." (See 3R2). Mr. Joseph Deva was named by Mr. Upaliratne, the First Petitioner, in his complaint to the Police on 31 May 1995 (See Document X) and is accused in M.C. Case No. 39193/95 of assaulting Mr. Upaliratne. (See Document X2). The Seventh Respondent, Dhammika, and the Eleventh Respondent, Jayawickrama, are co-accused persons in that case, and in his affidavit dated 17 July 1995 Mr. Upaliratne states that they were involved in ousting the former Time-Keepers. Mr. Joseph Deva has not filed an affidavit in response to the Petition. His statement to the Police that the new Time-Keepers, including himself, came to occupy their positions without force and that they were working together with the old Time-Keepers is not supported by the evidence in this case.

Although some or even most of the new Time-Keepers may not have assaulted and intimidated the old Time-Keepers, I am of the view that they had all concurred and combined privily with the more active and conspicuous participants, including officers of the State, to illegally and reprehensibly oust the old Time-Keepers and to take their places and continue to unlawfully functions as Time-Keepers. I reject the suggestion that they happened to be available to fill the vacancies in fortuitous circumstances.

## **THE ALLEGED INVOLVEMENT OF THE POLICE**

The complaint against the Police is that –

1. They had provided "illegal aid and cover" to the group of persons who were responsible for the unlawful acts in question; and that
2. By reason of their lack of sufficient and/or timely action, they had failed to prevent such acts.

In the circumstances, the Petitioners alleged, that the constitutional guarantee of equal protection was denied to the former Time-Keepers.

On 10th February 1995 Mr. Sarath Weeratunge and others complained to the Police that when they arrived at their customary places of work, the locks had been broken and others had unlawfully entered the premises. They reported that, on being questioned, those in occupation of their premises had said that from that day they had taken over the function of Time-Keepers. In their complaint the old Time-Keepers said that they had informed the Minister of Transport of the Provincial Council, Mr. Rambukwella, of this matter and that he had in turn communicated the information to the President of the Republic and to the Minister of Transport of Sri Lanka. Mr. Rambukwella had directed the old Time-Keepers to report the matter to the Police. And so they requested the Police to inquire into the matter and provide them with the opportunity of discharging their usual functions. (See P4).

In answering, *inter alia*, the Petitioners' averment that the acts complained of "occurred with the knowledge and/or under the cover of Police protection inasmuch as the Police failed to take any action to prevent the criminal acts perpetrated against the Petitioners and their colleagues and/or to enable them to perform their legitimate and lawful functions even after they were apprised of the aforesaid incidents", the Third Respondent, Mr. D. B. Ekanayake, Assistant Superintendent of Police, in paragraph 19 of his affidavit, stated that the complaint of Mr. Sarath Weeratunga on 10.2.95 (P4) was "investigated" and that "R PC 10416 Dharmaratne was despatched to the scene of the incident who dispersed unauthorised persons in occupation of the Time-Keeper Shed and directed them to come to the Police to have their statements recorded. Consequent to this direction only Joseph Deva came to the Police on 20.02.95 – statement marked 3R2, said Joseph Deva was produced before OIC, MO Branch."

The statement of Mr. Ekanayake is not borne out by 3R2 which he filed in support of his averments. That document contains copies of several entries made on the 11th and 12th of February by Reserve Police Constable 10416 Dharmaratne. The incident of which Mr. Sarath Weeratunge had complained had taken place on the 10th of February. Mr. Weeratunga's statement was recorded by the Police on 10 February at 1440 hours. The statement of Mr. Ekanayake that "Dharmaratne was despatched to the scene of the incident" is untrue and known by him, if he had read the supporting evidence he has produced, to be untrue. According to his inquiry notes, Dharmaratne

“while engaged on day patrol duty in the Central Bus Stand at 930 hours on 11.2.95 inquired for the complainant of MCR 707 C 3 291/186. [Mr. Sarath Weeratunge,] and met him and recorded his complaint and his request to warn those who had come there “not to come to this place hereafter and harass us.” On the following day, i.e. on the 12th of February, R. P. C. Dharmaratne records the fact that he visited Mr. Weeratunga’s residence but that on not finding him there, left a message requesting him to come to the Police Station. There is not a word about Dharmaratne having contacted any of the new Time-Keepers, let alone having “dispersed unauthorised persons in occupation of the Time-Keepers Sheds,” either on the 10th or 12th. I unreservedly reject the written submission of the 2nd, 3rd, 4th, 5th and 22nd respondents “that on receipt of information from one Sarath Weeratunga – depicted in P4 on 10.2.95 at about 2.40 p.m. the Police took prompt action dispersing (sic) the crowd and establishing peace.” Mr. Jayasinghe, understandably, did not support or even refer to that submission in the course of the argument. Nor is there any evidence produced by Mr. Ekanayake to show that any person other than Mr. Weeratunga was asked to report to the Police Station. Mr. Joseph Deva did turn up at the Police Station on 19th February 1995 (and not on 20 February as stated by Mr. Ekanayake), but no evidence has been produced to show why he turned up eight days after the incident that took place on the 10th of February and about which a complaint had been lodged on the same day. The statement of Mr. Joseph Deva which was recorded on 19 February is prefaced with the entry “Vide paragraph 186, the Respondent to the complaint Deva present in the station. I produce him to the O.I.C.”. Paragraph 186 is the statement of Mr. Sarath Wijetunga (P4). There is no reference in that statement to Mr. Joseph Deva. On the other hand, Mr. Wijetunga had stated that he could not identify any person who had gone into forcible occupation of their places of work. The statement of Mr. Ekanayake that Mr. Joseph Deva came to the Police Station on 20.2.95 “consequent to a direction” by R.P.C. Mr. Dharmaratne is false because Mr. Joseph Deva came to the Station on 19.02.95 and not on 20.2.95, and because he did not come in response to any “direction” given by Mr. Dharmaratne. Had he come in response to such a direction, one would have expected a reference to an entry in the books of the Police in which R.P.C. Dharmaratne had directed Mr. Joseph Deva to have come to the Police Station. Instead, a misleading reference is made to an entry, namely to paragraph 186, that does not explain Mr. Deva’s presence. Why was this?



As far as the events of the 10th of February are concerned I am of the opinion that the police, while realizing the importance of taking appropriate action to remove those whom they frankly recognized as "unauthorized persons", took no steps to remove the trespassers. Why were the events of the 10th of February entrusted to a mere Reserve Constable without any supporting staff?

The attempt to oust the Time-Keepers on 10 February did not succeed, despite the absence of the assistance of the Police. However, the second attempt was a complete success. According to the Petitioner (see paragraph 15 of the Petition and paragraph 16 of the affidavit of Mr. Upaliratne dated 14 March 1995 ) on the 14th of February 1995 "a group of over 100 persons armed with iron rods and poles arrived at the Kandy Bus Stand in the morning and assaulted and/or abused and/or intimidated the Petitioner and their colleagues had prevented them from performing their legitimate duties at Bus Stands in the Kandy Town and have forcibly and unlawfully taken over and are now performing the functions of Time-Keepers from 14.2.1995 at the Kandy Bus Stand." Mr. Mohideen Meera Saibo, the Second Petitioner, was one of the victims and he made a complaint to the police with regard to the assault committed on him. (P7A). Mr. N. P. S. S. Nissanka, the President of the Central Province Bus Workers' Co-operative Society complained to the Police of the forcible ouster, alleging that it had taken place in the presence of and with the assistance of Police Officers, and he sought police protection to enable the members of the Society to resume their work on the following day. (P7B).

In his affidavit dated 14 March 1995, Mr. A. P. K. Liyanage, a textile trader, stated as follows:

- 3...at about 9 a.m. or 9.30 a.m. on 14/2/95 two motor cycles of the traffic branch ridden by Police Constables Nos. 16520 and R 11064 came and stopped in front of my boutique.
4. Around the same time on the said date a police jeep bearing number 32 - 4563 came and stopped in front of my shop on the opposite side of the road. There were about six (6) policemen in that vehicle and stand around it.

5. I thereafter proceeded towards the Goodshed private bus halt which is close to my shop. At that time I also saw a yellow coloured Pajero vehicle bearing on it the legend "Irrigation Department" stop near my shop. In the said vehicle I recognized a Policeman commonly referred to as "Pol Abey" dressed in civvies. There were also about ten (10) others in the said vehicle whom I could not recognize.
6. I state that when I reached the Goodshed bus halt I witnessed a person called Sarath Bandara who is a member of the Central Province Bus Workers' Co-operative Society...and who works as a "Time-Keeper" being assaulted. I could not recognize his assailant.
7. I state that when I saw these incidents I returned to my shop. I then saw Mr. Tikiri Banda, the Co-ordinating Secretary to the Hon. Colonel Anuruddha Ratwatte, M.P., Minister of Irrigation and Deputy Minister of Defence with others alongside the said yellow coloured Irrigation Pajero giving directions to various persons and the operations that went on.
8. I state that the said Tikiri Banda was directing persons to the several sheds occupied by the several Time-Keepers as their offices. I saw the said persons who were being directed as aforesaid forcibly evict the Time-Keepers working there and forcibly occupy those sheds.
9. I noticed a crowd of about two hundred (200) persons involved in this violent operation. These persons were armed with poles and iron rods concealed in newspaper. There were to my estimate about fifteen (15) Policemen also involved in this operation.
10. I saw Sub-Inspector Vijitha Kumara of the Kandy Police forcibly dragging Time-Keepers from their sheds.
11. I saw *inter alia*, Sarath Bandara and G. Cyril Perera who work as Time-Keepers being assaulted by persons whom I could not identify and who belonged to the said group.

14. I state that about a week thereafter two (2) persons said to be from the C.I.D. made inquiries from me about what happened on 14.2.95 and I told them what I have affirmed to above. The said persons took down some notes in their field note books which was not shown to me or signed by me. No formal statement was recorded from me. The said persons told me that an investigation team would come from Colombo and directed me to keep my interview with them confidential."

Mr. M. R. Vijitha Kumara, Sub-Inspector of Police, who is the fifth Respondent, denies having been present at the place of the incident and states that on the day in question he was "engaged in vice-detection duty between 9.30 hours and 17.00 hours." In support of his *alibi*, he filed extracts from the Information Book (5R1). Two sets of entries are set out in 5R1. The first entry is recorded at 9.30 hours at page 73 of the Information Book wherein he states that he and other officers, dressed in "Civil" (as distinguished from official police) clothes, left the station on duty. The next entry is from page 75 and is recorded at 17.00 hours. It gives a detailed list of activities at 11.15, 11.45, 12.30, 13.30, 14.20, and 15.30 hours. There is no record of what he was doing between 9.30 and 11.15 hours. Learned Counsel was unable to explain why page 74 was not produced and what the Sub-Inspector and the other officers were doing. There was no question of being mistaken with regard to his identity, for Mr. Vijitha Kumara states that he "regularly came [into] contact with ...Liyanaage." He suggests, however, that since he had "often warned and reprimanded him" for obstructing the pavements, "this displeasure may have motivated the said Liyanage to tender P8'. Liyanage may have been happy to be able to identify Mr. Vijitha Kumara, but Mr. Vijitha Kumara has failed to show that Liyanage was uttering a falsehood.

Mr. Vijitha Kumara states that although he was well known, no other person has identified him as being involved in the incident. There are various reasons why he may not have been seen by some of those who complained. For instance, the incidents took place at various places and Mr. Vijitha Kumara may not have been at some of them. Mr. Vijitha Kumara was one of a large crowd of persons and may well have been missed in the melee. Moreover, even if he had

been identified, there could have been an understandable reluctance to name him. As Mr. Upaliratne explained in paragraph 17 of his affidavit dated 18th May 1995: "I respectfully state that out of concern for my safety I did not mention the presence and involvement of the 5th Respondent in what transpired on 14.2.95 which I am personally aware of and saw." In his statement to the police (P14) Mr. Upaliratne therefore confined himself to alleging that police officers in uniform arrived in a "Land Rover Jeep" preceded by a police bicycle and that they were moving about from place to place. He said he was in fear for his life because when the assaulting took place the police did nothing to assist them.

In addition to Mr. Vijitha Kumara, Police Constables Nos. 16520 and R11064 and Police Officer "Pol Abey" who arrived in an Irrigation Department vehicle were identified as being present at the scene of the incident. Police vehicle bearing Registration No. 32-4563 carrying about half a dozen police officers dressed in civil clothes was identified. Persons moving from place to place directing the operation were formally dressed and identified as police officers. In paragraph 8(iii) of the affidavit of Mr. Vijitha Kumara, the Fifth Respondent, – which is reproduced word for word in paragraph 15(iii) of the affidavit of Mr. P. B. Ekanayake, the third Respondent – it is stated that "Liyanaage who claims to have witnessed and known meticulous details including the names of the purported attackers and vehicle numbers had not transmitted this information to any interested person or other authority prior to the preparation of P8." P8 is Mr. Liyanage's affidavit. If, as suggested by Mr. Vijitha Kumara in paragraph 8(i) of his affidavit and by Mr. Ekanayake in paragraph 15(i) of his affidavit, Mr. Liyanage was anxious to implicate Mr. Vijitha Kumara for purely personal reasons, one might have expected him to have volunteered a statement on an earlier occasion. He did not rush to give information, for he had no personal interest in the matter. When he was asked by two police officers from the C.I.D. about two weeks after the incident, he related what had happened. These matters were recorded and the two persons who had interrogated him had told him that an investigation team would come from Colombo and he was directed to keep the "interview with them confidential" (see para. 14 of Liyanage's Affidavit P8). Both Mr. Vijitha Kumara and Mr. P. B. Ekanayake refer to P8 but neither of them denies the averments in

paragraph 14 of Mr. Liyanage's affidavit, according to which the information had been given to the police two weeks after the incident, that is on or about 28 February, whereas P8 is dated 14 March 1995. It is incorrect for the Third and Fifth Respondents to state that Mr. Liyanage's first intimation took place when P8 was prepared. Mr. Vijitha Kumara's *alibi* has not been established and there is no explanation of the presence and role of Police Constables Nos. 16520 and R11064 and Police Officer "Pol Abey" and police vehicle bearing Registration No. 32-4563. Nor is there any refutation of the allegation that police officers in official and casual garb were identified as moving about and/or passively lending support.

In his affidavit Mr. Ekanayake, the Third Respondent, states that "On 14.[2].95 when the alleged incident took place S.I. Amarasinghe and P.C. 10649 Dissanayake were on mobile patrol and having observed a large crowd intervened and prevented a possible breach of the peace." There are no affidavits from S.I. Amarasinghe or from P.C. Dissanayake nor is there any other evidence supporting this statement. No reference to the intervention of the police is made in Mr. Ekanayake's report 3R3. What he does say in that report is that the Time-Keepers who were legitimately performing their duties were forcibly ousted by another group of persons. Mr. Ekanayake in his report attempts to explain away the fact that persons were trespassing on the premises of the Time-Keepers, assaulting and intimidating people and indulging in unlawful behaviour by stating that the bus stand was a public place. I think his explanation had whitewashing as its principal object. I have already referred to Mr. Ekanayake's attempt to cover up the unlawful activities in question. The problem, he suggests, appears to have been based on some political consideration. In his opinion "the main dispute" was "*prima facie* civil in nature", and he says that he "is in the process of referring this dispute to the relevant Mediation Board." At the same time he says he had recommended that the information Book Extracts should be forwarded to the Attorney-General for advice. Five months after his report no progress has been made.

What action has the Police taken with regard to the complaints of assault and trespass? Mr. Ekanayake says that he is "presently continuing with the investigation" and attributes the tardiness of the

police to the fact that sufficient evidence was not available. He says that only the President of the Co-operative Society and the Second Petitioner "had made statements to the Police on their own volition. The Police had to go on a voyage of discovery to identify the other victims including the 1st and 3rd Petitioners". He says that the victims "were reluctant to complain and failed to provide the police with the necessary information." In his report (3R3) Mr. Ekanayake gives the names of 34 persons who had complained. What action was taken on their complaints? None. What action was taken on the complaint of the President of the Society who asked for police protection for all the members (P7B)? None. What action was taken on Mohideen Meera Saibo's complaint (P7A)? None. What action was taken on the statement of Mr. Upaliratne on 18 February (P14)? None. What action was taken on the several complaints made on the telephone to the Deputy Inspector General of Police by Mr. Keheliya Rambukwella and in his letter dated 16 February 1995 (P10A)? None. The Second Respondent who is among other things, the Deputy Minister of Defence states in his affidavit that he became aware of the alleged incident through a newspaper report and "directed the relevant police authorities to take immediate and necessary action to maintain law and order and investigate thereto." What action has the Police taken? None.

The Police function fulfils a most fundamental obligation of Government to its constituency. Public safety, the maintenance of public order and the preservation of peace and tranquility depend not only on the existence of adequate laws but also on the way in which it is applied. In *Railway Express Agency Inc. v. New York* <sup>(2)</sup>, Justice Jackson observed that "Nothing opens the door to arbitrary action so effectively as to allow officials to pick and choose only a few to whom they will apply legislation. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation." Matthews, J. observed in *Yick Wo v. Hopkins* <sup>(3)</sup>. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

By necessity the State has cloaked policemen with substantial discretionary power. The police may classify persons and draw lines in the application of laws, but discrimination must not be based upon impermissible criteria or arbitrarily used to favour or burden a group of individuals. In the matter before this Court, the lax enforcement of the law against those who were alleged to have violated the law, and the failure to afford protection to those who were in need of protection are unsupported by any neutral justification and were either totally irrational or entirely motivated by a desire to achieve some impermissible purpose. If I might borrow the words of Matthews, J. in *Yick Wo*, the police have used their powers "with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of "Article 12(1) of the Constitution. In the circumstances, I am of the view that Article 12(1) of the Constitution was violated and continues to be violated by the Police.

Faced with the inability to explain the role and presence of Sub-Inspector of Police Mr. Vijitha Kumara, the presence of Police Constables Nos. 16520 and R 11064, Police Officer "Pol Abey" and other police officers, whether dressed in the distinctive clothing worn by police officers or otherwise, learned Counsel for the Third, Fourth and Fifth Respondents, Mr. Jayasinghe, attempted to discredit the evidence adduced by the Petitioners in general. He submitted that the various complaints made were not consistent in that they referred to various number of persons who were present. The ousting of the Time-Keeper took place at several locations and therefore the number of persons present must necessarily have varied from the point of view of the person reporting aspects of the incident taking place at the location he was. Whatever the numbers were precisely, the Third Respondent refers to the presence of "a large crowd" who were involved in the incident.

Mr. Jayasinghe then suggested that the averments of the Petitioners and the affidavits filed in support of their contentions lacked credibility because there was a progressive exaggeration of the events that were supposed to have taken place as time went on. In that connection Mr. Jayasinghe said that no reference had been

made in affidavit P9 to the use of clubs and iron rods. Mr. Jayasinghe, however, failed to explain the significance of the statement in P9 that "over a hundred **armed** persons had been involved."

Mr. Jayasinghe then argued, mixing his metaphors, that what took place was, "a minor incident," "a storm in a tea cup", although "now an attempt is being made to make a mountain out of a molehill by implicating the Minister and the Police". One is hardly justified in describing the forcible ousting and replacement of a group of persons who were legitimately employed in the business of assisting a Provincial Council to discharge its vital public service of ensuring an orderly transport service as trivial. The assessment of the situation by Mr. Rambukwella, in his affidavit and in his letter to the Deputy Inspector-General of Police, which I have referred to earlier, seems to me to be more realistic. Nor am I able to accept learned Counsel's submission that the Police had been implicated merely for the purpose of obtaining relief from this Court. The Police were implicated because of the role they had played in ousting the old Time-Keepers and in unlawfully installing and keeping in office a new group of people.

## STATE RESPONSIBILITY

Dr. de Costa and Mr. Gamini Perera submitted that the acts of the First Respondent and the new Time-Keepers were private acts and could not be a matter for complaint under Article 126 of the Constitution, for the Court had jurisdiction only to hear and determine a question relating to the infringement or imminent infringement of a fundamental right by executive or administrative action. In support of their submission, learned Counsel cited the decision of this Court in *Perera v. University Grants Commission* <sup>(4)</sup> in which it was stated that:

"Constitutional guarantees of Fundamental Rights are directed against the State and its organs. Only infringement or imminent infringement by Executive or Administrative action of any Fundamental right or Language right can form the subject matter of a complaint under Article 126 of the Constitution. The wrongful act of an individual, unsupported by State authority is simply a private wrong. Only if it is sanctioned by the State or



done under the State authority does it constitute a matter for complaint under Article 126. Fundamental rights operate only between individuals and the State."

In *Perera v. University Grants Commission, Sharvananda, J.* (as he then was) explained that:

"The expression 'Executive or Administrative action' embraces executive action of the State or its agents or instrumentalities exercising governmental functions. It refers to exertion of State power in all its forms. The right to equality pervades all spheres of State action including administrative action of all kinds by all Government bodies. The constitutional provision therefore means that no agency of the State or the officers or agents by whom its powers are exerted shall deny to any person the equal protection of the law. Whoever by virtue of public position under a State Government denies or takes away the equal protection of the laws violates the constitutional inhibitions, and as he acts in the name and for the State and is clothed with the State's authority, his act is that of the State. (*Neal v. Delaware*)<sup>(5)</sup>.

Although the concept of the public-private divide has been questioned, and strong arguments have been adduced for the application of human rights law to acts between non-State actors, (e.g. see Andrew Clapham, **Human Rights in the Private Sphere**, 1993 Clarendon Press, Oxford), it is not necessary for the purposes of the matter before me to go into that complex question. Had this been merely a matter of determining whether the old Time-Keepers were unlawfully ousted by the new Time-Keepers, it might have been appropriate to consider whether Article 126 of the Constitution stood in the way of applying the provisions of Chapter III of the Constitution.

The complaint before us is that the ousting of the old Time-Keepers, the substitution of the new Time-Keepers, and the continued holding of office by the new Time-Keepers, were brought about by the deprivation of the Constitutional right of the old Time-Keepers to the equal protection of the law, and that denial was accomplished with the connivance, encouragement and significant

assistance of officers of the State. In the circumstances, those who conspired with the Government officials to deprive the old Time-Keepers of their fundamental right did so under "colour of law" and their conduct may be fairly attributed to the State as executive action. (See *Dennis v. Sparks* <sup>(6)</sup>, *Tower v. Glover* <sup>(7)</sup>). As Mr. Justice Brennan, writing for the Court, said in *Lugar v. Edmonson Oil Co. Inc.* <sup>(8)</sup> a person charged with a deprivation of a constitutional guarantee may "fairly be said to be a State actor either because he is a State official or because he has acted together with or has obtained significant aid from State officials, or because his conduct is otherwise chargeable to the State."

In *Mohammed Faize v. Attorney-General and Others* <sup>(9)</sup> Fernando, J. said that "... the act of a private individual would render him liable if in the circumstances that act is 'Executive or Administrative'. The act of a private individual would be Executive if such act is done with the authority of the Executive; and such authority transforms an otherwise purely private act into an Executive or Administrative action; such authority may be expressed or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation, and the like, including inaction in circumstances where there is a duty to act; and from subsequent acts which manifest ratification or adoption."

Dr. de Costa submitted that the First Respondent was not a State officer and that his acts could not be regarded as Executive or Administrative action. It would also follow that if he was not a State Officer, then the assistance he gave the new Time-Keepers would not make them State actions. He admitted, however, that as the Co-ordinating Secretary to a Minister, the First Respondent was paid by the Government, that he used Government vehicles, Government telephones, and other facilities and performed public functions. He was, as he claimed, known to several people, and indeed he was identified as the Co-ordinating Secretary to the Minister and he appeared to the public to be exercising the authority of his office. Dr. de Costa's contention, however, was that a Co-ordinating Secretary's tenure of office depended on the continuation in power of the political party to which he belonged; and since a change of Government after an election would result in the termination of his

services, he was not a State Officer capable of exercising Executive or Administrative functions. I have no hesitation in rejecting that submission, for the question of determining whether someone performs Executive or Administrative functions depends on the nature of his office including its powers, duties and functions.

I am of the view that the acts of the First Respondent are fairly attributable to the State and therefore engaged State responsibility for the purposes of Articles 17 and 126 of the Constitution. He may have exceeded the scope of his authority. However, when a public officer takes acts relating to his office, those actions should be considered to be executive action even if they exceed the scope of his authority, for he acts under colour of his office. (*Screws v. United States* <sup>(10)</sup>).

The State is also accountable because it has not merely been passive and tolerated the unlawful ousting of the old Time-Keepers by private persons, yielding readily to the influence of others and by its disinclination to act, but also because it has associated itself with it through the positive action, encouragement and assistance of the police force and its officers. I am in agreement with learned Counsel for the Petitioner that the replacement of the Time-Keepers was brought about by the significant aid rendered by State officials, including the first Respondent, the want of adequate action of the police in relation to the events of 10th February 1995, and the active role played by the Police on 14th February 1995 and by their subsequent lack of action. Admittedly some of the officers who took part in the operations were not in uniform. However, they were identified as police officers. In *Griffin v. Maryland* <sup>(11)</sup> it was held that when a private business hired an off duty police officer to act as a security guard, there was State action connected to his actions taken on behalf of the private business to the extent he appeared to the public to be exercising the authority of a police officer.

## ORDER

For the reasons set out in my judgment, I declare that the State has violated Article 12(1) of the Constitution.

The First Respondent shall pay the Petitioners a sum of Rs. 15,000 as costs.

The State shall pay each of the Petitioners a sum of Rs. 15,000 as compensation.

The 7th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 19th Respondents are hereby ordered forthwith to –

- (1) vacate the Time-Keepers premises at the locations set out in document P3; and
- (2) desist from performing the duties and functions of Time-Keepers at those locations or elsewhere in Kandy.

The Inspector-General of Police is directed to ensure that the 7th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 19th Respondents comply with the orders referred to in the preceding paragraph.

The Inspector-General of Police is further directed forthwith to –

1. assist the persons named in document P3 to regain possession of the premises vacated by them on 14th February 1995; and
2. provide such persons with the protection required to enable them to discharge their duties and functions as Time-Keepers.

The Inspector-General of Police is directed to report to this Court on or before the 20th of September 1995 on the steps he has taken to comply with the directions issued to him in this Order.

Mr. Jayasinghe submitted that persons other than the petitioners are not entitled to any relief and he cited the decision in *Somawathie v. Weerasinghe* <sup>(12)</sup> in support of his view. The case of *Somawathie* deals with the threshold question of the jurisdiction of the Court in terms of Article 126(2) of the Constitution to entertain a petition filed by a person whose rights have not been infringed, and not the question of relief the Court may eventually grant in the exercise of its powers under Article 126(4).

**FERNANDO, J.** – I agree.

**DHEERARATNE, J.** – I agree.

*Relief granted.*