RAMBUKWELLA
v
UNITED NATIONAL PARTY AND OTHERS

SUPREME COURT
SARATH N. SILVA, C.J.
JAYASINGHE, J. AND
DISSANAYAKE, J.
S.C. (EXPULSION) NO. 1/2006

Expulsion of a member of a recognised political party who is a Member of Parliament – Articles 3.3.(c), 3.3(d), 3.4.(d) and 9.7 of the Constitution; Validity of the expulsion in terms of proviso to Article 99 (13)(a) of the Constitution; Procedural impropriety – Right to representation by an Attorney-at-Law – Section 41(2) of the Judicature Act No. 2 of 1978.

The petitioner was a Member of Parliament representing the United National Party which is a recognized political party. He successfully contested the Parliamentary Elections held in the years 2000, 2001 and 2004 as a nominee of the 1st respondent for the Kandy District. On 13.01.2006 at a meeting of the Kandy District Balamandalaya of the Party, attended by the 2nd respondent as the leader of the U.N.P. and over 400 party activists including Members of the Parliament, Members of the Provincial Council and other District level representatives, chaired by the petitioner who made a speech and among other matters he had stated thus "..... at this critical juncture in the affairs of the country people's representatives should join together setting aside political divisions to strengthen the hand of the President to defeat the terrorism...."

Few days after the said meeting he received letter dated 16.01.2006 from the President which referred to the statement made by the petitioner regarding cooperation with the Government across party barriers and the letter ended with a request by the President to accept a Ministerial portfolio. On 25.01.2006 the petitioner was appointed as the Minister of Policy Development and Implementation and was also appointed as the National Security and Defence spokesman of the Government.

Upon the acceptance of the Ministerial portfolio by the petitioner the Working Committee of the party initiated the process of disciplinary action against the petitioner. The petitioner pleaded that no explanations were called for from the petitioner and that he was denied legal representation. Subsequently, he was expelled from the Party on a decision of the Working Committee.

Held:

(1) The standard of review of a decision of expulsion should be akin to that applicable to the review of the actions of an authority empowered to decide on the rights of persons in Public Law. Such review comes within the rubric of Administrative Law.

(2) Where a person has the right to be heard the provisions of section 41(2) of the Judicature Act will apply and such person is entitled to be represented by an Attorney-at-Law. The Panel of Inquiry acted in breach of the principles of natural justice in denying legal representation to the petitioner.

Per S.N. Silva, C.J. -

"This court has consistently held that the member affected has a right to be heard in compliance with the principles of natural justice. The phrase "*quazi* judicial" has evolved through decisions of Courts to encompass an act which adversely affect the right of a person, bringing within the scope of its exercise the duty to act judicially...",

(3) In terms of section 41(2) of the Judicature Act No. 2 of 1978 the right to representation by an Attorney-at-Law can be denied only if there is express provisions by law to the contrary, the guidelines issued by the then General Secretary cannot be considered as an express provision of law.

Per S.N. Silva, C.J. -

".... A political party comes into existence as a matter of private arrangement (contract) between persons who have the object of gaining power at elections but the character of such Association alters to a certain extent after gaining recognition as a Political Party as provided in section 7 of the Parliamentary Elections Act No. 1 of 1981. Thus a Political Party which commences as a private Association gains statutory recognition in reference to its Constitution with specific legal powers generally in regard

to elections and it plays a vital role in the realm of Democratic Governance..."

APPLICATION in terms of Article 99(13)(a) of the Constitution challenging expulsion from the United National Party.

Cases referred to:

(1) *Council of Civil Service Union and others* v *Minister for the Civil Service* 1985 AC 374.
(2) *Associated Provincial Picture Houses Ltd.* v *Wednesbury Corporation* 1948 1KB 223.
(3) *Edward* v *Bairstow* 1956 AC 14.
(4) *Gamini Dissanayake* v *Kaleel* 1993 2 SLR 135.
(5) *Jayatilake* v *Kaleel* 1994 1 SLR 319.
(6) *Sarath Amunugama* v *Karu Jayasuriya* 2000 1 SLR 173.

D.S. Wijesinghe, P.C. with *Wijedasa Rajapakse*, P.C., *Upali Senaratne*, *Kapila Liyanagamage* and *Kaushalya Molligoda* for the petitioner.
K.N. Choksy, P.C., with *Daya Pelpola* for the 1st, 2nd and 3rd respondents.
L.C. Seneviratne, P.C., with *Ronald Perera* for 4th, 5th and 6th respondents.
Ms. Indika Demuni de Silva D.S.G. for the 7th and 8th respondents.

Cur.adv. vult.

November 6, 2006.

SARATH N. SILVA, C.J.

The petitioner being a Member of Parliament has filed this application in terms of Article 99(13)(a) of the Constitution, for a determination that his expulsion from the 1st respondent, the United National Party (UNP), communicated to the Secretary General of Parliament being the 8th respondent and the petitioner by letters dated 10.8.2006, by the General Secretary of the UNP, being the 3rd respondent, is invalid and for a declaration that he continues to be and remains a Member of Parliament.

The petitioner has pleaded without contradiction by the respondents that he joined the Democratic United National Front (DUNF) in 1992 and successfully contested the Provincial Council Election for the Central Province and was appointed a Minister of the Provincial Council in 1994. In 1999 he contested the Provincial

Council Election as a nominee of the UNP and although he was in remand custody throughout the period of campaign, he secured the highest number of votes at that Election. Similarly, he successfully contested the Parliamentary Elections held in the years 2000, 2001 and 2004 as a nominee of the UNP for the Kandy District and secured large numbers of preferential votes. He also served as a Minister in the Government of which the Leader of the UNP, the 2nd respondent was the Prime MInister. At the Presidential Election of November 2002, the petitioner was in charge of the election campaign in the Kandy District and the 2nd respondent secured a significant majority of votes in that District.

As regard subsequent events, the petitioner has stated that when the Budget was presented by the President, in December 2005 considering the beneficial proposals, on several occasions both in and out of Parliament, he "praised" its contents in proof of which he produced publication marked P3. The petitioner produced publications dated 3.1.2006, 6.1.2006 and 11.1.2006 marked P4 in which it was specifically stated that he will be appointed a Minister by the President.

On 13.1.2006, the 2nd respondent as the Leader of the UNP was present at a meeting of the Kandy District Balamandalaya of the Party attended by over 400 Party activists including members of Parliament, Members of the Provincial Council, Pradeshiya Sabha's and other District level representatives, chaired by the petitioner as the Kandy District President. The petitioner has produced a copy of the minutes of that meeting marked P5. A copy of the minutes had been sent by the District Manager annexed to his letter dated 17.1.2006 to the General Secretary of the UNP (P5(a)), receipt of which was acknowledged by letter dated 24.1.2006 of the Deputy General Secretary (P5b).

These minutes contain a record of the speech made by the petitioner at the said meeting. Amongst other matters he had stated at this critical juncture in the affairs of the country, people's representatives "should join together setting aside political divisions to strengthen the hand of the President to defeat terrorism and find a political solution to ethnic issues whilst preserving the sovereignty of the People and the territorial integrity of the country. He stated that such a course of action would be in keeping with the

repeated statements made by the 2nd respondent at the Presidential Election campaign that if he wins he would seek the cooperation of the SLFP and other parties and would give them ministerial appointments to seek a solution to the "national question."

The petitioner has pleaded that a few days after the said meeting he received letter dated 16.1.2006 (P6) from the President which referred to statements made by the petitioner regarding cooperation in Government across party barriers and states that such views have been expressed by other members of the UNP including its senior leadership. The letter ends with a request by the President to accept a Ministerial portfolio to advance the endeavour to establish peace. Thereafter on 25.1.2006, the petitioner was appointed the Minister of Policy Development and Implementation and was also appointed as National Security and Defence spokesman of the Government of Sri Lanka, in which capacity he is yet functioning.

The acceptance of the Ministerial portfolio by the petitioner set in motion the process of disciplinary action against him. The steps in this process and the specific grounds of challenge raised by the petitioner would be dealt with hereafter. Quite apart from these legal grounds, Counsel for the petitioner made a general submission on the basis of the facts outlined above that have been extensively pleaded and supported with contemporary documents, contents of which have not been refuted by the respondents, that the course of action taken by the petitioner was not shrouded in secrecy amounting to deception on his part. He made statements in and outside Parliament which received wide publicity of his intention to support the President for reasons that were stated culminating in the speech at the District Balamandalaya attended by the Leader of the Party. The Leader who spoke after the petitioner at the meeting did not censure or check him on the proposed course of action. The petitioner has specifically pleaded that neither the 1st, 2nd and 3rd respondents nor the Party Working Committee sought his explanation as to the publicly declared course of action announced by him. In these circumstances Counsel submitted that disciplinary action was not warranted. Counsel for the 1st, 2nd and 3rd respondents submitted that it is

not alleged that the petitioner is guilty of deception in relation to the Leader or the Party Working Committee. However, he submitted that silence on the part of the 1st to 3rd respondents and the Party Working Committee cannot be construed as tacit approval of the petitioner's conduct and the petitioner should have sought specific approval for his proposed course of action. In the absence of which he is liable to disciplinary action in terms of the Constitution of the Party.

Although membership of the Party has a concomitant liability to disciplinary action in terms of the Constitution of the Party as correctly submitted by Counsel for the respondents, in deciding on the validity of an expulsion, which has the further implication of the loss of the seat in Parliament, the overall conduct of the person subject to such action has to be taken into account. The years of dedicated service that resulted in electoral gains for the Party and the attendant circumstances such as the repeated statements of the Leader of the Party that if he wins the Presidential Election, he would offer Ministries to members of the SLFP and other parties, may be relevant in considering the validity of the impugned expulsion of the petitioner from the perspective that the decision is arbitrary and unreasonable. But, the main thrust of the petitioner's case is directed at the legality *per se* of the expulsion, which has to be dealt with first in the light of the process of disciplinary action to which I would now advert.

As noted above the petitioner received an invitation from the President to accept a MInisterial Portfolio on 16.1.2006 (P6) and he was appointed a Minister on 25.1.2006. On 26.1.2006 a person by the name of Methsiri Paranavithana residing at New Mulleriyawa handed over a letter (P11) at the UNP Headquarters requesting that disciplinary action be taken against Mr. Mahinda Samarasinghe and the petitioner being Members of Parliament elected on UNP nomination lists accepted Cabinet Portfolios committing a "clear violation of the constitution, code of conduct and the policies and principles of the UNP." The 1st to 3rd respondents have produced marked 3R4 an extract from the minutes of the Party Working Committee held on the same day, the 26th January at 4.30 at which the complaint against the petitioner was tabled and a decision taken to appoint a disciplinary panel consisting of the 4th, 5th and

6th respondents to inquire into the matter. The minute does not contain any record of the discussion that took place at the meeting.

The 3rd respondent being the General Secretary of the Party sent letter dated 2.2.2006 (P7) to the petitioner stating that the Party Working Committee appointed a Panel of Inquiry consisting of the 4th, 5th and 6th respondents to inquire into "certain matters" relating to his "conduct as a member of the party" and that a further communication would be addressed to the petitioner by the panel.

The Chairman of the Panel, the 4th respondent sent letter dated 24.3.2006 (P8) to the petitioner calling for his explanation on the complaint of Methsiri Paranavithana, referred to above. The petitioner replied by letter dated 6.5.2006 (P12), having obtained a copy of the complaint, stating that appointment of the Panel of Inquiry is contrary to the Constitution of the UNP and that the Panel has no jurisdiction to seek his explanation. Without prejudice to the plea on jurisdiction, he denied having violated Constitution as alleged by Paranavithana.

In the meanwhile, the said Paranavithana of New Mulleriyawa made another complaint by letter dated 4.4.2006 alleging that Mr. Mahinda Samarasinghe and the petitioner against whom he made the previous complaint "now openly campaign for the PA whilst promoting the Mahinda Chinthanaya, which is directly in conflict with the policies of the UNP". The complaint (P15) had also been hand delivered at the Party Headquarters. The Working Committee at its meeting on 7.4.2006 (3R5) decided to refer this complaint as well to the Panel of Inquiry and the Chairman of the Panel by his letter dated 11.5.2006 called for the petitioner's explanation on his complaint (P14). The petitioner replied by letter dated 23.5.2006 (P16) on the same lines denying jurisdiction of the Panel. I would pause at this point, to note that the said Paranavithana from New Mulleriyawa appears to have been a ready complainant, virtually at the door step of the Party Headquarters, hand delivering complaints that promptly got tabled at Working Committee meetings with a swift reference to a Panel of Inquiry without there being any record of the discussions that took place on the matter amongst the members of the Committee. The complaints of Paranavithana that run into a few lines contain bald

statements of matters that should have been within the knowledge of the Working Committee.

Viewed from another perspective, considering that the petitioner was himself a member of the Working Committee from 1990 (paragraph 10 of the petition admitted by the respondents) and Paranavithana was only a member of the Party (not an elected representative or an office bearer of any one of the several representative bodies in the organizational structure of the Party), a question arises whether the members of the Working Committee had to get activated against a colleague on a complaint of a mere member of the Party, in respect of matters in the public domain since Paranavithana only relied on newspaper publications annexed to his letter to support his complaint.

Be that as it may, the next stage in the process, was the charge sheet issued on the petitioner by letter dated 16.6.2006 of the General Secretary (P17). The letter states that the Panel of Inquiry "has not been satisfied with the explanation contained in the petitioners letters P12 and P16 and has forwarded the charge sheet." The petitioner was requested to be present for an inquiry at the Party Headquarters on 5.7.2006 at 4.00 p.m. It has to be noted that the petitioner in his replies did not seek to explain the contents of Paranavithana's letters sent to him by the Panel but raised the question as to the jurisdiction of the Panel to seek his explanation. Hence, there is no question of the Panel not being satisfied with the explanation of the petitioner. The proper course of action would have been for the Panel to have referred the question of jurisdiction raised by the petitioner to the Working Committee on whose authority the Panel acted. If such a course of action was taken the question of jurisdiction (power to decide) in the matter of taking disciplinary action, that has loomed large in these proceedings would have been at the least considered prior to the impugned decision being taken. Counsel for the petitioner raised the further matter in this regard that as evident from the contents of P17 the charge sheet had not emanated from the Disciplinary Committee which was appointed by the Working Committee (3R6) on 26.1.2006 being the same day on which Paranavithana's complaint was received at the Party Headquarters.

To continue with the narrative of events, the petitioner replied by letter dated 1.7.2006 (P18) requesting a postponement of the inquiry to enable him to make adequate arrangements and requesting that he be informed whether he could have legal representation at the inquiry in view of the position taken up by him in his letters i.e. with regard to jurisdiction. The General Secretary replied by letter dated 3.7.2006 that the inquiry is postponed to 28.7.2006 at 4.00 p.m. and the letter specifically states as follows:

"Please note that legal representation is not permitted at these inquiries."

Thereupon the petitioner sent letter dated 27.7.2006 (P20) stating that the attempt to hold a disciplinary inquiry before an illegally constituted Panel of Inquiry is a violation of the Constitution of the UNP and the prohibition against legal representation is a violation of the principles of natural justice and a denial of his legitimate rights and that he is firmly convinced that the inquiry will not be fair and as such he would not be attending the inquiry. The next communication received by the petitioner is the letter of expulsion dated 10.8.2006 (P21) which states that the Working Committee at its meeting on 8.8.2006 "having considered the Report of the Disciplinary Committee and the findings of the Panel of Inquiry decided that he is guilty of all the charges included in the charge sheet.

The letter culminates as follows:

"Accordingly the working committee has found that you are in breach of Article 3.3(c), 3.3(d), 3.4(d) and 9.7 of the Constitution or any one or more of them. The Working Committee unanimously decided to expel you forthwith from United National Party."

Counsel for the petitioner contended that the sentence setting out the finding of the Working Committee has two parts that are inconsistent. The first part states that he is found to be in breach of the four Articles that have been specified. The second part states that he is in breach of "anyone or more of them". It was submitted that the finding is nothing but a cursory

citation of Articles of the Party Constitution and reflect a doubt on the part of the Working Committee as to which of them have been breached by the petitioner. That, an expulsion carrying serious implications cannot be based on such a vague and imprecise finding as to the Articles of the Constitution the petitioner is found to be in breach of.

Based on the foregoing the petitioner has raised the following 3 grounds to establish the invalidity of the expulsion:

i) that in terms of Article 6.3(a) of the Constitution of the UNP the body empowered to take disciplinary action is the National Executive Committee (NEC) and not the Party Working Committee which has taken the impugned decision (P21).

ii) that the Panel of Inquiry acted in breach of the principles of natural justice in denying legal representation to the petitioner which was necessary for the petitioner to establish the absence of jurisdiction.

iii) that the provisions of the Constitution cited as having been breached by the petitioner and set out in the charges do not in any event apply to him. Further that the finding as contained in the impugned decision P21 that the petitioner has been found to be in breach of "anyone or more" of specified Articles of the Constitution of the UNP is vague, and;

a) reveals that the Working Committee has misdirected itself on the applicable provisions and ;

b) denied to the petitioner an opportunity of seeking review from the Court as to the validity of a specific breach;

The grounds urged by the petitioner seeking to invalidate the decision to expel him, require a consideration of the nature of the power exercised by a Political party in expelling a member having the consequence of that member losing his Parliamentary seat and the basis of the review of the validity

of such decision of expulsion by this Court in terms of proviso to Article 99(13)(a) of the Constitution.

Mr. Choksy, P.C. for the respondents submitted that a Political Party is a private organization consisting of its members who come together on the basis of a Constitution of such Party. He persistently stated that the membership of a Political Party is akin to membership of a 'club' and the expulsion of a member should be viewed from same perspective of the expulsion of a member from a club or similar private organization, without introducing the high standard of review that apply in Public law. He submitted that the relationship between a member and a party is essentially contractual and a matter of Private Law.

On the other hand, Mr. Wijesinghe, P.C., for the petitioner submitted that although the relationship between the member and the Party may be contractual and a matter of private Law, the consequence of expulsion has a serious impact on the rights of the member in that he loses the seat in Parliament to which he has been lawfully declared elected upon the preferential votes of the electoral district whom he represents. In view of the added and serious consequence of a decision of expulsion, it was submitted that the standard of review of the validity of such expulsion should be the same as that which applies to the review of validity of a decision of an authority exercising power under Public Law.

The submission of Mr. Choksy, as to the basic nature of a Political Party being akin to that of a "club" and the relationship between the members and the party being one of contract, a subject in realm of Private law, is correct. However there is merit in Mr. Wijesinghe's submission that in the exercise of the power of expulsion the matter transcends the realm of Private Law and attracts the standard of review of the public law. A Political Party comes into existence as a matter of private arrangement (contract) between persons who have the object of gaining political power at elections but the character of such Association alters to a certain extent after gaining recognition

as a Political Party, as provided in section 7 of the Parliamentary Elections Act No. 1 of 1981. Section 7(4)(b) requires Secretary of a Political Party at the time of making an application for recognition to furnish to the Commissioner of Elections a copy of the Constitution of such Party and a list of its office bearers. Thus, a Political Party which commences as a private Association gains statutory recognition in reference to its Constitution with specific legal powers generally in regard to Elections and it plays a vital role in the realm of Democratic Governance.

Under the law as it stood prior to the present Constitution of 1978 the expulsion of a member from a Political Party did not have the consequence of such Member vacating his seat in Parliament. Article 99 of the present Constitution, departed from the previous electoral system of "first past the post elections" to one of proportional representation, in terms of which a Party is declared entitled to such number of Members of Parliament in proportion to the votes gained by the Party in an Electoral District. In terms of Article 99(2) as it stood, the Party when submitting a nomination paper was also required to set out the names of the candidates in order of priority on the basis of which the candidates were declared elected depending on the proportion of votes gained by the Party. This system of Elections is generally described as the "List System" or "Crude List System". Article 99(13) (a) in regard to expulsion of a member from a Party with the consequence of his vacating the seat in Parliament, with judicial review by this Court as to the validity of such expulsion, was introduced as a part of this system of Elections.

The Fourteenth Amendment to the Constitution, certified on 24.5.1988 repealed Article 99 and substituted a new provision which removed the power of the Party to indicate a priority of candidates in the nomination paper and empowered the electors to indicate their preference of not more than 3 candidates nominated by the same recognised political party. Thus the "List System" or "Crude List System", was replaced with the "Preferential System" which is now operative.

However, the provisions of Sub-Article 13(a) of the original Article 99 were included verbatim in the newly enacted Article 99 as contained in the 14th Amendment. In view of the change of the Electoral System effected by the Fourteenth Amendment the review of the validity of a decision of expulsion has to be, in my view, now considered not only from the perspective of a vacation of the seat of the Member in Parliament but also from the perspective of the impact on the Electorate from which he was declared on the basis of preferential votes cast in his favour. As a result of the expulsion by the Party the voters preferred candidate is removed from his seat in Parliament and replaced by a candidate who at the original election failed to obtain adequate preferential votes to gain election to Parliament. In short the winning candidate is replaced by a candidate who has lost, as a result of the expulsion. Thus in consequence of the expulsion not only the member loses his seat in Parliament but also there is a subversion of the preference indicated by the electors in exercising their franchise. In view of these far reaching consequences I am inclined to agree with the submission of Mr. Wijesinghe, that the standard of review of a decision of expulsion should be akin to that applicable to the review of the action of an authority empowered to decide on the rights of persons in Public Law. Generally such review comes with the rubric of Administrative Law.

In the case of "*Council of Civil Service Union and others v Minister for the Civil Service*"(1) Lord Diplock grouped these grounds of review at Public Law as illegality, irrationality, and procedural impropriety. He also referred to possible fourth ground of proportionality being the standard of review in civil law countries in Europe. At 410 and 411 Lord Diplock briefly outlined the contents of these three grounds as follows:

> *"By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision making-power and must give effect to it. Whether he has or not is par excellence a justiciable*

question to be decided; in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation[2]. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v Bairstow[3] of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as "procedural impropriety" rather than the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice...."

I am of the view that the foregoing statement of Lord Diplock which has been cited in all leading authorities on the subject should generally apply in deciding on the validity of an expulsion in terms of Article 99(13)(a) of the Constitution

considering it's far reaching consequences as set out above. The grounds urged by the petitioner would be accordingly considered from this perspective.

The first and third grounds which relate to lack of jurisdiction of the Party Working Committee to decide on the expulsion and the misdirections with regard to the provisions of the Constitution of the Party in reference to which a breach is said to have been established, pertain to illegality. The second ground of denial of legal representation relate to procedural fairness and the petitioner has buttressed this ground in reference to a right of representation by an Attorney-at-Law as contained in section 42(2) of the Judicature Act No. 2 of 1978.

I would first deal with the matter of illegality. In Judicial Review of Administrative Action – De Smith, Woolf and Jowell – 5th Ed. page 295 the basis of review on illegality is summed up as follows:

> *"The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the power in order to determine whether the decision falls within its "four corners."*

In this instance the power of expulsion stems from the Constitution of the UNP to which the petitioner as a member has subscribed to. There the basis of review is to ascertain whether the expulsion falls within the "four corners" of the Constitution of the Party which gains statutory recognition in terms of section 7 of the Parliamentary Elections Act referred above. The petitioner has contended that in terms of the Constitution of the UNP, produced marked P1, the power to take disciplinary action, including expulsion or suspension, against any individual member is vested in the National Executive Committee (NEC) in terms of Article 6.3(a). Admittedly, the expulsion of the petitioner was at no stage considered by the NEC.

Mr. Choksy, in his submissions conceded that expulsion has not even been reported to the NEC. The petitioner has raised

the objection as to the jurisdiction from his very first response referred to above on this premise. The decision as to expulsion has been taken by the Party Working Committee, which according to the petitioner consists of nominees of the Party Leader. The complaint of the petitioner with regard to the composition of the Party Working Committee is not without merit. In terms of Article 7 of the Constitution, the Party Working Committee consists of Office Bearers of the Party and not exceeding 50 members of the NEC nominated by the Party Leader. In terms of Articles 8.5 and 8.6 all Office Bearers of the UNP are nominated by the Leader and ratified at the Annual Convention. Whereas the NEC is a more representative body in terms of Article 6 of the Constitution.

The respondents submitted in their objections that the powers, duties and responsibilities of the NEC have been vested in the Working Committee by a Resolution of the NEC in August 2002, produced marked 3R3.

The petitioner has in his counter affidavit specifically stated that the Resolution (3R3) as appearing on the face of the document itself was merely read at the meeting by one member and translated to Tamil by another member. 3R3 does not state that it was seconded by any person or put to the vote of the National Executive Committee, but it is merely recorded that the Party Leader being the then Prime Minister confirmed the Resolution. Further the petitioner contended that power of disciplinary action resulting in expulsion of a member with such serious consequences as noted above, cannot be delegated or vested in the Party Working Committee without any provision in the Constitution for a delegation of such a power to the Party Working Committee.

Admittedly, Article 6 of the Constitution which deals with NEC does not empower the NEC to vest or delegate any of its powers. However, the respondents rely on Article 7.15 included in the chapter with regard to the Party Working Committee which states that the Committee will have the power to exercise the powers, functions and duties vested in it by the NEC. The respondents also relied on previous Judgments of this Court in

the cases of *Gamini Dissanayake* v *Kaleel*[4] and *Jayatilake* v *Kaleel*[5]. These expulsions appear to have been made under the previous Constitution of the UNP. The petitioner submitted that in that Constitution there is no specific provision similar to Article 8(1) of the present Constitution, which provides for specific delegation of powers to the Working Committee by the NEC. Further it is noted that although Fernando, J., in *Gamini Dissanayake's* case observed that the minutes of the Executive Committee relied on to establish the vesting of power in the Working Committee were "undoubtedly defective" (at 158) the petitioner who obtained leave to reply even in their counter affidavits did not claim that the Resolution had not been passed, instead they merely questioned the effect of that Resolution, by asserting that it did not enable the Working Committee to exercise disciplinary power vested in the Executive Committee. He further observed as follows:

> *"If the petitioners were seriously contending that this Resolution had been proposed but not passed, that allegation should have been made clearly specifically and directly." (at 158).*

In this case too *ex facie* the Resolution is defective, since there is no person seconding it or the matter being discussed or put to the vote of NEC. Unlike in *Gamini Dissanayake's* case the petitioner has questioned the jurisdiction of the Working Committee from the very outset and in his counter affidavit specifically stated that "the Resolution was not seconded or considered by the House."

In the circumstances the respondent had to adduce further material by way of the confirmation of the minutes which appears to have been done in *Jayatilake's* case (*supra*). In the absence of even such material considered to be adequate by Kulatunga, J. (at 378), I have to accept the ground urged by the petitioner as to the invalidity of the Resolution in so far as it relates to the exercise of disciplinary power. There is further support for such finding derived from provisions of article 6.3(a), which not only empowers the NEC to take disciplinary action including expulsion or suspension and contains a further

requirement that the NEC should report such action at the next "Annual Convention" of the Party, being the highest body in the organizational structure of the Party. In this instance the Working Committee has not even reported the decision to the NEC, being the body empowered with disciplinary power and as such the decision could never be communicated to the next Annual Convention of the Party being a mandatory requirement in terms of Article 6.3(a) of the Constitution.

The next ground is illegality urged by the petitioner in respect of provisions of the constitution of the UNP which are alleged to have been breached by him so as to warrant the expulsion. The decision of expulsion (P1) repeats the 5 charges contained in the charge sheet P17, without reference to the particular Articles of the Constitution in respect of each of the five grounds. After the narration of the five grounds (P21) states as follows:

> *"Accordingly the Working Committee has found that you are in breach of Article 3.3(c), 3.3(d) and 9.7 of the Constitution of the party or any one or more of them."*

The particular ground raised that the finding is vague and not precise, is manifest. It is not possible for any person to relate the Articles of the Constitution which are stated, to the five charges specified in the preceding section because of the qualification that the breach is of any one or more of them. Even assuming that this is merely an erratic expression and that the petitioner could have come to the necessary conclusion with reference to the charge sheet which cited the particular Articles of the Constitution in respect of each charge, the petitioner contends that those provisions of the Constitution would not apply to him. The first charge in P17 is as follows:

> *"That on or about the 25th day of January 2006 whilst being a member of the United National Party and a member of Parliament of the United National Party for the Kandy District, you have accepted, the office namely, Minister of Policy Development and Implementation under the United Peoples Freedom Alliance Government without approval of the Working Committee of the United*

National Party and thereby you have violated Article 3.4(d) of the Constitution of the United National Party."

Article 3.4(d) which is alleged to have been breached as contained in document P1 (Constitution) is as follows:

".... Where the member accepts office in the administration formed by any other political party or political alliance or political association or political group or political body consequent upon an election to Parliament or Provincial Council or Local Authority or in an administration that comes into existence upon the change of political control in Parliament or in a Provincial Council or local authority during its term, without the approval of the Working Committee of the Party."

The petitioner's submission has merit in that what is prohibited is only acceptance of office consequent upon an election to Parliament or Provincial Council or Local Authority or in an administration that comes into existence upon the change of political control in Parliament or in a Provincial Council or in a local authority during its term without the approval of the Working Committee.

There is no reference to the assumption of office upon a Presidential Election. The petitioner did not accept an office upon an election to Parliament. He continued to serve in the opposition and accepted office after the Presidential election on an invitation of the President in the circumstances referred to above. Therefore the conduct of the petitioner cannot possibly come within the ambit of Article 3.4(d) of the Constitution as alleged in the charge sheet.

As regards the other charges 2 to 4 contained in the charge sheet (P17) it is stated in respect of each charge that the violation is read with Article 9.7 of the Constitution.

This is a common feature of the charges 2, 3 and 4. The petitioner contends that article 9.7 cannot apply for him since it relates to conduct of "any candidate". Article 9.7 as contained in P1 reads as follows:

"Any candidate who fails to act in harmony with the principles, policy programme, constitution, rules, code of conduct and standing orders of the party, shall be deemed to have violated the constitution and shall be subject to disciplinary action including expulsion.

It is clear that the reference here is to a candidate who fails to act in harmony with the principles, policy and the like, of the Party. This is included in Chapter 9, which relates to Presidential, Parliamentary and other elections. On the material alleged in the charge the impugned conduct of the petitioner does not relate to the conduct as a candidate of the Party. The petitioner was certainly not a candidate at the Pradeshiya Sabha election to which reference is made in respect of the charges. Charge 5 is a consequential charge and cannot stand on its own. In the circumstances the ground of challenge based on the charge has also been established by the petitioner.

The final ground of challenge relates to procedural impropriety. Mr. Wijesinghe contended that in the long line of decisions of this Court commencing from the decision of *Gamini Dissanayake* v *Kaleel* (*supra*), including the decision in *Sarath Amunugama* v *Karu Jayasuriya*[6] at 173, this Court has held that there should be compliance with the principles of natural justice. This premise is conceded by the respondents.

The additional ground alleged in this case is that where a person has the right to be heard, the provisions of section 41(2) of the Judicature Act will apply and such person is entitled to be represented by an Attorney-at-law. Section 41(2) of the Judicature Act reads as follows:

"Every person who is a party to any proceeding before any person or tribunal exercising quasi judicial powers and every person who has or claims to have the right to be heard before any such person or tribunal shall unless otherwise expressly provided by law be entitled to be represented by an attorney-at-law."

Mr. Choksy, contended with reference to the long title to the Judicature Act and the provisions of Article 105 of the Constitution that the contents of the sub-section should be restricted only to courts and other institutions of a judicial nature. On the other hand Mr. Wijesinghe submitted that the right of representation in courts and such other institutions exercising judicial power is specifically covered by the provisions of section 41(1) and this sub section (2) cited above refers to the exercise of quasi judicial power. The preceding analysis reveals that the power of expulsion by a political party in respect of a member, who holds seat in Parliament has serious consequences in regard to the right of such member and the exercise of franchise by the voters of the electoral district who cast preferential votes in his favour. This Court has consistently held that the member affected has a right to be heard in compliance with the principles of natural justice.

The phrase "*quasi* judicial" has evolved through decisions of Courts to encompass an act which adversely affect the right of a person, bringing within the scope of its exercise the duty to act judicially.

Wade and Forsyth in his work on Administrative Law 9th Ed. page 482 states as follows:

> *"The term quasi judicial accordingly came into vogue as an epithet for power which although administrative were required to be exercised as they were judicial i.e. in accordance with natural justice."*

Since the power of expulsion in relation to a member leading to his vacating his seat in Parliament has to be exercised in compliance with the principles of natural justice,this would in my view come within the ambit of a *quasi* judicial power. In the circumstances the member would be entitled to be represented by an attorney-at-law at the inquiry which precedes such decision in terms of section 41(2) of the Judicature Act No. 2 of 1978 cited above.

The petitioner has specifically raised the question of jurisdiction of the disciplinary panel and sought legal representation. This request is in any event reasonable considering that the petitioner was objecting to the jurisdiction of the panel. The request for legal representation has been refused by the 3rd respondent being the General Secretary by document P10. The 4th, 5th and 6th respondents being members of the Inquiry Panel have sought to justify the decision on the basis of the guidelines for the conduct of the disciplinary inquiries marked 4R1 dated 8.8.91 issued by the then General Secretary Mr. B. Sirisena Cooray. In paragraph 11 of this guideline it is stated "the member is not entitled to be represented by lawyers." These guidelines appear to have been issued well before the several decisions by this Court which require the compliance with the principles of natural justice. In terms of section 41(2) the right to representation by an attorney-at-law can be denied only if there is express provision by law to the contrary. The guidelines issued by the then General Secretary cannot be considered an express provision of law by any stretch of imagination.

In the circumstances the petitioner is entitled to succeed on this ground as well.

Since the petitioner has established the three grounds of challenges to the decision it is unnecessary to examine the further aspect of the reasonableness of the expulsion in the light of the antecedent conduct of the petitioner referred to in at the commencement of this judgment.

Accordingly, I allow this application and grant the petitioner the relief prayed in prayers (c), (d), (e) and (f) of the prayer to the Petition.

The application is allowed with costs.

JAYASINGHE, J. – I agree.

DISSANAYAKE, J. – I agree.

Application allowed.