SUMITH KALUGALA
v.
Y. P. DE SILVA

COURT OF APPEAL
HECTOR YAPA, J.,
J.A.N. DE SILVA, J.,
P.H.K. KULATILAKA, J.
C.A. APPLICATION NO. 645/98

August 17, 18, 20, 21, 24, 25, 26, 27, 28 and 30, 1998 Decided on September 01, 1998 (Reasons September 30, 1998.)

Provincial Council Elections – Provincial Councils Elections Act, No. 2 of 1988, Section 63 – Expulsion – Jurisdiction of Court of Appeal – Duty of the Court – Appointment of Disciplinary Committee – Was petitioner given an opportunity to meet the charges – Right of Appeal to Central Committee – Proof of charges – Suppression and misrepresentation of facts – Contractual obligation to the court – Uberrima Fides.

The petitioner was elected in 1996 as a member of the Hikkaduwa Pradeshiya Sabha. He was also the private secretary of the 8th respondent who was the Leader of the House of the Southern Provincial Council and sole representative of the SLMP political party in that Council. In September, 1997, the 8th respondent who had a dispute with the PA and who became critical of its key Ministers and Her Excellency the President, resigned from the membership of the Southern Provincial Council. The petitioner was nominated to fill the vacancy and took oaths as a member of the Southern Provincial Council. Thereafter as petitioner did not yield to pressures by the 8th respondent to be critical of the PA he was asked to resign but he refused.

Eventually the petitioner faced an inquiry into five charges levelled against him after which the petitioner was informed by letter dated 1.6.98 that the central committee of the party had unanimously decided to expel him from the SLMP with immediate effect. The petitioner challenged the expulsion as being arbitrary, unlawful, invalid and contrary to the rules of natural justice.

Held:

1. Jurisdiction to hear this matter is conferred by section 63 (1) of the Provincial Councils Act, No. 2 of 1988 on the Court of Appeal. The Court of Appeal has to determine the validity of the expulsion of a member of a Provincial Council from membership of a recognized political party. If the court declares the expulsion valid the member will lose his right to continue as a member of the Provincial Council and his seat will become vacant from the date of such determination.

2. In exercising the jurisdiction conferred on it by section 63 of the Provincial Councils Elections Act Court should inquire whether the expelling body had –

   (i) acted within its jurisdiction,
   (ii) followed the procedure laid down in the Constitution of the party,
   (iii) acted in compliance with the principles of natural justice before taking the decision to expel the petitioners, and whether
   (iv) the grounds adduced for expelling the petitioners could be sustained, and
   (v) the alleged misconduct if proved, merited the extreme punishment meted out.

3. The rules of the SLMP constitution empower the Politburo to appoint the Disciplinary Committee subject to the approval of the Central Committee. The appointment of the Disciplinary Committee by the Politburo on 27.2.98 was approved by the Central Committee on 8.3.98. There was compliance with rules (rules 16.1 and 24.1) of the SLMP constitution. Therefore the Disciplinary committee was appointed by the authority competent to appoint it.

4. The appointment of three members of the Central Committee to the Disciplinary Committee did not make the composition of the Disciplinary Committee *ultra vires* the SLMP constitution.

5. No allegation of bias become established merely by the fact that the members of the Disciplinary Committee happened to be influential members of the Politburo as well as of the Central Committee or even from the fact that the main witness against the petitioner happened to be an influential member of the Central Committee in the absence of clear proof of bias.

6. The allegation of late receipt of the letter containing the charges cannot be accepted in the absence of available proof not being adduced. Further the conduct of the petitioner showed he had prior knowledge of the charges.

7. The petitioner had been given the right to present his case. He had given evidence and called one Bala Gamage to testify on his behalf. Against him the 8th respondent and several other witnesses had given evidence.

   He was given an opportunity to cross-examine the witnesses who testified against him but he had not made use of this opportunity.

   Further the petitioner had not objected to any of the members of the Disciplinary Committee inquiring into the allegations against him. He had not moved for a postponement of the inquiry for any reason and had consented to the holding of the disciplinary inquiry on 2.4.1998.

   The petitioner's testimonial trustworthiness was also in issue.

   The petitioner had been given an opportunity to meet the charges against him by the Disciplinary Committee.

8. The right of appeal provided by the SLMP constitution (rule 25.5), was from the findings of the Disciplinary Committee and the punishment imposed by the Central Committee. The right of appeal was not available from the findings of the Disciplinary Committee until the Central Committee imposed its punishment. A petitioner who has been expelled from the party can still exercise his right of appeal under rule 25.5.

9. The petitioner was found guilty of conduct affecting the party objectives and its activities, arbitrary actions against the District Organization of the party, misappropriation of the salary of his Secretary and being a deserter from the Sri Lanka Navy.

   The petitioner has failed to be honest, truthful and disciplined towards the party, he has failed to act placing party interests before his personal interests and to safeguard the unity of the party. He has brought the SLMP into disrepute in view of the allegation relating to the misappropriation of money. From the angle of the SLMP as a political party, these are very serious charges. The misappropriation of money and forgery were very serious allegations where criminal proceedings could have been instituted.

   The expulsion was therefore warranted.

10. The petitioner was guilty of suppression and misrepresentation of facts by tendering false documents.

11. When the petitioner sought a declaration from court that his expulsion was invalid, he entered into a contractual obligation with the court and was therefore required to disclose all material facts. There must be *uberrima fides.*

Cases referred to:

1. *Tilak Karunaratne v. Mrs. Sirimavo Bandaranaike* (1993) 2 Sri LR 90.
2. *Gamini Dissanayake v. M. C. M. Kaleel* (1993) 2 Sri LR 135.
3. *Goonaratne and others v. Premachandra and others* (1994) 2 Sri LR 137, 148.
4. *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 AC 147, 171.
5. *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* (1997) 1 Sri LR 360.
6. *Rex v. Kensington Income Tax Commissioners; Princess Edmond de Polignac Ex parte* (1917) 1 KB 257.
7. *Castelli v. Cook* (1848) 7 Hare 89, 94.
8. *D. L. S. L. Silva v. Senanayaka, Upasena and others* – SC 472/96 SC Minutes of 05.06.98.

APPLICATION under section 63 of the Provincial Councils Election Act.

D. S. Wijesinghe, PC with *W. Dayaratne, R. Jayawardena and S. Gamage* for petitioner.

Sirinath Perera PC with *Ananda Cooray* for 1st, 2nd and 4th respondents.

Adrian Perera SSC for the 7th respondent.

J. C. Weliamuna with *S. Daluwatta* for the 8th respondent.

N. Palihawardana for the 9th respondent.

Cur. adv. vult.

September 30, 1998.

HECTOR YAPA, J.

After the hearing of this application in terms of section 63 (1) of the Provincial Councils Elections Act, No. 2 of 1988, we made our determination holding that the expulsion of the petitioner is valid. We set down below our reasons for so holding.

The petitioner who is a member of the Southern Provincial Council has made this application in terms of the section 63 (1) of the Provincial Councils Elections Act, No. 2 of 1988 challenging his expulsion by the 4th respondent, the Sri Lanka Mahajana Party (SLMP) which is a recognized political party. By this application the petitioner invokes the jurisdiction of this court seeking a declaration that his expulsion from the SLMP is invalid. At the relevant time 1st, 2nd and 3rd respondents were the Chairman, the General Secretary and the Deputy Chairman respectively of the 4th respondent (SLMP). The 5th respondent was the General Secretary of the 6th respondent, the People's Alliance (PA) which is also a recognized political party. The SLMP is presently one of the constituent political parties in the PA. The 7th respondent is the Commissioner of Elections. The 8th respondent is the Galle District Organizer of the SLMP and also a Deputy Chairman of the said party. The 9th respondent is the Secretary of the Southern Provincial Council.

The Facts

According to the material available the 8th respondent had contested the Elections of the Southern Provincial Council held in the year 1994 under the PA symbol and was elected as the sole

representative of the SLMP at the said election. He was thereafter appointed as the Leader of the House of the Southern Provincial Council. After the aforesaid appointment of the 8th respondent, the petitioner was employed as his private secretary. While the petitioner was functioning as the private secretary of the 8th respondent, he was given nomination by the SLMP to contest the elections of the Pradeshiya Sabha of Hikkaduwa on the PA ticket at the Pradeshiya Sabha Elections held in the year 1996 and was elected as a Pradeshiya Sabha member. He also continued to function as the Private Secretary of the 8th respondent.

In September, 1997, the 8th respondent who had a dispute with the PA and who became critical of its key ministers and Her Excellency the President, resigned from the membership of the Southern Provincial Council. After the resignation of the 8th respondent from the Southern Provincial Council, the Politburo and the Executive Committee of the SLMP unanimously decided to nominate the petitioner as the nominee for the said vacancy. The said decision was communicated to the 5th respondent who in turn informed the 7th respondent that the petitioner had been nominated to fill the vacancy created by the resignation of the 8th respondent as a member of the Southern Provincial Council. Consequent to the said nomination of the petitioner, the 7th respondent acting in terms of section 65 (2) of the Provincial Councils Elections Act, appointed the petitioner as a member of the Southern Provincial Council to fill the vacancy created by the resignation of the 8th respondent. Accordingly the petitioner took oaths as a member of the Southern Provincial Council on 01.12.1997. The petitioner has produced the relevant *Gazette* notification No. 1003/2 dated 24.11.1997 (P5) and the declaration of his oath dated 01.12.97 (P6). After he became a member of the Southern Provincial Council, the petitioner was requested by the SLMP to resign from the membership of the Pradeshiya Sabha of Hikkaduwa.

The petitioner has stated in his application that after he became a member of the Southern Provincial Council, the 8th respondent who continued to function as the District Organizer of the SLMP began to pressurise him to criticise the PA and its leadership. However, the petitioner who had not received any instructions from his party the SLMP, to follow a hostile attitude towards the PA or the Government, resisted such pressure brought on him by the 8th respondent. The petitioner alleged that the 8th respondent wanted him to criticize Her

Excellency the President and the Cabinet of Ministers in his maiden speech which he made on 24.12.97. However, the petitioner declined to make any such criticism as was requested by the 8th respondent. A copy of the minutes of the meeting of the Southern Provincial Council held on 24.12.97 has been produced (P8). It was the position of the petitioner that the 8th respondent having failed to exert pressure on him, had insisted that the vehicle permit to which the petitioner was entitled to as a member of the Southern Provincial Council be given to him. When the petitioner had turned down this request, the 8th respondent was disappointed and therefore he had started a campaign of vilification against the petitioner with a view to have the petitioner removed from the SLMP and also from the membership of the Southern Provincial Council. It was stated by the petitioner that on 14.02.98 when he was at his residence one Upali de Silva and Sirisena Kumarsiri who were supporters of the 8th respondent had forcibly entered his house and threatened him with death, if the petitioner failed to resign from the membership of the Provincial Council. Thereafter, the petitioner had complained about this incident to the Meetiyagoda Police who had filed action against them in the Magistrate's Court of Balapitiya in case No. 951. Certified copies of the B report, journal entries and the charge-sheet were produced by him (P9, P10 and P11). Further, the 8th respondent had made several malicious and false allegations against the petitioner stating that the petitioner was not performing his duties as a Provincial Council member and that he was acting against the policies of the SLMP and therefore the 8th respondent would get the petitioner expelled from the party and from the membership of the Southern Provincial Council.

In March, 1998, the petitioner had received a letter dated 18.03.98 signed by the 2nd respondent requesting him to attend a meeting to be held 10.00 am on 29.03.98 at the auditorium of the Railway Welfare Association, Baseline Road, Borella (P15). This meeting was a special meeting of the Executive Committee of the SLMP and the petitioner attended this meeting. After the meeting the 2nd respondent had called the petitioner and had told him that an inquiry into certain allegations made against the petitioner will be held on 02.04.98 at the head office of the SLMP and requested him to be present. Even though the petitioner inquired from the 2nd respondent, as to the nature of the allegations against him and the persons who have made such allegations, the 2nd respondent had not divulged those particulars to him but told the petitioner that he will be given the details at the

inquiry. As requested by the 2nd respondent the petitioner had been present at the SLMP head office Colombo by 10.00 am on 02.04.98. The 8th respondent had also been present on that occasion with a large number of supporters who had come to testify against the petitioner. At about 11.00 am the petitioner was called into the conference hall by the 2nd respondent who was joined by the 3rd respondent the deputy chairman of the SLMP. When the 2nd respondent informed the petitioner about the letter dated 16.03.98 (P16) sent to him containing the allegations against him, the petitioner had denied the receipt of such a letter and stated that he had come to the head office on that day because of the oral request made to him by the 2nd respondent on 29.03.98. He further informed the 2nd respondent that he did not receive any intimation of the allegations against him and therefore, he was not ready to attend and participate at any formal inquiry. The 2nd respondent thereafter had stated that he would read out the charges against the petitioner from the letter sent to the petitioner dated 16.03.98 (P16). The said letter (P16) was received by the petitioner only on 16.05.98. The charges read out to the petitioner by the 2nd respondent were as follows :

(i) that the petitioner's behaviour and the conduct has adversely affected the objectives and the activities of the SLMP in the Galle District.

(ii) that he aided and abetted the police and the powerful politicians of other parties to arrest the members of the SLMP on false allegations.

(iii) that he has arbitrarily acted against the District Organization of the party instead of carrying forward its objectives.

(iv) that he has misappropriated the salary of his secretary by fraudulently placing his signature on the relevant documents.

(v) that he was not a person who has resigned from the Sri Lanka Navy, but a deserter.

After the charges were read out by the 2nd respondent, the petitioner had informed the 2nd respondent that he was hearing these allegations for the first time and that he was not ready for a formal inquiry. However, the 2nd respondent had insisted that the petitioner should at least briefly indicate his position with regard to these charges.

The petitioner thereupon had protested stating that the charges were vague and lacked sufficient particulars to give answers. Due to the insistence of the 2nd respondent, the petitioner stated that he gave an oral explanation. At the conclusion of the questioning of the petitioner by the 2nd respondent, he was forced to place his signature on a sheet of paper without giving him an opportunity to read his statement. The 3rd respondent had not actively participated in the questioning. Thereafter, the 2nd respondent had requested the 8th respondent who was the only other person present throughout the proceedings, apart from the petitioner, 2nd and 3rd respondents, to state his allegations against the petitioner. The 8th respondent thereupon handed over a written statement to the 2nd respondent and orally denied what was stated by the petitioner. The petitioner was not given an opportunity to ask any questions or to examine the documents tendered by the 8th respondent. When the petitioner made a request to question the 8th respondent, he was told that he had no right to do so and that he should remain silent. The atmosphere at the said inquiry was one of utter hostility to the petitioner. On that occasion, the 2nd respondent requested the petitioner to call Ranjith Gamage one of the persons who accompanied him and he was questioned and his statement was recorded. Thereafter, the 8th respondent called several of his supporters as witnesses and handed over some statements to the 2nd respondent. The petitioner was not given any opportunity to peruse any of these documents. At the conclusion of the inquiry the 2nd respondent indicated that the petitioner will be informed of the decision later. Immediately thereafter, the petitioner had gone to meet the 1st respondent to complain about the proceedings held by the 2nd respondent, but failed to meet him as he was warded in the Colombo National Hospital.

The petitioner on 11.06.98 received a letter dated 01.06.98 under registered post signed by the 2nd respondent, stating that the central committee of the party at its meeting held on 30.05.98 had unanimously decided to expel the petitioner from the SLMP with immediate effect. The said letter with the envelope was produced marked P25 and P25A. The petitioner on or about 11.06.98 received another letter from the 7th respondent dated 08.06.98 (P26) enclosing a letter from the 5th respondent dated 03.06.98 (P27) stating inter alia that the 5th respondent has informed him that the petitioner should be removed from his membership of the Southern Provincial Council, as he was informed by the 2nd respondent that the petitioner had been expelled

from the SLMP, which is a constituent party of the People's Alliance. The 7th respondent has further stated in the said letter (P26) that the seat of the petitioner will fall vacant at the expiration of one month from 03.06.98 in terms of section 63 (1) of the Provincial Councils Elections Act.

In the above circumstances, the petitioner has stated that his expulsion is arbitrary, unlawful, invalid and contrary to the rules of natural justice. Therefore, the petitioner has filed this application to have his expulsion from the membership of the SLMP be declared invalid in terms of the provisions of section 63 (1) of the Provincial Councils Elections Act.

Jurisdiction of the Court of Appeal

The proviso to section 63 (1) of the Provincial Councils Elections Act, No. 2 of 1988 confers on the Court of Appeal, a similar jurisdiction as that has been conferred on the Supreme Court by the proviso to Article 99 (13) (*a*) of the Constitution in relation to the members of Parliament. The proviso to section 63 (1) of the Provincial Councils Elections Act, provides as follows :

"Provided that in the case of the expulsion of a member of a Provincial Council his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Court of Appeal by petition in writing and the Court of Appeal upon such application determines that such expulsion was invalid. . . . Where the Court of Appeal determines that the expulsion was valid the vacancy shall occur from the date of such determination.

Therefore, the Court of Appeal is called upon to determine the validity of the expulsion of a member of a Provincial Council from membership of a recognized political party. If such expulsion is declared valid such member of the Provincial Council will lose his right to continue as a member of the Provincial Council and his seat will become vacant from the date of such determination. The said section 63 therefore is intended to protect a member of the Provincial Council duly elected by the people or upon nomination by a political party, from being denied the right to continue as a member except on valid grounds.

In the case of *Tilak Karunaratne v. Mrs. Sirimavo Bandaranaike*[1] and others it has been held that the jurisdiction of the Supreme Court in terms of the proviso to Article 99 (13) (A) is wide; it is an original jurisdiction on which no limitations are placed. In deciding whether the expulsion of a Member of Parliament was valid or invalid some consideration of the merits is obviously required. Dheeraratne, J. in the said case at page 101 referred to the nature and the scope of the court's jurisdiction in the following terms. "The nature of the jurisdiction conferred on the Supreme Court in terms of the proviso to Article 99 (13) (*a*) is indeed unique in character; it calls for a determination that expulsion of a Member of Parliament from a recognized political party on whose nomination paper his name appeared at the time of his becoming such Member of Parliament, was valid or invalid. If the expulsion is determined to be valid, the seat of the Member of Parliament becomes vacant. It is this seriousness of the consequence of expulsion which has prompted the framers of the Constitution to invest that unique original jurisdiction in the highest court of the Island, so that a Member of Parliament may be amply shielded from being expelled from his own party unlawfully and/or capriciously. It is not disputed that this court's jurisdiction includes an investigation into the requisite competence of the expelling authority; an investigation as to whether the expelling authority followed the procedure, if any, which was mandatory in nature; an investigation as to whether there was breach of principles of natural justice in the decision-making process; and an investigation as to whether in the event of grounds of expulsion being specified by way of charges at a domestic inquiry, the member was expelled on some other grounds which were not so specified". Similar views were expressed in the case of *Gamini Dissanayake v. M. C. M. Kaleel*[2] *and Others* .

In the case of *Goonaratne and Others v. Premachandra and Others*[3] at 148 the Court of Appeal after having considered the above judgments of the Supreme Court, observed as follows: "It is clear from what has been stated in the judgments cited, that this court in exercising the jurisdiction conferred on it by section 63 of the Provincial Councils Elections Act, should inquire whether the expelling body had (1) acted within its jurisdiction, (ii) followed the procedure laid down in the constitution of the party, (iii) acted in compliance with

the principles of natural justice before taking the decision to expel the petitioners and (iv) whether the grounds adduced for expelling the petitioners could be sustained and (v) whether their alleged misconduct if proved, merited the extreme punishment meted out to them".

Jurisdictional ultra vires

The term "jurisdiction" generally means the legal power or authority to give a decision on a matter. The lack of jurisdiction can arise in many ways. It is best expressed in the words of Lord Reid in the case *Anisminic Ltd. v. Foreign Compensation Commission*[4] at 171 where he stated as follows: "But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly".

In this application it was submitted on behalf of the petitioner that the Disciplinary Committee that inquired into the conduct of the petitioner was not constituted in accordance with the SLMP constitution (2R1) and therefore the disciplinary body did not have the power to hold the inquiry. It was submitted that the said Disciplinary Committee lacked jurisdiction for three reasons. First the learned counsel contended that the Disciplinary Committee was not a standing Disciplinary Committee of the party. Secondly it was argued that the said committee was not appointed by the authority that had the competence

to appoint this body and thirdly the counsel submitted that the composition of the disciplinary body was contrary to the provisions of the SLMP constitution. It was submitted that according to rules 16.11 and 24.1 of the SLMP constitution (2R1) provision is made to appoint the Disciplinary Committee of the party by the Central Committee and argued that the aforesaid provisions clearly intended the Disciplinary Committee to be a standing committee of the party and not an adhoc committee created to inquire into a particular case. It was further contended that the Disciplinary Committee of party should normally consist of persons who are not actively involved in the affairs of the party and the task of appointing this committee is solely entrusted to the central committee and to no other organ of the party. In this case it was argued that the appointment of the national organizer (Leader of the party), the general secretary and the assistant secretary of the SLMP, who are the powerful members of the SLMP, as members of the Disciplinary Committee, had the effect of taking away the objectivity and the fairness that was expected from such a disciplinary body.

It was submitted that according to rules 16.11 and 24.1 of the SLMP constitution, the Disciplinary Committee should be appointed by the Central Committee and the Politburo was not the competent authority to appoint the said committee. However, in this case the Disciplinary Committee was appointed on 27.02.98 not by the Central Committee but by the Politburo of the SLMP (2R6). Further, it was contended that rule 17.1 of the constution which permitted the Politburo to take decisions subject to the approval of the Central Committee, had no application to the appointment of a standing committee like the Disciplinary Committee. It was also submitted that rule 17.6 which permitted the Politburo to take action in disciplinary matters of the members by exercising the powers vested in the Central Committee and subject to the approval of the said committee, had no application in this instance. The reason being that the appointment of the Disciplinary Committee by the Politburo was not made subject to the approval of the Central Committee (2R6). According to 2R6, the Polit buro appointed the Disciplinary Committee consisting of three members and directed the said committee to summon the 8th respondent and other Galle District organization leaders for this purpose and

to conclude the inquiry early and submit its report to the Politburo. It was argued that this conduct on the part of the Politburo, cannot mean that the appointment of the Disciplinary Committee was made subject to the ratification by the Central Committee but a direct and final exercise of power by the Politburo. Therefore, it was contended by Mr. Wijesinghe, PC, that the Disciplinary Committee was not appointed by the authority (Central Committee) which had the power to do so, under the SLMP constitution.

It was also contended by counsel that the composition of the Disciplinary Committee was contrary to the provisions of the SLMP constitution. The inclusion of three members of the Central Committee in the Disciplinary Committee was *ultra vires* the constitution, for the reason that the Central Committee was the supreme body of the SLMP having the power to hear appeals from a decision of the Disciplinary Committee. Rule 25.5 of the SLMP constitution provides that every member of the party has the right of appeal to the Central Committee, against any disciplinary order taken against any member. In the circumstances, it was argued that the constitutional right of appeal given to a member against the findings of a Disciplinary Committee to the Central Committee, would be rendered nugatory, if the Disciplinary Committee members are drawn from the Central Committee. It was also pointed out by counsel that according to rule 15.9 of the SLMP constitution, specific provision has been made to the particular committees to which the members of the Central Committee should be drawn. Further the absence of any reference that the Disciplinary Committee should be drawn from the Central Committee in rules 16.11 and 24.1 of the SLMP constitution and the conferment of the appellate jurisdiction in the Central Committee would show that the constitution of the SLMP (4th respondent) did not provide for the members of the Central Committee to be appointed to the Disciplinary Committtee. Therefore, it was submitted on behalf of the petitioner that the Disciplinary Committee that inquired into the conduct of the petitioner was not constituted in accordance with the SLMP constitution and in the circumstances the said disciplinary body did not have the jurisdiction to hold the disciplinary inquiry against the petitioner.

The learned counsel for the respondents on the other hand argued that the very nature of a Disciplinary Committee is adhoc. He referred to rule 15.9 of the SLMP constitution which names the committees that should be set up by the Central Committee and these committees do not include a Disciplinary Committee. However, it was pointed out by counsel that rule 15.9 permitted the Central Committee to set up other committees including a Disciplinary Committee when it became necessary. Learned counsel further contended that advisedly a standing Disciplinary Committee was not provided in the constitution of the SLMP, for the reason that such a body would become incompetent to hold a disciplinary inquiry, in the event of any allegations of misconduct or indiscipline, against a member of members of the Disciplinary Committee. It may be observed here that the very fact that the constitution of the SLMP after having provided for the appointment of the Disciplinary Committee by the Central Committee has not created the said body, is an indication that the Disciplinary Committee was not intended to function as a standing Disciplinary Committee, but as a body that could be set up as and when the need arose, in terms of the rule 15.9 of the SLMP constitution. Further, rule 15.9 of the SLMP constitution. Further, rule 15.9 appears to be the only provision under the SLMP constitution which provides for the creation of various committees. rule 25.3 of the SLMP constitution provides for an ex parte inquiry in certain situations by the Disciplinary Committee to be appointed by the Central Committee. The language used in rule 25.3 to read "Disciplinary Committee to be appointed by the Central Committee" appears to suggest that the Disciplinary Committee would be an adhoc body to be appointed by the Central Committee as opposed to a standing Disciplinary Committee.

The contention that the Disciplinary Committee was not appointed by the authority which had the competence to appoint such a body namely the Central Committee, was met by the learned counsel for the respondents on the basis that the appointment of the Disciplinary Committee by the Politburo, which was approved by the Central Committee, was in fact the decision of the Central Committee. He referred us to the rules 16.3, 16.5, 17.1, 17.3 and 17.6 of the SLMP constitution (2R1). The rule 16.3 provides that the power to maintain discipline and take disciplinary action against the members of the party

is vested with the Central Committee. The rule 16.5 provides that the Central Committee has the power to delegate its power to other organizations and officers. The rule 17.1 provides that between two Central Committee meetings the Politburo has the power to act on behalf of the Central Committee and also to take decisions subject to the approval of the Central Committee. The rule 17.3 provides that subject to the approval of the Central Committee the Politburo has the power to direct all the affairs of the party on behalf of the Central Committee. The rule 17.6 provides that the Politburo acting under the powers vested in the Central Committee, has the power to deal with matters relating to discipline amongst the members and the party organizations, subject to the approval of the Central Committee. Learned counsel therefore submitted that having regard to the above provisions, the Politburo is given the power to appoint a Disciplinary Committee subject to the approval of the Central Committee. It was further contended that since the Central Committee as provided by rule 15.6 is required to meet once in two months, and therefore, unless the Politburo has the power to act subject to the approval of the Central Committee, the functioning of the party machinery would become unworkable. Therefore, the counsel submitted that the Politburo has the power to appoint a disciplinary Committee subject to the approval of the Central Committee. He referred to the various stages leading to the appointment of the Disciplinary Committee against the petitioner. In this case the Galle District Organization by its letter dated 21.02.98 (2R4) has informed the SLMP about certain acts of misconduct on the part of the petitioner and the general secretary of the party (2nd respondent) has brought this matter to the notice of the Politburo by including it in the agenda dated 23.02.98 (2R5) which was considered at its meeting held on 27.02.98, where the Politburo decided to appoint a Disciplinary Committee consisting of the national organizer (as the chairman of the Disciplinary Committee), the general secretary and the assistant secretary, T. I. de Silva (2R6). It was contended that in terms of rule 17.6 of the SLMP constitution, the Polit Bureau is empowered to appoint the Disciplinary Committee subject to the approval of the Central Committee. Thereafter, the appointment of the Disciplinary Committee by the Politburo was referred to the Central Committee for approval by including it in the agenda prepared on 01.03.98 (2R7) and the Central Committee at its meeting dated

08.03.98 approved the decision taken by Politburo on 27.02.98 to appoint a Disciplinary Committee (2R8).

Therefore, it would appear on a consideration of the above rules of the SLMP constitution (2R1) that the Politburo is empowered to appoint the Disciplinary Committee, subject to the approval of the Central Committee. The appointment of the Disciplinary Committee by the Politburo on 27.02.98 (2R6) has been approved by the Central Committee on 08.03.98 (2R8). Further, it is stated in 2R8 that the Central Committee not only approved the said decision of the Politburo but in addition the Central Committee decided to appoint the national organizer, the secretary, and the assistant secretary T. I. de Silva as the members of the Disciplinary Committee. Therefore, it is very clear from 2R8 that the Central Committee not only approved the appointment of the Disciplinary Committee by the Politburo but in fact had appointed the three members of the Disciplinary Committee by naming them. In the circumstances, it would appear that there had been compliance of rules 16.1 and 24.1 of the SLMP constitution. Therefore, the submission of the counsel for the petitioner, that the Disciplinary Committee was not appointed by the authority competent to appoint the said body should fail.

It was submitted on behalf of the petitioner that the composition of the Disciplinary Committee was contrary to the SLMP constitution (2R1), in that the three members of the Central Committee were included in the Disciplinary Committee. This argument was based on the rule 25.5 of the SLMP constitution which provides an appeal to a member of the party from a disciplinary order, to the Central Committee. It was pointed out that this constitutional right of appeal to the Central Committee, against the findings of the Disciplinary Committee consisting of three members of the Central Committee, would be rendered nugatory if the appellate body is to consist of members of the Central Committee. It was submitted that in the absence of such provision in rules 16.11 and 24.1 as to the persons who should be appointed to a Disciplinary Committee, and further, the conferment of appellate authority on disciplinary matters to the Central Committee was a clear indication that the SLMP constitution did not envisage members of the Central Committee being appointed

to the Disciplinary Committee. Therefore, counsel argued that the inclusion of three members of the Central Committee in the Disciplinary Committee was ultra vires the constitution.

However, it was contended on behalf of the respondents, that the SLMP constitution (2R1) required the appointment of office-bearers of the party to the Disciplinary Committee, in view of rule 15.3 which required the office-bearers to be drawn necessarily from the members of the Central Committee. Further, it was contended that in view of rule 16.5 any delegation of power by the Central Committee could only be made to the office-bearers of the party (SLMP) as referred to in rule 15.3 who should necessarily be members of the Central Committee. In addition, it was submitted by counsel that the Central Committee being a larger body consisting of 67 members and therefore, the likelihood of any prejudice being caused to a member who has appealed to the Central Committee from a disciplinary order, would be minimal. It was further submitted that the structure of the SLMP constitution (2R1) is such that one cannot avoid a situation where members of the Disciplinary Committee, also being members of the Central Committee which would sit as an appellate body. Having regard to the provisions of the SLMP constitution, it would appear that the above situation complained of by the petitioner, would be unavoidable as a matter of necessity, in view of the structure of the SLMP constitution to which the petitioner has subscribed as a member. Under these circumstances, we hold that the composition of the Disciplinary Committee was not *ultra vires* the SLMP constitution.

Breach of Natural Justice

The petitioner has pleaded that he has been expelled from the membership of the party (SLMP) in breach of the rules of natural justice and therefore, the court will hold that the expulsion is invalid. It was contended on behalf of the petitioner, that the application of natural justice principles meant the observance of three main features, namely that the petitioner's right to have his case to be heard by an unbiased tribunal, his right to have notice of the charges of misconduct and his right to be heard in answer to those charges.

Learned counsel submitted that in this case, the petitioner was denied the right to be heard by an unbiased tribunal. He contended that the Disciplinary Committee consisted of persons who were members of the Politburo and the Central Committee. Learned counsel referred us to the fact that the Politburo on 27.02.98 on a complaint dated 21.02.98 made to them by the Galle District Organization (2R4) decided to hold a disciplinary inquiry against the petitioner and nominated the Disciplinary Committee (2R6) without calling for an explanation from the petitioner and on 08.03.98 the members of the Central Committee ratified the said decision (2R8). The ratification of the decision of the Politburo was also done by the Central Committee without calling for an explanation from the petitioner. It was further submitted that these decisions were taken by the Politburo and the Central Committee which comprised the 8th respondent who was the principal witness against the petitioner. In this connection it must be stated that it would have been ideal to have a Disciplinary Committee appointed completely outside the Politburo and the Central Committee. However, as pointed out by counsel for the respondents, that the structure of the SLMP constitution is such that one cannot avoid a situation where persons who become members of the Disciplinary Committee from being members of the Politburo and the Central Committee as well. Political parties by their very nature are voluntary organizations. The membership will depend on the constitution. Therefore, a person joining a political party will be entering into a contract with the party to be governed by the party constitution. Hence, it is the structure of the constitution of the party to which the petitioner has subscribed, which makes this system necessary. When the SLMP constitution has provided this machinery, to determine allegations of misconduct by its members, all that the court is required to do is to see whether there has been a substantial compliance of those requirements in the SLMP constitution. Further, under these circumstances the allegation of bias cannot be considered as having being established, purely by the fact that the members of the Disciplinary Committee happened to be influential members of the Politburo as well as the Central Committee, or even from the fact that the main witness against the petitioner happened to be an influential member

of the Central Committee, unless there was very clear proof of bias. It is for the reason that in cases of this nature, where the party constitution has required the formation of a disciplinary body in this manner, one must assume that such a disciplinary body was capable of considering the allegations of misconduct against a member without bias, unless bias was very obvious from the conduct of the members of the Disciplinary Committee. This is because a line however must be drawn between genuine and fanciful cases of bias.

An allegation was made by the petitioner that he was not given notice of the inquiry and that it was only on 29.03.98 when the petitioner attended an executive committee meeting of the party, that he was told by the 2nd respondent about an inquiry to be held against him at the party headquarters on 02.04.98. Further on that occasion the 2nd respondent did not inform him of the nature of the allegations against him. The petitioner's position was that the registered letter dated 16.03.98 (P16) sent to him was not received by him until 16.05.98, well after the inquiry that was held on 02.04.98. It was stated by him that the delay was probably due to the postal strike. In addition, the letter dated 10.03.98 (2R9) sent to petitioner giving the notice of the charges, the date and the time of the inquiry and the names of the members of the Disciplinary Committee was not received by him. It was contended on behalf of the petitioner that this 2nd letter of 10.03.98 (2R9) was a dubious document and should not be acted upon. With regard to the registered letter dated 16.03.98 (P16), it was submitted by the respondents that since the petitioner has marked the envelopes P25A and P26A in respect of the letters P25 and P26 received by him, to show the date of their receipt, he could have marked the envelope in respect of P16 to show that it was received only on 16.05.98. This has not been done even though the burden was on the petitioner to prove that the registered letter (P16) was in fact received by him on 16.05.98. Regard to the 2nd letter (2R9) it was stated that the 2nd respondent had posted a similar letter dated 10.03.98 (2R10) to the 8th respondent, informing him about the inquiry to be held against the petitioner on 02.04.98. It was contended on behalf of the respondents that if 2R9 was a fabrication, then similarly 2R10 should also be a fabrication and if that was so, the question

would arise as to what additional benefit the 2nd respondent could have expected by filing 2R10 in court. In these circumstances, it would appear that the position taken up by the petitioner that he received P16 only on 16.05.98 and the letter 2R9 was a fabricated document cannot be accepted. Even assuming for the purpose of argument that the petitioner did not receive either P16 or 2R9, it was admitted by the petitioner that he was told by the 2nd respondent that an inquiry against him would be held at the party headquarters on 02.04.98. However, the conduct of the petitioner thereafter, appears to suggest that he was not conducting himself as a person who had no knowledge of the charges or the allegations against him. For instance, if the petitioner had no knowledge of the allegations against him, one would have expected the petitioner to have made every effort to find out what the allegations against him were, and further, he should have made a request for additional time to the Disciplinary Committee, on the basis that he had no intimation of the allegations against him and therefore, he needed time to prepare his case. But what took place subsequently at the inquiry on 02.04.98 clearly shows the conduct of a person who had prior knowledge of the allegations against him and that he was prepared to go through the inquiry confidently and voluntarily without any complaint. Therefore, under these circumstances the complaint by the petitioner that he had no notice of the allegations against him prior to inquiry, cannot be accepted.

The next question to be decided here is whether the petitioner had been given an opportunity to answer the charges against him. It was submitted on behalf of the petitioner that the disciplinary inquiry alleged to have been held on 02.04.98 was a farce and the omissions and weaknesses on the part of the Disciplinary Committee in conducting a proper inquiry against the petitioner were sought to be covered by the admissions purportedly obtained from the petitioner at the inquiry. It would appear from the proceedings of the disciplinary inquiry held on 02.04.98 (2R12A) that the petitioner had consented to the procedure that was adopted at the inquiry and further that he had informed the Disciplinary Committee that he wanted to commence the inquiry by giving evidence to exonerate himself of the charges. He had also wanted the inquiry against him to be completed on that

day itself and therefore, he had signed the document (2R12P) stating that he had voluntarily participated in the inquiry without any duress and that he was prepared to accept any decision taken by the party, as a member of the SLMP. However subsequently the petitioner in his counter affidavit has categorically denied that he consented to the procedure adopted at the inquiry and alleged that duress was exerted on him. It is observed from the proceedings of the disciplinary inquiry, that the petitioner had been given the right to present his case. The petitioner and one Bala Gamage had given evidence on behalf of the petitioner and several other witnesses including the 8th respondent had given evidence against the petitioner. The petitioner had been given the opportunity to cross-examine the witnesses who testified against him, but it appears that he had not made use of this opportunity. Further, it is clear from the proceedings that petitioner had not objected to any member or the members of the Disciplinary Committee inquiring into the allegations against him. It is to be noted that the petitioner has not moved for a postponement of the inquiry for any reason and had consented to the holding of the disciplinary inquiry on 02.04.98. In view of these considerations, the petitioner cannot be permitted now to challenge the vires of the Disciplinary Committee and further we are unable to accept his complain that he was not given an opportunity to answer the charges against him. It is also doubtful whether the petitioner could be believed when he stated in his counter affidavit, that he did not consent to the procedure adopted at the inquiry and his allegation that there was duress exerted on him, specially by the 2nd respondent. In fact it is seen from the papers filed by the petitioner, that an attempt had been made by him to show that he did not even know the names of all the members which constituted the Disciplinary Committee, so much so, that he had failed to make all of them as respondents to this application. This conduct on the part of the petitioner goes to show that he is now making an effort to build up a case completely different to the case seen from the material available. Therefore, his behaviour seems to suggest that he is now trying to change the facts to his advantage. Thus, his testimonial trustworthiness itself becomes an issue in this case. In these circumstances, we hold that the petitioner had been given an opportunity to meet the charges against him before the Disciplinary Committee.

Another matter that merits consideration is the question relating to the deprivation of the right of appeal given to the petitioner under the SLMP constitution. It was pointed out by counsel that rule 25.5 of the SLMP constitution provided a right of appeal to a member, against a disciplinary order made against him to the Central Committee. In the circumstances, he contended that the constitution required the Disciplinary Committee findings to be communicated to an aggrieved party to enable him to exercise his right of appeal as provided under rule 25.5. It was therefore submitted that the failure to communicate the findings of the Disciplinary Committee to the petitioner and his immediate expulsion from the party, upon the receipt of the report of the Disciplinary Committee by the Politburo and the Central Committee, effectively deprived the petitioner of the exercise of his right of appeal. Learned counsel further pointed out that the immediate expulsion of the petitioner from the membership of the party, prevented the petitioner from appealing, since by virtue of his expulsion he lost his membership of the party and in the circumstances, the petitioner could not have appealed to the Central Committee for the reason that the right of appeal was only granted to a member of the party. It was contended on behalf of the respondents that the SLMP constitution provided only a single right of appeal to a member, in terms of rule 25.5. Therefore, it was argued by counsel for the respondents, that if the submission made on behalf of the petitioner is accepted, then the petitioner is accepted, then the petitioner had a right of appeal from the findings of the Disciplinary Committee, before any punishment was meted out and therefore, it would be necessary for the petitioner to make a second appeal to the Central Committee, once a decision regarding punishment was made. Since two appeals were not provided under the SLMP constitution, it was submitted that the only right of appeal the petitioner had, was an appeal made against both the findings of the Disciplinary Committee and the punishment meted out to him by the Central Committee. Therefore, on a consideration of the rule 25.5 it would appear that the right of appeal permitted to a member under this rule is an appeal that could be made by him, after the imposition of punishment by the Central Committee and not at the stage when the member was found guilty by a Disciplinary Committee. This is because the SLMP constitution provided for a single appeal by a member and further, that if an appeal

was allowed from a decision of the Disciplinary Committee as contended by counsel for the petitioner, rule 25.5 could have clearly stated so, without merely stating that an appeal is permitted to a member against a disciplinary order. It must also be mentioned here that it is open to the petitioner who has been expelled from the party, to exercise his right of appeal under rule 25.5, since he does not lose the character of a member of the SLMP to exercise his right of appeal, for the reason that his very expulsion from the membership of the party is being challenged by him in the appeal.

Merits of the case

According to the letter dated 01.06.98 (2R18) the petitioner had been expelled from the membership of the party (SLMP), since he had been involved in acts of indiscipline in violation of the party constitution. According to the Disciplinary Committee report (2R15) the petitioner was found guilty of four of the five charges that were levelled against him. Five charges which were referred earlier in detail related to the following. The petitioner's conduct affecting the party objectives and its activities, his involvement in the arrest of members of the party on false allegations, his arbitrary actions against the District Organization of the party, his act of misappropriating the salary of his secretary and finally he being a deserter from the Sri Lanka Navy. Out of the four charges the petitioner was found guilty, the first three charges related to his conduct as a member of the party and the fourth charge related to the misappropriation of the salary of his secretary by fraudulently placing his signature on the voucher. The Disciplinary Committee after having decided that the petitioner was guilty of the first four charges, left the decision on the fifth charge to be taken by the Politburo. Further, the Disciplinary Committee decided that since the petitioner was guilty of the first four charges, he has acted in violation of rule 7 (responsibilities and duties of members) and rule 27 (grounds for taking disciplinary action) of the SLMP constitution and recommended to the Central Committee to take disciplinary action in terms of rule 28, which made provision for punishments under the SLMP constitution. The Disciplinary Committee in addition decided that in terms of rule 7 of the SLMP constitution

the petitioner has failed to perform his duties and responsibilities as a member. He has failed to be honest, truthful and disciplined towards the party and has failed to act placing party interests before his personal interests, safeguarding the unity of the party. He has further brought the party (SLMP) into disrepute in view of the allegation relating to the misappropriation of money. Therefore, under these circumstances from the angle of the SLMP as a political party, these are very serious charges. In addition, the fourth charge involving an act of misappropriation of money and forgery could be considered as a very serious allegation where criminal proceedings could have been initiated against the petitioner. Therefore, the said conduct of the petitioner is likely to bring discredit to the party. In the aforesaid circumstances, it would appear that the petitioner had been found guilty of very serious charges by the Disciplinary Committee and the Central Committee had unanimously decided to expel the petitioner from the party (SLMP). Therefore, we are of the view that the expulsion of the petitioner is warranted in the circumstances.

Suppression and misrepresentation of facts from the court by tendering false documents

At the hearing of this application, it was brought to the notice of court by the President's Counsel appearing for the 1st, 2nd and 4th respondents that the petitioner has attempted to misrepresent facts to court and for this purpose he has tendered false documents. On this matter, it is pertinent to focus our attention to the document 2R4 relied on by the 2nd respondent and the document P28 with its annexure X which has been relied upon by the petitioner to counter the contents of the document 2R4. The 2nd respondent in his statement of objections in paragraph 27 has disclosed to court that by letter dated 21.02.98 marked 2R4, the District Secretary Ratnapala Wimalaratne had informed the 2nd respondent who is the General Secretary of the SLMP that at the Galle District Committee meeting held on 08.02.98 several allegations were directed against the petitioner and the said committee had decided to inform the SLMP of those allegations. The District Secretary in his letter dated 21.02.98 (2R4) had referred to the five allegations against the petitioner.

The petitioner in his counter affidavit at paragraphs 22 and 31 (ii) has taken up the position that 2R4 is a fabrication because Ratnapala Wimalaratne was neither the District Secretary nor a member of the District Committee at the relevant time. In order to support this position an affidavit dated 13.08.98 from Premalal Kodituwakku has been filed marked P 28 along with a photocopy of the minutes relating to the Galle District Convention held on 13.07.97 marked "X". Even though the affidavit is from one Premalal Kodituwakku (P28) we find that in paragraph 31 (ii) of the counter affidavit of the petitioner the reference is to an affidavit from Padmalal Kodituwakku. Premalal Kodituwakku in his affidavit (P28) states that he is a member of the SLMP and he was present at the District Convention held on 13.07.97 and that Ratnapala Wimalaratne's name did not appear in the list as a committee member and further that the said Ratnapala Wimalaratne was not appointed as the District Secretary at that meeting or thereafter. He referred to his signature in the attendance register annexed to "X". With regard to this matter learned counsel appearing for the 1st, 2nd and 4th respondents after having referred us to the report of the District Convention held on 13.07.97 which is contained in the document "X", with the permission of Court produced the original of the said "X" document marked A1 and the attendance register marked A2. On a perusal of the original documents marked A1 and A2, we observe that the original report had been prepared by Ratnapala Wimalaratne with his signature. His signature is placed below the word "ගම්‌යා" and the name Ratnapala Wimalaratne is typed below his signature. Further, Cyril Dharmawardana, 8th respondent, has also placed his signature above his name as the Galle District Organizer. However, it is observed that the report in "X" does not contain Ratnapala Wimalaratne's signature and his name and also the signature of Cyril Dharmawardana, Galle District Organizer. Learned counsel therefore submitted that "X" is a false document. He also referred us to the copy of the attendance register dated 13.07.97 in document "X" produced by the petitioner and to the original attendance register of 13.07.97 in document A2, and submitted that in the attendance register of 13.07.97 in document "X", there are signatures going up to Nos. 126, whereas in the original attendance register in document A2 there are only signatures going up to Nos. 124 and

the last signature is that of Kamal Kariyawasam. In document "X" two other names K. Sunil and Sumith Kalugala (petitioner) with their addresses and their signatures appear at Nos. 125 and 126, respectively. Learned counsel submitted that this circumstance also goes to establish that the document "X" is a false document which has been prepared for the purpose of the petitioner's case with the object of showing that the petitioner had attended the party convention held on 13.07.97. Therefore, on a perusal of the document "X", with the original marked "A1" & "A2" in respect of the two matters referred to above, it is manifestly clear that "X" is a false document. In the circumstances, it would appear that the petitioner has deliberately attempted to suppress from and misrepresent facts to the court by tendering two false documents.

In addition to the above matter the learned counsel for the respondents referred us to few other instances, where the petitioner has not been truthful with the court. However, in view of the serious nature of the misrepresentation observed from the document "X" referred above it is unnecessary to go into the details of the other allegations referred to by Counsel for the respondents.

When the petitioner filed this application in court in terms of section 63 of the Provincial Councils Elections Act, No. 2 of 1988, seeking a declaration from court that his expulsion from the membership of the SLMP is invalid, he has entered into a contractual obligation with the court. In view of this contractual relationship the petitioner is required to disclose all material facts fully correctly and frankly. This is indeed a duty cast on any litigant who comes to court seeking relief. This matter was considered by Jayasuriya, J. in the case of *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els and Two Others* 1997 1 SLR 360[5]. Where it was held that when a party is seeking discretionary relief from court upon an application for a Writ of Certiorari, he enters into contractual obligation with the court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose *uberrima fides* and disclose all material facts fully and frankly to court.

It was submitted on behalf of the respondents that any person who misleads court, misrepresent facts to court or utter falsehood of court will not be entitled to redress from court. It was contended that this was a well-established proposition of law, since courts expect a party seeking relief to be frank and open with the court and therefore courts will say "we will not listen to your application because of what you have done". Learned counsel further submitted that this principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Whether the order has been made without total lack of jurisdiction is not relevant in such cases. He cited the case of *Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac,* Ex parte 1917 1 KB 257[6] in support of this proposition.

Learned President's Counsel on behalf of the petitioner made a submission to counter this position by urging that the principle of *uberrima fides* has been applied only in writ cases where discretionary relief is sought from court. However, it would appear that the application of this principle has not been restricted in its application as submitted by counsel. Even in admiralty cases involving the grant of injunctions this principle has been applied. In the case of *Castelli v. Cook* 1848 7 HARE 89 at 94,[7] the Vice Chancellor Sir James Wigram considered this proposition and stated as follows:

> "The rule, as I understand it, is this: that a plaintiff applying *ex parte* comes under a contract with the court. He will state the whole case fully and fairly to the court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward; the plaintiff is told that the court will not decide on the merits, and that, as he has broken faith with the court, the injunction must go".

In a Fundamental Rights Case SC Application No. 472/96 *D. L. S. L. Silva v. Senanayake Upasena and Others* decided on 05.6.98[8] Fernando, J. has set aside his own judgment dated 27.06.97, since it was obtained by wilful misrepresentation and fraud. In that case the court went to the extent of directing the Attorney-General

to take appropriate criminal proceedings in respect of the misrepresentations made by the petitioner to the court.

Therefore, in the instant case the petitioner has wilfully suppressed material facts from the court by tendering two false documents and has thereby violated his contractual obligation to the court to disclose *uberrima fides.* In the circumstances, the relief sought by the petitioner should be refused without going into the merits of the case. However, since the petitioner in this application was exercising a statutory right given him and further the fact that serious consequences would flow from his expulsion, we decided to consider fully the merits of this case as well.

In cases of this nature the burden of satisfying court that the expulsion of the petitioner is valid is with the respondents who have expelled the petitioner from the SLMP. In taking this decision the respondents have satisfied the court that they have substantially followed the procedure provided under the SLMP constitution, observed the principles of natural justice and has established a justifiable case for expelling the petitioner. For the above reasons, we affirm our determination dated 01.09.98 where we held that the expulsion of the petitioner was valid and accordingly dismissed the petitioner's application with costs. Further, we deeply appreciate the assistance given to us by counsel.

DE SILVA, J. – I agree.

KULATILAKA, J. – I agree.

Application dismissed.