AMEER ALI AND OTHERS
VS
SRILANKA MUSLIM CONGRESS AND OTHERS

SUPREME COURT,
S. N. SILVA, CJ,
JAYASINGHE, J,
UDALAGAMA, J,
DISSANAYAKE, J AND
FERNANDO, J,
SC (EXPULSIONS) NO. 2/2005 WITH SC (EXPULSIONS) NOS 3 AND 4/2005
31ST MAY AND 3RD AND 7TH JUNE, 2005.

Constitutional Law- Article 99(13) (a) of the Constitution - Explusion from political party - Mala fides, bias and failure of natural justice - Invalidity of expulsions - Policy of SLMC- Alleged failure to sign a pledge of loyalty to SLMC and its leader - Burden of proof to adduce evidence to support allegations against petitioners.

The petitioners in Applications Nos. 2 and 3/05 contested the Parliamentary elections as SLMC candidates and were elected to the Batticaloa and Trincomalee Districts respectively. The petitioner in Application No. 4/05, a SLMC member contested the Wanni District as a UNP candidate and was elected as Member of Parliament for that District, in terms of an electoral pact between the SLMC and the UNP.

The petitioners supported the then President's National Advisory Council for Peace and Reconciliation and were appointed Project Ministers for Batticaloa, Trincomalee and the Wanni Districts respectively. This resulted in a letter by the 3rd respondent, Secretary, SLMC addressed to the petitioners calling upon them to sign a pledge of loyalty to the SLMC and its leader (the 2nd respondent) and the High Command, and to follow their policies and directions. The petitioners severely criticized the leader and the party for not joining the peace process to the detriment of Muslims.

Consequently, the 3rd respondent informed the petitioner that disciplinary action will be taken against the petitioners. The 2nd respondent denied the allegations against the SLMC and threatened disciplinary action against the petitioners. The allegations by the petitioners against the SLMC included criticism for signing an amended electoral pact witht the UNP and allowing three SLMC members to join the UNP.

In the absence of clarification as to who was the disciplinary authority, whether it was the High Command of the politbureau as asserted by the 3rd respondent and criticism against the SLMC and its leader, the petitioners refused to attend an inquiry at a hotel and were summarily expelled from the SLMC by the High Command by letter dated 04.04.2005, and without hearing them.

Held :

Notwithstanding a purported withdrawal of the letters of expulsions by the 3rd respondent on 28.05.2005 whilst the petitions were pending -

(a) The Supreme Court had jurisdiction to determine the validity of expulsions ;
(b) The expulsions were contrary to natural justice, mala fide and ultra vires the SLMC constitution ;
(c) Minutes of the meetings of the High Command and polibureau were not produced in evidence. The burden of producing such evidence was on the respondents;
(d) The expulsion of the petitioner in Application No. 4/05 based on his purported expulsion from the UNP was invalid ;
(e) expulsions of the petitioners from their political party were invalid;
(f) a Member of Parliament cannot be expelled from his party save on cogent grounds which are beyond doubt, in the public interest. The benefit of the doubt will be resolved in favour of the Member.

Cases referred to :

1. *Tilak Karunaratne* v. *Sirimavo Bandaranaike* (1993) Sri LR 91
2. *Gamini Dissanayake* v. *M. C. M. Kaleel and Others* (1993) 2 SriLR 135, 234

APPLICATIONS challenging expulsions from party.

D. S. Wijesinghe, P. C. with *Sanjeewa Jayawardena*, *Priyanthi Goonaratne*, *Kaushalya Molligoda* and *M. I.M. Azver* for petitioners in Application Nos. 2/ 2005 and 3/2005

Wijayadasa Rajapase, P. C. with *Kapila Liyanagamage* and *Rasika Dissanayake* for petitioner in Application No. 4/.2005

Romesh de Silva, P. C. with *Harsha Amarasekera* for 1st and 2nd respondents in Application Nos. 2, 3 and 4/2005.

Ikram Mohamed, P. C., with *A. A. M. Illias*, *Nizam Kariapper* and *Padma Bandara* for 3rd respondent in Application Nos. 2, 3 and 4/2005

K. N. Choksy, P. C. with *L. C. Seneviratne*, P. C. *Daya Pelpola*, *S. J. Mohideen*, *Ronald Perera* and *Shamila Amarawickrema* for 4th, 5th and 6th respondents in SC Application No. 4/2005.

I. Demuni de Silva, Senior State Counsel for 4th and 5th respondents is SC Application Nos 1 and 3 of 2005 and for 7th and 8th respondents in SC Application No. 4/2005

Cur.adv.vult.

1st July 2005

JUDGMENT OF THE COURT

The Petitioner in application No. 2/2005 has been a member of the 1st Respondent Party (SLMC). He contested the general election held in April 2004, as a candidate nominated by the SLMC and was the only nominee of the Party to be returned as a Member of Parliament for the Batticaloa District.

The Petitioner in application No. 3/2005, has been a member of the SLMC and contested the general election held in April 2004, as a candidate nominated by the party and was returned as a Member of Parliament for the Tricomalee District.

The Petitioner in application No. 4/2005 has been a member of the SLMC and was a nominee of the United National Party at the general election in April 2004, for the Wanni District. His name was included in the nomination paper of the United National Party on the basis of an electoral agreement with the SLMC and was returned as a Member of Parliament.

The three Petitioners have been expelled from the SLMC by letters dated 4th April 2005, sent by the 3rd Respondent, being the Secretary General of the Party. SInce the expulsions were effected by letters bearing the same date and in view of the similarity in the relevant facts and circumstances, it was decided to hear these matters together.

These Petitioners have filed applications in terms of the proviso to Article 99 (13) (a) of the Constitution seeking declarations from this Court that their respective expulsions from SLMC and in the case of the Petitioner in application No. 4/2005, the consequential expulsion from the United National Party, are invalid and that the seats held by them in Parliament have not become vacant consequent to such expulsions.

The circumstances leading to the impugned expulsions are similar in respect of all three applications. The Petitioners contend that they had serious differences of views in regard to the manner in which the Members elected from the SLMC should conduct themselves in Parliament, with the 2nd Respondent, being the Leader of the Party. The charges on which the expulsions were made have a direct bearing on these differences.

According to the sequence of events the first incident relevant to the expulsions is a letter dated 5.10.2004, sent by the General Secretary of the Party requesting the Petitioners to sign a pledge in the specimen form that was annexed, declaring loyalty and total allegiance to the Party, to its Leader and the High Command. The pledge also required the person to follow *inter alia* the policies and directions of the Leader and the High Command.

The Petitioners refused to sign the pledge and when they were called for explanations wrote letters dated 13.11.2004, stating, inter alia, that the requirement to sign the pledge is ultra vires the Constitution of the Party and they also raised questions as to whether three members of the Party were permitted to take membership of the United National Party, prior to their being nominated as Members of Parliament.

In the interim period the Petitioners wrote a joint letter dated 25.10.2004, to the Leader of the Party (P7) setting out serious criticisms of the conduct of the Leader in relation to the interests of the Party and of the Muslim community who have reposed confidence in the Party. In particular they criticized the decision of the Leader in not attending the meeting of the National Advisory Council for Peace and Reconciliation (NACPR) convened by Her Excellency the President to bring about a national consensus to achieve a just and durable solution to the ethnic problem that has devastated the country for more than two decades. They alleged that the failure of the Leader to cooperate in the national endeavour will have a serious impact on the interests of the Muslims of the North and East, who have been languishing in abject poverty and destitution in refugee camps for several decades. Further, that the mandate they received at the election was to make use of every opportunity to work towards a viable solution that would encompass the just and reasonable aspirations of the Muslims of the North and East. Accordingly, they informed the Leader that they would extend their fullest support to the Government in its endeavour to find a lasting solution to the problems identified by them which will benefit the Muslims in particular and the country at large, in general.

Shortly thereafter the 3 Petitioners were appointed as Project Ministers for Rehabilitation and Development for the Batticaloa, Trincomalee and Wanni Districts, being the three Districts from which they have been elected.

The reply of the Leader to the Party is contained in a single letter dated 05.11.2004, addressed to all three Petitioners, the contents of which would be referred to later.

The Petitioners thereafter received letters dated 19.11.2004 that were similary worded, requiring them to show cause as to why disciplinary action should not be taken against them, inter alia for any one or more of the following, summarized as follows :

(a) failure to sign the pledge of allagiance to the Party and to the Leader;
(b) the acceptance of the post of Project Minister ;
(c) The active support extended to the Government;
(d) joining the ranks of the Government Members in Parliament

The letters have been signed by the General Secretary and state that the action is taken on a decision of the High Command.

The Petitioners were requested to show cause on or before 30.11.2004, and be present at a meeting of the High Command to be held at the headquarters of the Party on 09.12.2004.

The Petitioners responded by letter dated 29.11.2004, requesting time to answer and were granted an additional 10 days time and were required to be present at the meeting of the High Command scheduled for 09.12.2004.

The Petitioners replied to the charges by letter dated 07.12.2004, denying the allegations and setting out most of the facts and circumstances included in the letter previously addressed to the Leader referred to above. They further stated that there is no validly constituted High Command in force and accused the General Secretary who wrote the letter that he would be liable to be dismissed from the Party in view of his signing the amended electoral agreement with the United National Party which had been disputed by the Petitioners in their previous correspondence.

By letter dated 20.12.2004, the Secretary General, disputed the contents of the reply and informed the Petitioners that they could present their case to the High Command and requested that a date be nominated in the month of January, on which date the matter would be heard at one of the Hotels that were specified.

It appears that no further action was taken in the matter until March 2005, when letters dated 01.03.2005, was received by the Petitioners, signed by the Secretary General who informed them that the Politbureau

will go in to the show cause notice at a meeting on 12.03.2005 to be held at the Earls Court, Trans Asia Hotel at 5.00 p.m. The Petitioners were requested to be present. Another letter was received by the Petitioner bearing the same date sent by the Secretary General requesting the Petitioner to be present on Sunday 13th March at 5.00 p. m. at the same venue for a meeting of the High Command and at which meeting the High Command will go into the show cause notice that had been issued.

The Petitioners replied by letters dated 11.03.2005, referring to the two sets of Inquiries to be held by two bodies of the 1st Respondent party and stated that they were puzzled as to how they have been summoned to face two disciplinary inquiries on two successive dates in respect of allegations set out in one show cause notice The Petitioners sought specific clarification as to which particular body would seek to exercise disciplinary control. Thereupon letter dated 14.03.2005 was sent by the General Secretary to the Petitioners requiring them to be present at a meeting of the High Command to be held on 23.03.2005 at the Hotel specified above at 7.00 p.m.

The Petitioner responded by letter dated 21.03.2005, stating that the General Secretary has failed to clarify the several fundamental issues raised in letter dated 14.03.2005, and as such would not attend the meeting of the High Command on 23.03.2005. Thereupon the 2nd Respondent notified the expulsion of the Petitioners by letter dated 04.04.2005, referred to above. It is claimed that the decision for expulsion has been taken at the meeting of the High Command said to have held on 23.03.2005.

The Petitioners have challenged the expulsions on the following grounds :

(a) that the decisions for expulsion have been made in violation of the principles of natural justice, without affording a proper hearing to the Petitioners at a time when they had raised serious issues as to the particular body of the party that could exercise disciplinary control;

(b) that there are no grounds for the expulsion of the Petitioners, since they have acted at all times in the best interests of the SLMC, its collective membership and in keeping in mind the interests of the Nation;

(c) that the expulsions were mala fide and intended to victimize the Petitioners ;

(d) that the expulsions lack bona fides, since 3 members of the Party have been permitted to take membership of the United National Party, in violation of the Constitution of the 1st Respondent party.

(e) that the decisions have been activated through bias arising from differences within the Party by a group hostile to the Petitioners.

After this Court issued notice on the Respondents and when pleadings were completed, by letter dated 28.05.2005, addressed to the respective Petitioners, General Secretary of the Party stated that the High Command has taken into consideration the statements in the affidavits filed in Court and since the Petitioners have taken up the position that they were not afforded a hearing prior to adopting the extreme measure of expulsion, the High Command has decided to withdraw the expulsions communicated by letter dated 04.04.2005 in order to give a further opportunity to present their position before the Party. The withdrawal of the expulsions has also been communicated by letter bearing the same date to the Secretary General of Parliament.

Counsel for the 1, 2 nd and 3rd Respondents, being the Party, its Leader and Secretary General, submitted that since the expulsions have been withdrawn it is unnecessary for this Court to make any decision as to the validity of the expulsions and that the proceedings should be accordingly terminated. On the other hand, the Petitioners contended that the withdrawal of the expulsions is conditional and restricted only to one of the grounds on which the expulsions have been challenged before this Court, namely the failure to comply with the principles of natural justice. The Petitioners contended that this Court should hear and determine the matter in its entirety.

In terms of Article 99(13) (a) of the Constitution, where a Member of Parliament ceases by expulsion to be a member of a recognized party on whose nomination paper, his name appeared at the time of becoming such Member of Parliament,his seat becomes vacant upon the expiration of a period of one month from the date of his ceasing to be such member. The proviso to the Sub-article states that the seat will not become vacant if prior to the expiration of one month the member applies to the Supreme Court and this Court detemines in such application that the expulsion was invalid. It is to be noted that the withdrawal of the expulsion by the 3rd Respondent on behalf of the 1st Respondent party was done on 28.05.2005, after a period of one month had elapsed from the date of the impugned expulsions. Thus the withdrawal was done at a time when this Court was

seized with the matter and in terms of the proviso the seat will not become vacant only if this Court makes a determination that the expulsion is invalid. Accordingly the withdrawal by the 3rd Respondent does not *per se* result in a position where the expulsions become invalid and the Petitioners are correct in requesting a determination to be made by Court as to the invalidity of their expulsions.

The Petitioners submitted the letter seeking to withdraw the expulsions on the alleged non-compliance with principles of natural justice in arriving at a decision to expel the Petitioners, and this should be taken as a concession on the part of the 1st, 2nd and 3rd Respondents of this ground of invalidity.

The sequence of events outlined above reveals that serious differences of views had arisen between the Petitioners, who were elected from 3 different Districts, presumably on the basis of the support extended by the voters of the respective Districts to the cause of the 1st Respondent party and their personal preference of the respective Petitioners as candidates most suited to serve their needs on the one hand and, the Leader of the Party on the other.

The long letter dated 25.10.2004 addressed by the Petitioners collectively to the Leader, the contents of which have been referred to above clearly state the concerns of the Petitioners from a perspective of what should be the policy of the party in relation to the ethnic issue and the serious adverse impact it has on the Muslims in the North and East. They have expressed serious concern as to the stand taken by the Leader on these issues and indicated that they would support the Government to serve the cause of the Muslims and their electorates best. This Court cannot in any way decide on the correctness of the matters stated by the Petitioners in their letter. Suffice it to state for the purpose of these applications, that the matters raised by the Petitioners relate to questions of policy to be decided by the Party in the interests of the Party and its voters. We have to note that there is no element of personal acrimony disclosed in the letter sent collectively by the Petitioners to the Leader.

The reply of the Leader dated 05.11.2004, on the other hand, commences on a note of hostility with the opening paragraph which reads as follows :

"I wish to deny all the assertions, comments and allegations contained in the said letter under reference, since they are false and made with an

ulterior motive of justifying the political stance taken by you in violation of the Constitution of the party ....

and ends on an ominous note as follows :

"Finally I would like to remind that the Muslims of the north east will not pardon you for the treacherous act committed and the Party too will take appropriate action against you in due course."

To say the least, the Leader has thrown the principles of natural justice and fairness to the winds. The hostile comments made well before the commencement of any disciplinary action by itself establish the allegations of the Petitioners of mala fides and of bias. To make matters worse, the Leader has precipitously stated that the Party will take action against the Petitioners is due course. Thereby he has assumed the authority to decide on the matter for the entire Party. This is far removed from the democratic process, which should characterize the action of a political party and the degree of fairness, being a sine qua non of any disciplinary action that may be validly taken by a political party in respect of any of its members.

In this background the Court has to examine the impugned disciplinary process with a greater degree of caution to ascertain whether the initial stigma of bias and mala fides have been removed in the course of the disciplinary action allegedly taken.

The letters dated 19.11.2004, being the show cause letters have been sent by the Secretary General of the Party on the basis of the direction of the High Command. President's Counsel for the Petitioners contend that minutes are kept of meetings of the High Command. They have referred to documents "C" and "D" being minutes of the High Command meetings held on 10.05.2004 and 20.09.2004 produced by the Respondents. These documents establish that the minutes of previous meetings are read and adopted as accurate records, on being proposed and seconded to that effect by the members. The Respondents have failed to produce any of the minutes of any of the meetings of the High Command at which decisions are said to have been taken with regard to disciplinary action against the Petitioners.

The two letters dated 1.03.2005 sent by the Secretary General requiring the Petitioners to attend meetings of the High Command and the Politbureau on successive dates purported to be sent on the basis of a decision of the High Command and Politbureau. A question necessarily arises as to who changed these decisions within three days of the Petitioners pointing out the anomaly of attending two sets of disciplinary inquiries. We have to make this observation since the letter requiring the Petitioners to attend the disciplinary inquiry before the High Command has been sent on 14th March in reference to the letter of 11th March sent by the Petitioners. There could possibly have been no meetings held both of the High Command and Politbureau within such a short space of time.

The disciplinary inquiry itself is said to have been held at the meeting of the High Command at Kings Court of Trans Asia Hotel. Colombo on 23.03.2005, commencing at 7.00 p.m. Since the final decision to expel the Petitioners is said to have been made in this meeting it was essential for the Respondents to have produced the minutes of the meeting that indicate the persons who were present and the manner in which the serious issues raised by the Petitioners were considered before a final decision was made. The minutes would ordinarily have to be confirmed at the next meeting of the High Command. The letters of expulsion do not indicate the meetings at which the decisions as to the expulsions were confirmed by the High Command. These infirmities necessarily lead to the inference that the Secretary General has been sending a series of letters at the dictation of another and not on the basis of any decisions of the High Command or of the Politbureau, that would ordinarily have been recorded in the form of minutes of such meetings.

In the case of *Tilak Karunaratne vs Sirimavo Bandaranaike and others*[1] Dheeraratne J., examined the nature of the jurisdiction conferred on this Court in terms of provisions of Article 99(13) (a). He has made the following observations at page 101-

"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 recognised 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 carpriciously. 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"....

It is clear from the observation cited above that this Court has to examine the requisite competence of the expelling authority and the nature of the decision making process including that of the "domestic inquiry" to be satisfied as to its bona fides and the compliance with the principles of natural justice.

The 1st to 3rd Respondents have failed to produce any evidence as to any of the foregoing matters which the Court has to examine to determine the validity of the expulsion.

In the case of *Gamini Dissanayake* Vs *M. C. M. Kaleel and others* [2] Kulatunga, J. in delivering the majority judgment of this Court observed as follows:

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

The observations that the Court may not determine an expulsion to be valid unless there are overwhelming reasons warranting such decision and that such a decision will be competent only in the most exceptional circumstances and in furtherance of the public good the need for which should be beyound doubt have been made considering the serious repercussions that follow upon an expulsion of a member. Ordinarily a Member of Parliament would vacate his seat only if his election is declared void or if he becomes subject to any of the disqualifications as are specified in the Constitution. Therefore, the expulsion from the party which visits the same consequence on a member should be made only for cogent reasons that warrant such extreme action. The reasons have to transcend personal and parochial considerations and should rest on a broader foundation of the public good.

The sequence of events outlined above based entirely on the documents that have been produced reveal that prior to disciplinary action being taken a serious dispute had arisen between the Petitioners and the Leader of the Party. As noted, the matters raised by the Petitioners relate to important questions of policy to be decided by the Party in the larger interests of the electorate being the Muslims of the North East. The reply of the Leader as contained in letter dated 05.11.2004 does not state any firm position with regard to these questions of policy but descends to a personal tirade against the Petitioners.

The burden of proof is on the Respondents to satisfy the Court as to the competence of the expelling authority, being in this instance the High Command of the Party. To get to this point it is the burden of the Respondents to establish that the validly constituted High Command convened and took the decision reflected in the several letters written by the General Secretary. At the least, the Respondents should have produced the book containing minutes of the meeting of the High Command that include the minutes of the relevant meetings. They have failed to produce even such *prima facie* evidence of the meetings. It is also the burden of the Respondents to satisfy this Court that the High Command considered the evidence and the relevant material in respect of the charges that have been made against the Petitioners in the light of the matters urged by the Petitioners (in their reply to the show cause notice) and came to findings adverse to the Petitioners from the perspective of the overall interests of the Party and its electorate. The Respondents have failed to adduce any

such evidence. Importantly, considering the personal animus displayed by the Leader prior to disciplinary action being taken, the Respondents, should have adduced evidence to establish that the decision making process was devoid of any taint of bias against the Petitioners. The Respondents have failed to adduce any such evidence as well. Thus we hold that the Respondents have failed in every respect to satisfy this Court as to the validity of the impugned expulsions.

We accordingly declare that the expulsions effected by letters dated 04.04.2005, of the three Petitioners are invalid. Accordingly their seats in Parliament shall not become vacant pursuant to the purported expulsions.

The applications are allowed with costs payable to the Petitioner by the 1st, 2nd and 3rd Respondents.

In relation to Application No. 4 of 2005, the letter dated 02.05.2005 addressed to the Secretary General of Parliament by the United National Party stating that the Petitioner in that application has ceased to be a member of the Party from 05.04.2005 has been admittedly sent on the basis of the expulsion of the Petitioner from 1st Respondent Party by letter of 04.04.2005.

Learned President's Counsel for the United National Party conceded that the Party had no direct interest in this matter and would abide by the decision of this Court on the basis of the challenge to the impugned expulsion as contained in the letter of 04.04.2005.

Accordingly, in Application No. 4 of 2005, we make a further declaration that the impugned expulsion as contained in letter dated 02.05.2005, to the Secretary General of by Parliment by the United National Party in also invalid.

SARATH N. SILVA, C. J.

NIHAL JAYASINGHE, J.

N. K. UDALAGAMA, J.

N. E. DISSANAYAKE J.

RAJA FERNANDO, J.

Expulsion determined invalid