

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application under and in terms of Section
63(1) of the Provincial Council Elections Act No.2 of 1988

Waruna Deeptha Rajapakshe,

Petitioner

Vs

CA 103/2012

1. Janatha Vimukthi Peramuna (JVP)/
(Peoples Liberation Front)
2. Mr. Somawansa Amarasinghe, Leader ,
JanathaVimukthiPeramuna (JVP)/
(Peoples Liberation Front).
3. Mr. Tilvin Silva, General Secretary,
JanathaVimukthiPeramuna (JVP)/
(Peoples Liberation Front).

And 26 others

Respondents

Before : Sisira de Abrew J
Anil Gooneratne J
A.W.A.Salam J

Counsel : Saliya Pieris with Asthika Devendra, Nuwan Bopage and
Ms. Sunali Jayasuriya for the Petitioner
Wijedasa Rajapakshe PC with Rasika Dissanayake for the
1st to 26th Respondents
Janak de Silva DSG with Ashan Fernando SC for the 28th
and 29th Respondents

Argued on : 21.9.2012
Decided on : 15.11.2012

Sisira De Abrew J

The petitioner in this case is a member of the Janantha Vimukthi Peramuna (JVP) and a member of the Western Provincial Council representing the JVP. According to the petitioner on 20.2.2012 he received a charge sheet dated 10.2.2012 from the secretary of the JVP (3rd respondent) setting out six charges and stating that a disciplinary committee had been appointed under chapter 10 of the Constitution of the JVP to conduct an inquiry into the charges leveled against him. It further requested the petitioner to submit his explanation in writing within 14 days. The petitioner however did not submit his explanation. The 3rd respondent by his letter dated 12.3.2012 (P6), informed the Secretary Western Provincial Council that the disciplinary committee had found the petitioner guilty of all six charges and that the central committee of the JVP had decided to expel him from the party. The said letter a copy of which was also sent to the petitioner requested the secretary of the Western Provincial Council to take appropriate steps. The petitioner by this petition seeks to quash the said decision of the Central Committee.

Learned President's Counsel citing section 63 of the Provincial Council Election Act No. 2 of 1998 (the Act) contended that the Court of Appeal, in a case filed under section 63 of this Act, must make its determination within two months of the filing of the case. He therefore contended that the petitioner is not entitled to the relief claimed as two months have passed since the filing of the petition. I now advert to this contention. Section 63 of the Act reads as follows:

“Where a member of a Provincial Council ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on

whose nomination paper his name appeared at the time of his becoming such a member, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

Provided that in the case of expulsion of a member of a Provincial Council his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the court of Appeal by petition in writing and the Court of Appeal upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Court of Appeal who shall make their determination within two months of the filing of such petition. Where the Court of Appeal determines that the expulsion was valid the vacancy shall occur from the date of such determination.”

One must consider the provision that the Court of Appeal shall make its determination within two months of the filing of the case is directory or mandatory. Similar provision is found in the Code of Criminal Procedure Act No. 15 of 1979 (CPC). Section 203 of the CPC reads as follows:

“When the cases for the prosecution and defences are concluded, the Judge shall forthwith or within ten days of the conclusion of the trial record a verdict of acquittal or conviction giving his reasons therefore and if the verdict is one of conviction pass sentence on the accused according to law.”

In *Anura Shantha Vs Attorney General* [1999] 1 SLR 299 court of Appeal considering section 203 of the CPC held: “The provisions of the Section 203 of the code are directory and not mandatory. This is a procedural obligation that has been imposed upon court and its non compliance would not affect the individual rights unless such non compliance occasions a failure of justice.” Applying the principles laid down in the above judicial decision, I hold failure by the court of Appeal to

make its determination within the prescribed period will not nullify the petition and that section 63 of the Act is only directory and not mandatory. I therefore reject the said contention of learned President's Counsel.

Learned PC next contended that the petitioner should have made all members of the JVP parties to this case and that he should have taken steps under section 16 of the Civil Procedure Code. I now advert to this contention. What is the decision challenged in this case? That is the decision to expel the petitioner from the party. Who took this decision? It is the central committee of the JVP. All central committee members have been made parties in this case. I therefore hold that there is no merit in the contention and reject it.

Learned counsel for the petitioner contended that the decision to expel the petitioner from the party is wrong as it had not been made in compliance with the constitution of the party. Chapter 10(iii) of the constitution of the JVP (P1) provides that the disciplinary committee must inform the members who allegedly violate the discipline of the party the place, date and time of the inquiry. Further according to chapter 10 (iv) of the constitution of the JVP the members who allegedly violate discipline of the party must be given an opportunity to appear before the disciplinary committee and submit their explanation. According to material submitted to this court, the disciplinary committee has not complied with the above provisions of constitution of the JVP. I therefore hold that the decision by the central committee of the JVP to expel the petitioner is wrong and should be set aside.

For the above reasons I quash the decision to expel the petitioner from the 1st respondent party (JVP) which was communicated by the letter dated 12.3.2012 (P6) and declare that the petitioner has not ceased to be a member of the Western

Provincial Council and that he continues to be a member of the Western Provincial Council.

Judge of the Court of Appeal.

Anil Gooneratne J

I agree.

Judge of the Court of Appeal

AWA Salam J

I agree.

Judge of the Court of Appeal