GUNAWARDENA AND ANOTHER
v.
PATHIRANA, O.I.C., POLICE STATION, ELPITIYA AND OTHERS

SUPREME COURT.
FERNANDO, J.,
WIJETUNGA, J. AND
ANANDACOOMARASWAMY, J.
S.C. APPLICATION 519/95
JANUARY 13, 1997.

Fundamental Rights – Unlawful seizure of a booklet – Illegal arrest – Articles 13(1) and 14(1) (a) of the Constitution – Assessment of Compensation.

The 2nd petitioner who earned her living by selling lottery tickets had in her possession a booklet lent to her by the 1st petitioner titled "Ratata Mokada Wenna Yanne? Menna Aththa" which had been compiled and published by the United National Party. Both petitioners were active supporters of the U.N.P. The booklet contained extracts of speeches made by members of the opposition in Parliament critical of the performance of the new government elected in 1994. On a complaint made by the 3rd respondent a Minister of the Southern Provincial Council that a woman at a lottery ticket counter was criticising the Government peace process and distributing the aforesaid booklet, the 1st and 2nd respondent police officers left for investigations, but without obtaining a copy of the booklet which was available with the 3rd respondent and examining its contents. They took the petitioner into custody together with the booklet and detained them at the police station overnight. The next day the 1st petitioner's statement was recorded after which both petitioners were produced before a Magistrate, charged under Section 118 of the Penal Code. At the time of the arrest the 2nd respondent alleged that the petitioners were distributing illegal and obscene literature.

Held:

1. The booklet contained nothing more than political criticism of the Government; there was no justification for the arrest of the petitioners particularly without prior examination of the booklet; nor was there any justification for detaining the petitioners at the police station; hence the petitioners' rights under Articles 13(1) and 14(1) (a) have been infringed.

2. In determining the amount of compensation which each petitioner is entitled the Court will take account of the numerous decisions of the Court stressing the importance of the freedom of speech, the right to criticise governments and political parties and the importance of dissent as well as the directions given by the Court to the Inspector General of Police to instruct his officers regarding those rights and freedoms. The amount of compensation must not be restricted to the proprietary loss or damage caused.

Cases referred to:

1. *Attorney-General v. Siriwardena* (1978, 79, 80) 1 Sri L.R. 377.
2. *Attorney-General v. Nadesan* (1978, 79, 80) 1 Sri L.R. 339.
3. *Faiz v. Attorney-General* (1995) 1 Sri L.R. 372, 383.
4. *Tennakoon v. De Silva*, 1997 1 Sri L.R. 16.
5. *Joseph Perera v. Attorney-General* (1992) 1 Sri L.R. 199.
6. *Ekanayake v. Herath Banda, S.C.* Application 25/91 S.C. Minutes 18 December, 1991.
7. *Amaratunga v. Sirimal* (1993) 1 Sri L.R. 264.
8. *De Jonge v. Oregon* – 1937 – 299 US. 353.
9. *Wijeratne v. Perera S.C.* Application 379/93 S.C. Minutes 2 March 1994.
10. *West Virginia State Board of Education v. Barbette* (1943) 319 US 624, 641.
11. *Peiris v. Attorney-General* (1994) 1 Sri L.R. 1.
12. *Deshapriya v. Municipal Council, Nuwara Eliya* (1995) 1 Sri L.R. 362.
13. *Ratnasara Thero v. Udugampola* (1983) 1 Sri L.R. 461.
14. *Ratnapala v. Dharmasiri* (1993) 1 Sri L.R. 224.
15. *Hulangamuwa v. Weerasinghe, S.C.* Application No. 661/95 S.C. Minutes 22 July 1996.
16. *Abasin Banda v. Gunaratne* (1995) 1 Sri L.R. 244, 254.
17. *Wickramabandu v. Herath* (1990) 2 Sri L.R. 348.
18. *Sirisena v. Perera* (1991) 2 Sri L.R. 97.

APPLICATION for relief for infringement of fundamental rights.

Upul Jayasuriya for petitioner.
A. R. C. Perera, D.S.G. for 1st, 2nd, 4th and 5th respondents.

Cur. adv. vult.

February 13, 1997.
FERNANDO. J.

The two petitioners complain that their fundamental rights under Articles 12(2), 13(1) and 14(1) (a) were infringed by the Elpitiya Police who seized a booklet entitled **"Ratata Mokada Wenna Yanne? Menna Aththa!"** and thereafter arrested them.

When this application was taken up for hearing, the learned DSG, who appeared for the 1st, 2nd, 4th and 5th respondents, conceded

that there had been a violation of the 1st petitioner's fundamental right under Article 13(1), and of the 2nd petitioner's fundamental rights under Articles 13(1) and 14(1) (A). However, Counsel could not agree on the liability of the 1st, 2nd and 3rd respondents, and the amount of compensation which the petitioners should receive, and they were given time to make written submissions on those matters. Although the infringements are now admitted, it is yet necessary to refer to the facts in order to determine the gravity of the infringements, the persons responsible, and the appropriate relief.

FACTS

The 2nd petitioner earned her living by selling lottery tickets at a little wooden counter in the Elpitiya town. According to the petitioners, at about 3.15 p.m. on 17.8.95, the 1st petitioner, a relative of the 2nd petitioner, came to her counter. He took some lottery tickets from her for sale, and lent her the booklet in question. Both were active supporters of the United National Party, and the 2nd petitioner was an advisor to a UNP branch in the Elpitiya electorate. The UNP was responsible for the compilation and publication of that booklet, which, it is not in dispute, consisted of several extracts from speeches made in Parliament by the Leader of the Opposition, and other Opposition Members of Parliament, in the debate on the extension of the Emergency in May 1995. The petitioners aver that the "speeches had made a comparative analysis and a critical evaluation of the promises given by the present Peoples Alliance regime during their election campaign in 1994, and how those promises have been breached thereafter. The current political issues ... and the future of the country ... have also been discussed".

The respondents produced a certified copy ("2R1") of a complaint made to the Elpitiya Police, at 3.25 p.m. on the same day, by the 3rd respondent, the provincial Minister of Food and Co-operatives of the Southern Provincial Council. He had alleged that at a lottery ticket counter belonging to one Abeywickrema, a woman was criticising the Government's peace process while distributing a booklet entitled **"Ratata Mokada Wenna Yanne? Menna Aththa!"**; that she had said

that one Matarage of the UNP had asked her to give those booklets free to purchasers of lottery tickets; and that she had given him also a booklet. He understood that booklet to be against the Government's peace process, and he asked the Police to investigate Abeywickrema's activities – whether they were likely to cause a breach of the peace – and thereafter to take action according to law. There is no statement, note, or record suggesting that the 3rd respondent showed or handed his copy of the booklet to the Police, or that the Police asked for or examined it; and the respondents did not produce that copy of the booklet.

The very next entry, after that complaint, was at 3.50 p.m. That was by the 2nd respondent, a sub-inspector. He noted that on the orders and advice of the Officer-in-Charge, the 1st respondent, he was setting out, together with two constables, to investigate the complaint about that booklet.

There are two versions as to what happened thereafter. According to the petitioners, the 1st petitioner, hearing that the 2nd respondent and two constables had seized the booklet and were questioning the 2nd petitioner at the ticket counter, rushed there and explained that it was he who had left the booklet there and that it contained no illegal writings. He asked the 2nd respondent not to harass the 2nd petitioner and him. However, the 2nd respondent informed them that the 3rd respondent had made a complaint that the petitioners were distributing illegal and obscene literature, and took them into custody together with the booklet. They were taken to the Police station around 4.30 p.m. The 2nd petitioner was released around 5.30 p.m., after her statement had been recorded. The 1st petitioner was produced before the DMO at 6.30 p.m. and checked for consumption of alcohol, although he said he had not taken any. He was then searched, unsuccessfully, for any other literature. The 2nd petitioner was then re-arrested and both were taken back to the Police Station. It was only the next morning, after being detained overnight, that the 2nd respondent recorded the 1st petitioner's statement. And only thereafter were the petitioners produced before the Elpitiya Magistrate, charged under section 118 of the Penal Code, and released on bail at 11.30 a.m.

In his affidavit, the 2nd respondent gives the following account:

"(a) I respectfully state subsequent to the recording of 2R1 on the instructions of the 1st respondent, I proceeded for inquiry on 17.8.95 at 15.50 hrs.

(b) Having visited the place where the 2nd petitioner was engaged in sale of sweep tickets, I took into my custody the book marked P1.

(c) Whilst I was there, the 1st petitioner came in a drunken state and was abusive of the President and the Government. I feared a major breach of the peach. Having informed him of the reasons for the arrest, I arrested him at 16.50 hrs.

(d) Thereafter, I arrested the 2nd petitioner having explained the reasons for the arrest at 20.15 hrs. on 17.8.95 at the scene.

(e) The 1st petitioner was produced before the District Medical Officer of the Elpitiya Hospital having issued a GHT and the DMO has stated that the 1st petitioner was smelling of liquor on examination.

(f) On 18.8.95, both the petitioners were produced on a "B" report under section 118 of the Penal Code before the Magistrate of Elpitiya and were released on bail by the Magistrate."

The respondents have not produced the DMO's report, the statements made by the petitioners, or by any others, or any statements or notes of inquiry relating to the seizure of the booklet, and the arrest and detention of the petitioners. However, on the same page as the 3rd respondent's complaint there appears, immediately after the entry made by the 2nd respondent at 3.50 p.m., a part of the entry made by him, on his return, at 5.05 p.m. This records that in pursuance of the complaint 2R1 he went to the 2nd petitioner's counter, where he questioned her and examined the booklet, which he found to consist of extracts from parliamentary speeches made

during the May 1995 Emergency debate. The inference is that he had not examined the booklet at all previously.

The petitioners had produced with their petition an uncertified copy of the "B" report, the accuracy of which (as distinct from its veracity) I must accept as it was not objected to or questioned by the 2nd respondent in his affidavit. The "B" report contained several statements seriously inconsistent with that affidavit: it was stated, first, after referring to the complaint 2R1, **that the 3rd respondent had given the Police a copy of the booklet;** second, that after questioning the 2nd petitioner, **she had been arrested for further investigation**, and that consequent to her statement they had searched for the 1st petitioner; third, that **the 1st petitioner had been arrested when he was found, drunk, at the Elpitiya bus-stand,** giving members of the public a distorted version of the contents of the booklet; and fourth, that **they had information from residents of the town** that the distribution of the booklets to the public and the distortion of facts were likely to cause a breach of the peace.

I must first consider the evidence relating to the booklet. As for its contents, the 2nd respondent admitted that it consisted of extracts from parliamentary speeches. At first, it seemed that the learned DSG was trying to justify the 2nd respondent's actions on the basis that the petitioners' conduct, in distributing the booklet, might reasonably have been viewed as likely to have caused a breach of the peace. It is true that the complaint 2R1 and the "B" report do contain references to a possible breach of the peace, but these cannot be treated as evidence, and there are no supporting affidavits from the 3rd respondent and the officer who filed the "B" report. It is only the 2nd respondent's affidavit which referred to a breach of the peace, but according to that his apprehension arose because of the alleged drunken behaviour of the 1st petitioner – and not the contents of the booklet. Further, there was no evidence whatever of any distribution of booklets – but only of the possession of a single booklet. Nevertheless, we asked the learned DSG whether it was respondents' position that the law relating to parliamentary privilege permitted the Executive to scrutinize a publication consisting of

extracts from speeches made in Parliament, in order to determine whether its distribution and/or possession by citizen was likely to provoke a breach of the peace, and if so, to seize the publication and arrest the citizen: in short, whether a citizen could be subject to any criminal liability or penalty for possessing or publishing parliamentary speeches. Had the answer to that question been in the affirmative, then it would have become necessary for the Court to consider (in the light of decisions such as *Attorney-General v. Siriwardena*[1], and *Attorney-General v. Nadesan*[2]) to what extent it could examine those extracts. But as the learned DSG conceded that the seizure of the booklet in question was in violation of Article 14(1) (a), and stated that no criminal proceedings were beings taken against the petitioners, it became unnecessary for us to deal with those issues.

It is necessary next to see whether, before the 2nd respondent set out to investigate the complaint 2R1, the 1st and the 2nd respondents had at least examined the booklet. The entry which the 2nd respondent made at 5.50 p.m. strongly suggests that he examined the booklet only at the 2nd petitioner's counter. The statement in the "B" report that the 3rd respondent had produced a copy is not only not evidence, but seems untrue: for if it had been produced, that would have been recorded, and the 2nd respondent would have produced that copy with his affidavit. However, this makes no difference in the circumstances of this case. If the 1st and 2nd respondents did have a copy of the booklet, they should have perused it before starting an investigation, and that would have shown that there was no offence to be investigated – as the DSG's concession establishes. If they had any doubt, they could have obtained appropriate advice before proceeding to interfere with the livelihood and the rights of citizens. On the other hand, if in fact they did not have a copy, it was incumbent upon them to have called upon the 3rd respondent to produce it, so that they could peruse it and decide whether any investigation was justified. Thus – whether the police had a copy of the booklet before the 1st respondent directed the 2nd respondent to investigate but failed to peruse it, or whether they did not have a copy but failed to call for one – the inference remains the same, that the 1st and 2nd respondents acted with undue haste upon the 3rd respondent's complaint, knowing that it related only to a political dispute, arising from political criticism of the Government.

I must now turn to the arrest of the 2nd petitioner. Although in his affidavit the 2nd respondent does not admit that she was arrested that afternoon and then released, but avers that she was arrested only much later, at 8.15 p.m., "at the scene", this is flatly contradicted by the "B" report which states that she was arrested **before** the 1st petitioner. The petitioners' version that she was arrested, released, and then re-arrested, after the 1st petitioner had been taken back to the 2nd petitioner's counter, is intrinsically far more probable. But this makes little difference. There was no justification for her arrest that afternoon, and even less for her arrest three hours later, when contents of the booklet could have been fully scrutinized at leisure.

In regard to both petitioners, although the 2nd respondent claims to have "informed" or "explained" "the reasons for the arrest", he does not say what those reasons were. His affidavit thus fails to respond adequately to the detailed affidavit sworn by the petitioners. What is more, the "B" report says that the 2nd petitioner was arrested for further investigation, and thus contradicts any suggestion that she was arrested because the booklet might possibly caused a breach of the peace. I find the petitioners' version that the 2nd respondent had alleged that they were distributing illegal and obscene literature to be more probable.

In regard to the arrest of the 1st petitioner, the 2nd respondent's version that he was arrested because he was drunk and abusive is unacceptable. First, the credibility of the 2nd respondent's affidavit is affected by its inconsistencies with the "B" report. Second, there is no evidence whatever that the 2nd petitioner was drunk; the DMO's report was not produced, and even if I were to accept the 2nd respondent's averment as to its contents, that would only show that the 1st petitioner had consumed some alcohol. The State licenses places for the sale and consumption of liquor; and it is not an offence either to consume liquor, or to be in a public place after such consumption. Assuming that the 1st petitioner had consumed liquor, he did not become disentitled to protest, even vigorously, when the 2nd respondent illegally seized his booklet which he had lent to the 2nd petitioner. As for the allegation that the 1st petitioner had "abused" the President or the Government, there is no note, contemporaneous or otherwise, of that fact, let alone what that

"abuse" consisted of. And what is more, had there been any "abuse" of the President, it is most unlikely that it would have been omitted from the "B" report, as that abuse would have been relevant to the charge under section 118 of the Penal Code, which was the only charge in that report: the absence of any such reference therein leads to the conclusion that the 2nd respondent's version in his affidavit is no more than an after-thought. Even in his affidavit the 2nd respondent merely asserts that the 1st petitioner was abusive, without any particulars. I cannot act upon his mere assertion that the 1st petitioner was "abusive", as that is no more than his opinion; particulars were essential, as this Court is required to consider whether, objectively, the 1st petitioner's words or conduct justified arrest under the relevant statutory provisions.

In view of the learned DSG's submission that the unlawful arrest was "mitigated" by the fact that the petitioners were released "after only a few hours" detention, it is necessary to mention that the 2nd respondent gave no explanation for the delay in producing the petitioners before the Magistrate, and in recording the 1st petitioner's statement.

LIABILITY OF 1ST, 2ND AND 3RD RESPONDENTS

The 2nd respondent was directly responsible for the impugned seizure and arrest. The decisions which he took were not on the spur of the moment, in a sudden emergency; he had time to consider, and if necessary to seek advice. He failed to ask the 3rd respondent for the booklet. He did not ensure that the 1st petitioner's statement was recorded promptly. He did not explain why he arrested (or re-arrested) the 2nd petitioner at 8.15 p.m., virtually ensuring overnight detention at the Police station.

Although the 1st respondent was not directly responsible, it was he who ordered the "investigation" at the 2nd petitioner's ticket counter, without first perusing the contents of the booklet. Nor did he explain why the 2nd petitioner was arrested (or re-arrested) at 8.15 p.m., or why they were not produced before a Magistrate the same day. Even accepting that as Officer-in-charge he is not responsible for everything that his subordinates did, yet this was an investigation

which he himself had ordered, and in the absence of a satisfactory explanation, he must share the responsibility at least for what happened after that arrest and that default.

It was the 3rd respondent's complaint which resulted in the impugned seizure and arrest. The 3rd respondent claims to have had a copy of the booklet, and could have satisfied himself about its contents; and he has not tendered an affidavit suggesting why the possession or distribution of the booklet was wrongful. But even assuming that he knew that, as learned Counsel for the petitioners has submitted, his complaint was "false and malicious" and intended "to stifle any criticism of the Government", the petitioners have other remedies, civil and criminal, in respect of any alleged false complaint or its consequences. Something more is required for liability in an application under Article 126: *Faiz v. Attorney-General*[3], and *Tennakoon v. de Silva*[4], and Counsel has not been able to draw our attention to any other relevant factor. The 3rd respondent's complaint shows that what he requested was action according to law, and there is no evidence that he, in any way, instigated or procured the impugned seizure and arrest. The petitioners' claim against him therefore fails.

RELIEF

In deciding whether the petitioners are each entitled to Rs. 100,000/- as compensation, as claimed by them, I must not fail to take account of the numerous decisions of this Court, stressing the importance of the freedom of speech, the right to criticise governments and political parties, and the importance of dissent; of the degree of intrusiveness and undue haste which characterized the infringements; of the direction given by this Court to the Inspector-General of Police, the 4th respondent, to instruct his officers to respect those rights and freedoms; and of the fact that the amount of compensation must not be restricted to the proprietary loss or damage caused.

In *Joseph Perera v. Attorney-General*[5], Sharvananda, CJ, observed in respect of the seizure of a pamphlet critical of the Government:

> "It certainly contains expressions of dissent and criticism against Government. But freedom of speech and expression would be illusory if the Police can with impunity arrest and detain a person if he does not obsequiously sing the praises of this government. The danger to a party in power is not the same as rocking the security or sovereignty of the State. The Police should not be timorous to scent in every utterance criticising the Government, an attempt to incite disaffection against or to overthrow the Government."

The Court unanimously held that Emergency Regulation 28 – which required Police permission for the distribution of posters, handbills, and leaflets – made by the President was violative of Article 12(1). The majority held that the arrest of the three petitioners was lawful, but awarded them Rs. 10,000/- each on account of their excessive detention:

> "... there was a reasonable basis for the initial action of the arrest ... This is not a case of the Police riding roughshod over the rights of citizens. The Police action was *bona fide* and within the scope of their functions and the outcome of the case has depended on a legal issue ..."

In *Ekanayake v. Herath Banda*[6], a teenage student was awarded Rs. 50,000/- compensation for the infringement of her fundamental rights under Articles 11, 13(1) and 13(2). She was arrested because of alleged "anti-governmental subversive activity", and I pointed out that:

> "the expression of views, which may be unpopular, obnoxious, distasteful or wrong is nevertheless within the ambit of freedom of speech and expression, provided of course there is no advocacy of, or incitement to, violence or other illegal conduct ... for dissent is inextricably woven into the fabric of democracy."

That case involved a serious violation of Article 11, which *Amaratunga v. Sirimal*[7], did not. There the Police took action because slogans were shouted against the Government in the course of a "Jana Ghosha", or noise protest, against the Government. The

petitioner was participating by banging a drum, which the Police destroyed. For that violation of his fundamental right under Article 14(1) (a) he was awarded Rs. 50,000/- as compensation, because:

> "The right to support or to criticise Government and political parties policies and programmes, is fundamental to the democratic way of life, and the freedom of speech and expression is one "which cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions" (*De Jonge v. Oregon*[8]). This is not a borderline case, or a sudden emergency in which a quick decision had to be taken... [but] a grave, deliberate and unprovoked violation... Stifling the peaceful expression of legitimate dissent today can only result, inexorably, in the catastrophic of violence some other day."

The hope which I expressed, that:

> "the Inspector-General of Police will of his own volition issue appropriate directions and instructions to all Officers-in-Charge of Police Stations, that criticism of the Government, and of political parties and policies, is, *per se*, a permissible exercise of the freedom of speech and expression under Article 14(1) (a)", was not realised. Another comparable violation of Article 14(1) (a) occurred just five months later. That was in *Wijeratne v. Perera*[9], where a trade union official was awarded Rs 70,000/- as compensation on account of the unlawful seizure of posters from his home and his unlawful arrest, because that was considered to be:
>
> > "... a grave pre-meditated violation of the fundamental rights of a citizen, and it matters little whether he is a humble casual worker, raising a not-uncommon plea for a salary increase to meet escalating living costs, or a person of standing and responsibility in the community ..."

It was stressed that:

> "The Constitution, and in particular Articles 10, 12, and 14, recognise the fundamental right of every Sri Lankan to be different: to **think** differently; and to have and to **express** different opinions – not merely a right to disagree privately in silence, but to communicate disagreement openly, by word, conduct and action, by peaceful and lawful means. Dissent, or disagreement manifested by conduct or action, is a corner-stone of the Constitution. It is a right enjoyed by Members who speak and vote as they wish in Parliament; by Judges, who must decide controversies according to their considered opinion; and by every citizen at election time when he casts his vote for the candidate of his choice. Democracy requires not merely that dissent be tolerated, but that it be encouraged; and this obligation of the Executive is expressly recognised by Article 4(d), which therefore requires that the police not only refrain from suppressing lawful dissent, but also that they "respect, secure and advance" the right to dissent. As Justice Jackson ominously observed in *West Virginia State Board of Education v. Barbette*[10]."
>
> > "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. It seems trite but necessary to say that the First Amendment was designed to avoid these ends by avoiding these beginnings."
>
> The planned protest was clearly not a hasty, strident, over-reaction to a trifling or transient grievance, but a patient, subdued and dignified plea to the conscience of the community for a living wage ... These were not errors of judgment occurring during a sudden emergency, or when dealing with armed violence directed at the foundations of democracy. On the contrary, the respondents had time for deliberation and were faced with a proper exercise of democratic dissent."

This time the Inspector-General of Police was directed:

> "to issue, after consulting the Attorney-General, precise and detailed instructions to all Officers-in-charge of Police Stations as to their duties in terms of Article 4(d) of the Constitution, to respect, secure and advance the exercise of the fundamental rights guaranteed by Article 13(1) and (2), and Article 14(1) (a), (b) and (c) ..."

On 4.10.94 State Counsel tendered to court a copy of the instructions prepared by the Attorney-General's Department, which had been sent to to the Inspector-General of Police for issue to the police.

In *Pieris v. Attorney-General*[11]; about fifteen petitioners were each awarded sums varying from Rs. 20,000/- to Rs. 25,000/- as compensation and costs for the infringement of Article 13(2), 14(1) and 14(1) (c). The Court observed that:

> "Moreover, in a representative democracy there must be a continuing public interest in the workings of government which should be open to scrutiny and criticism... The unfettered interchange of ideas from diverse and antagonistic sources, however unorthodox or controversial, however shocking or offensive or disturbing they may be to the elected representatives of the people or any sector of the population, however hateful to the prevailing climate of opinion ... must be protected and must not be abridged if the truth is to prevail" ... As Justice Jackson ... once observed: "Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. Wide: open and robust dissemination of ideas and counter thought are essential to the success of intelligent self-government."

Finally, in *Deshapriya v. Municipal Council, Nuwara Eliya*[12], the Mayoress of Nuwara Eliya was ordered to pay Rs. 100,000/- as

compensation in respect of the unlawful seizure of 450 copies of the "**Yukthiya**" newspaper – which was held to be "a grave, deliberate and unprovoked infringement, and not one which occurred in a sudden emergency or at a time of public disorder, or through an error of judgment in a borderline case." The amount of compensation was fixed at Rs. 100,000/- (although in *Ratnasara Thero v. Udugampola*[13]; only Rs. 10,000/- has been awarded for the seizure of 20,000 pamphlets) because:

> "It would not be right to assess compensation at a few thousand rupees, simply because the newspaper was sold for seven rupees a copy; that would only be the pecuniary loss caused by the violation of the petitioners' right of property under ordinary law. We are here concerned with a fundamental right, which not only transcends property rights but which is guaranteed by the Constitution; and with an infringement which darkens the climate of freedom in which the peaceful clash of ideas and the exchange of information must take place in a democratic society. Compensation must therefore be measured by the yardstick of liberty, and not weighed in the scales of commerce."

Learned Counsel for the petitioners cited the observations of Kulatunga, J., in *Ratnapala v. Dharamasiri*[14]:

> "... it seems to be that despite so many decisions, torture at police stations continues unabated, in utter contempt of fundamental rights guaranteed by the Constitution. In granting relief this Court must necessarily have regard to this development."

He submitted that the conduct of the Police reveals "a total disregard for the constitutional safeguards afforded to citizens", tantamount to contempt of this Court. While I agree that a series of decisions in regard to Article 14(1) (a) over a period of time, and the instructions issued by the 4th respondent, would preclude any leniency towards transgressors on the basis of uncertainty in

the law, I do not propose to increase the award of compensation in this case by incorporating a punitive element.

As for the learned DSG's plea in "mitigation", Article 13(2) provides that an arrested person "**shall** be brought before the judge of the nearest competent court according to procedure established by law", and **shall not** be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law". The "Procedure established by law" contemplates prompt production before a Magistrate (see *Hulangamuwa v. Weerasinghe*[15]; although that dealt with an arrest upon a warrant and *Abasin Banda v. Gunaratne*[16], and cases cited). Even assuming that it is permissible to record a statement before such production, that too must be done promptly; the delay caused by a further search was not justifiable. here the petitioners were kept for an inordinately long time at the Police station, and I decline to reduce compensation on the basis suggested by the learned DSG. I must add that Article 13(1) applies not only to the initial "arrest" but to continuing deprivation of liberty for purposes other than the suspicion of the commission of an offense: see *Wickramabandu v. Herath*[17], *Sirisena v. Perera*[18], and *Peiris v. Attorney-General.*(*supra*)

I grant the petitioners a declaration that their fundamental rights under Articles 13(1) and 14(1) (a) have been infringed by the 1st and 2nd respondents, and award them compensation (including costs) in a sum of Rs. 70,000/- each. The State will pay each of them Rs. 60,000/-, and the 1st and 2nd respondents will each personally pay each petitioner a sum of Rs. 5,000/-.

WIJETUNGA, J. – I agree.

ANANDACOOMARASWAMY J. – I agree.

Relief granted.