

ARJUNA RANATUNGA
v
JOHNSTON FERNANDO
MINISTER OF YOUTH AFFAIRS AND OTHERS

SUPREME COURT
S. N. SILVA, C. J.
J.A.N. DE SILVA, J.
WEERASURIYA, J.
SC FR 133/2002
NOVEMBER 20, 2002

Fundamental Rights - Article 12 (1), 12 (2), 14 (1) g and 126 – Sports Law No. 25 of 1973 – Disqualifying Members of Parliament being office bearers in sports associations – Violation ?

The Gazette Notification purporting to amend regulation 14 promulgated under the Sports Law by disqualifying Members of Parliament, Provincial Council, Municipal Council, Urban Council, Pradeshiya Sabha or any other Local Authority was challenged by the petitioner a former Sri Lanka Cricket Captain and Member of Parliament on the ground that the fundamental rights guaranteed to him by Art 12 (1), 12 (2) and 14 (g) have been infringed by the executive.

It was contended by the respondents that, the new regulation was introduced to depoliticize the sports associations - to keep politicians away from becoming office bearers of sports bodies.

Held :

- (1) The regulation as reflected in the gazette permits politicians to hold office in the Sports Associations but only precludes Members of Parliament and local bodies set out in the gazette from holding office. There are many politicians who are not necessarily Members of Parliaments.

A candidate who gets defeated at any election could hold office but not a successful candidate.

Per J. A. N. de Silva, J.

"I am of the view that the registration is unduly and unfairly restrictive of the rights of the Members of Parliament, Provincial Councils and Local Authorities to be elected as office bearers of sports associations."

- (2) The regulation published contains a classification which is arbitrary, and is devoid of any substantial basis.

J. A. N. de Silva, J.

"De politicization of sports associations being a desirable object can be achieved by freeing the democratically elected sports bodies of interference or under influence from those who wield governmental power."

APPLICATION under Article 126 of the Constitution.

Romesh de Silva PC with Dinal Philips and Hiran de Alwis for petitioner.

Saleem Marsoof PC Add. Solicitor General and S. Herath State Counsel for respondents.

Cur. adv. vult.

January 10, 2003

J. A. N. DE SILVA, J.

The petitioner, Arjuna Ranatunga, represented his school Ananda College, his club, the Sinhalese Sports Club and Sri Lanka at cricket. He played 93 Test Matches and 269 One Day Internationals for Sri Lanka and was the captain of the Sri Lanka team which won the world cup held in 1996. In August 2000 he retired from Test Cricket. 01

The petitioner states that for several years he has been interested in getting involved in the administration of cricket. After he retired from Test Cricket the Interim Committee which functioned in the year 2001 invited him to serve in the Cricket Committee to look after cricket and cricketers. During this period at various functions and press interviews he has expressed his desire to contest the presidency of the Board of Control for Cricket in Sri Lanka with a view to develop the infrastructure facilities for cricket in this country, mainly to help the out-station cricketers. 10

The Parliament of the Socialist Republic of Sri Lanka was dissolved in or about October 2001 and a general election was held in December the same year. The petitioner too contested the district of Colombo from the Peoples Alliance Party and was successful. He received the second highest number of preferential votes in the Colombo District and presently is an elected Member of Parliament. The petitioner states that even after the general election he has been making several statements to the press declaring his intention of contesting the impending election of the Board of Control for Cricket in Sri Lanka (BCCSL). 20

Immediately after the formation of the new government a hundred day development programme was launched. As an integral part of this programme, the Minister in charge of Sports with the concurrence of the Cabinet of Ministers decided to amend the existing sports laws in the country. 30

Consequently the 1st respondent the Minister of Youth Affairs and Sports caused a gazette notification bearing No. 1222/16 to be published on 7th February 2002 purporting to amend regulation 14 promulgated under the Sports Law No. 25 of 1973 by adding the following new paragraph to the list of disqualifications.

"(g) If he is a Member of Parliament, Provincial Council, Municipal Council, Urban Council, Pradeshiya Sabha or any other local authority."

The petitioner contends that by virtue of the said gazette the 1st respondent purports to preclude, inter alia, Members of Parliament being disqualified to be office bearers in "Sports Associations." 40

Complaining that the fundamental rights guaranteed to him by Articles 12 (1), 12 (2) and 14 (1) (g) of the Constitution have been infringed by the executive, the petitioner invoked the jurisdiction of this court under Article 126 of the Constitution.

At the hearing of this application, learned counsel for the petitioner Mr. Romesh de Silva, P. C. raised the following matters for consideration of this court.

That :

(1) The action of the 1st respondent is arbitrary, capricious, wrongful, unjust and unreasonable. 50

(2) The decision of the 1st respondent to publish the said regulation is mala-fide and that the petitioner had been singled out with a view to prevent him from contesting the presidency of the BCCSL.

(3) The regulation is violative of and discriminatory towards all sportsmen and women in that no restrictions are placed on the other professions and disciplines in becoming members of Parliament.

(4) The regulation is ultra-vires the powers given to the Minister. 60

(5) The regulation is violative of sections 31 and 41 of the Sports Law No. 25 of 1973.

Supporting the 1st ground of objections learned counsel for the petitioner submitted that the petitioner relies on grounds of equality before the law contained in Article 12 (1) and 12 (2) as the basis of this application to court.

Article 12 of the Constitution lays down the general rule of equality, that all persons are equal before the law and that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any of such grounds. There are several decided cases in Sri Lanka, India and other jurisdictions where the principles relating to "equal protection" have been identified, recognized and applied. It is to be noted that, 70

(1) The principle of equality does not mean that every law must have universal application for all who are not by nature, attainment

or circumstances, in the same position, as the varying needs of different classes of persons need separate treatment.

(2) This principle does not take away from the state the power of classifying persons for legitimate purposes. 80

(3) Every classification is in some degree likely to produce some inequality and mere production of inequality is not enough.

(4) If a law deals equally with members of a well-defined class it is not obnoxious and it is not open to the charge of denial of equal protection on the grounds that it has no application to other persons.

(5) While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily and without any substantial basis (vide Basu on Constitutional Law of India). 90

To pass the test of permissible classification two conditions must be fulfilled:

(1) That the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. And,

(2) That the differentia must have a rational relation to the object sought to be achieved by the statute/regulation in question. What is necessary is that there must be a nexus between the basis of classification and the object of the regulation under consideration. 100

When a "law" is challenged as denying equal protection, the question for determination by the court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of the statute/regulation. To attract the operation of Article 12 (1) it is necessary to show that the selection or differentiation is unreasonable. "Article 12 nullifies sophisticated as well as simple minded modes of discrimination" - (Sharvananda, J. in *Palihawadana v Attorney General* page 14). 110

Mr. Marsoof, P.C, Additional Solicitor General, who appeared for the respondents endeavored to explain the object behind the regulation in question. It was his submission that in the past office bearers of sports associations who were "politicians" used political influence in selection of sportsmen and women for national and international events and thereby caused grave injustice to persons who did not have any political backing. Learned counsel submitted that the new regulation was introduced to 'de-politicize' the sports associations. In other words to keep politicians away from becoming office bearers of sports bodies. 120

Mr. Marsoof drew the attention of court to a report prepared and submitted by the committee of inquiry to the Minister who was in charge of Parliamentary Affairs and Sports in 1971 where there is a recommendation that politics and sports should be kept apart as it had been alleged that there is bureaucratic and political interference in sports. The learned Additional Solicitor General further submitted that in the recent past there were several Members of Parliament who held office in National Sports Associations such as BCCSL, Boxing Association, Volleyball Federation and Table Tennis Association. 130

Learned Additional Solicitor General contended that the present government having taken the aforesaid factors into consideration in its election manifesto at the general election held on the 5th of December 2001, pledged to the people that it would take steps to de-politicize sports administrations by the introduction of new laws to ensure proper administration of sports associations. In order to achieve this objective of de-politicization of sports administration the 1st respondent took steps to amend the regulations made under the Sports Law with the 100 day programme introduced by the government. 140

It is to be noted that the committee report referred to by Mr. Marsoof is in 1971 and is long prior to the enactment of Sports Law No. 25 of 1973. The then Minister of Sports and the legislature having considered the recommendation of the committee report enacted the Sports Law in 1973. A number of disqualifications have been set out in that law with regard to the persons who wish to be elected for sports bodies. Political views or political colour of the

person to be elected has been deliberately omitted from the list of disqualifications. Learned counsel for the petitioner submitted that there is no logic, reason or justification for the decision of the 1st respondent that a Member of Parliament should not hold office in sports associations. In the past Dr. N. M. Perera, J. R. Jayawardena, Gamini Dissanayake, Tyronne Fernando, T. B. Werapitiya, Laxman Jayakody held office as the presidents of the BCCSL and discharged their duties well even though they were members of Parliament. There were no allegations made against any of the said members that they did not or could not discharge their duties properly by virtue of the fact that they were Members of Parliament.

The question that arises for consideration is whether the objective of de-politicization has been achieved by this regulation by placing a restriction on the Members of Parliament and other local bodies from contesting for positions in the sports associations.

There are many politicians who are not necessarily Members of Parliament. For example Chairman of a political party, the General Secretary, Members of Executive Committees and Central Committees of political parties.

The regulation as reflected in the gazette permits politicians to hold office in the sports association but only precludes Members of Parliament and local bodies set out in the gazette from holding office. A candidate who gets defeated at any election could hold office, but not a successful candidate. If the petitioner was not successful in becoming a Member of Parliament he could have held office in the BCCSL. I am of the view that the regulation in question is unduly and unfairly restrictive of the rights of the Members of Parliament, Provincial Councils and Local Authorities to be elected as office bearers of sports associations. De-politicization of sports associations being a desirable objective can be achieved by freeing the democratically elected sports bodies of interference or undue influence from those who wield governmental power.

Having considered all the above circumstances I hold that the regulation published by the 1st respondent contains a classification

which is arbitrary and is devoid of any substantial basis. And for that reason is violative of the fundamental rights of the petitioner enshrined in the Constitution in Article 12 (1), 12 (2) and 14 (1) (g). However as no election for the BCCSL has been held after promulgation of the regulation, no real harm had been caused to the petitioner. Therefore I do not award him damages but he will be 190 entitled to Rs. 50,000/- as costs payable by the respondents.

S. N. SILVA, C. J. – I agree.

WEERASURIYA, J. – I agree.

Relief granted.