

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

In the matter of an application for under and in  
terms of Section 63(1) of Provincial Councils  
Elections Act No. 02 of 1988.

**C.A. Case No. 336/2015  
(Expulsion)**

**Hewa Anthonige Piyasena,**  
No. 79/2 - Boutique near the Temple,  
Horapawita,  
Kamburupitiya.

**PETITIONER**

**-Vs-**

**1. United People's Freedom Alliance**  
No. 301, T.B. Jaya Mawatha,  
Colombo 10.

**2. A.D. Susil Premjyantha,**  
The General Secretary,  
United People's Freedom Alliance,  
No. 301, T.B. Jaya Mawatha,  
Colombo 10.

**2.a Wishwa Warnapala,**  
The General Secretary,  
United People's Freedom Alliance,  
No. 301, T.B. Jaya Mawatha,  
Colombo 10.

**2.b Mahinda Amaraweera,**

The General Secretary,  
United People's Freedom Alliance,  
No. 301, T.B. Jaya Mawatha,  
Colombo 10.

**3. K.L. Dayananda,**

The Secretary to the Southern Provincial Council,  
Council Secretariat Office,  
Bope Road, Kalegana,  
Galle.

**4. Mahinda Deashapriya,**

Commissioner of Elections,  
Elections Secretariat,  
Sarana Road,  
Rajagiriya.

**5. Hon. Attorney General,**

Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : **Vijith K. Malalgoda, PC, J. (P/CA)**  
**A.H.M.D. Nawaz, J. and**  
**H.C.J. Madawala J.**

**COUNSEL** : **Razik Zarook, PC with Rohana Deashapriya and**  
**Chanakya Liyanage for the Petitioner.**  
**Janak de Silva, DSG for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup>**  
**Respondent.**

**Argued on** : 24.03.2016  
**Decided on** : 02.03.2017

### **ORDER OF COURT**

By a petition dated 18<sup>th</sup> August 2015, the Petitioner has applied to this Court in terms of Section 63 of the Provincial Councils Elections Act No. 2 of 1988, challenging his expulsion from the 1<sup>st</sup> Respondent-United People's Freedom Alliance (UPFA) which is a recognized political party.

#### **Factual Matrix**

At all material times to this application, the 1<sup>st</sup> Respondent was a recognized political party registered under and in terms of the provisions of the Parliamentary Elections Act No. 1 of 1981, whilst the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent were the General Secretary of the United People's Freedom Alliance and the Secretary to the Southern Provincial Council respectively.

The Petitioner states that he is a member of the Sri Lanka Freedom Party (SLFP) and after the formation of the political party under the name of the United People's Freedom Alliance (UPFA), he became a member of the UPFA. Clause 10(2) of the Constitution of the UPFA makes this position quite clear.

After this petition was filed, this Court issued notices on the 1<sup>st</sup> Respondent (the United People's Alliance), 2<sup>nd</sup> Respondent (the General Secretary of the UPFA at the material time), 3<sup>rd</sup> Respondent (the Secretary to the Southern Provincial Council), 4<sup>th</sup> Respondent (the Commissioner of Elections) and the Honourable Attorney-General a number of times but there have not been any representation for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Even after the 2<sup>nd</sup> Respondent was substituted, the current holders and they were notice, there has not been any representation for those added Respondents. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents were represented by the Counsel for the State.

When this Court took up this matter for inquiry on 24.03.2016, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were not represented with the exception of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents who were represented by the learned Deputy Solicitor General. The Deputy Solicitor General informed court that as they had not filed objections in the matter, they would abide by the order of this Court.

### **The Gravamen of the Petitioner**

The Petitioner has averred that he was last elected to the Southern Province Provincial Council at the elections held on or around 29.03.2014 having obtained the requisite preferential votes from Matara District contesting as a candidate of the United People's Freedom Alliance—vide **P2**—the gazette notification officially listing out the elected members of Matara District of the Southern Province. By **P3** dated 06.08.2015, the Secretary of the United People's Freedom Alliance (UPFA) has informed the Petitioner that he was expelled from the Alliance on the ground that he had violated the policies and the constitution of the UPFA by becoming a candidate at the General Election 2015 under an independent group for the Matara District. By **P4**, the Petitioner has responded to **P3** stating that since the expulsion was illegal, he would be seeking redress from the Court of Appeal. The Petitioner further alleges in his petition that consequent to **P2** (the letter of expulsion), he received a letter dated 11.08.2015 from the 3<sup>rd</sup> Respondent, Secretary of the Southern Provincial Council notifying him that the Secretary of the UPFA by letter dated 06.08.2015 informed that the Petitioner had been expelled from the UPFA consequent to which his membership of the Southern Provincial Council would cease and the 3<sup>rd</sup> Respondent sought confirmation whether the Petitioner had received the said letter—vide **P5**. The Petitioner responded to **P5** in the same tenor as he did as regards **P4**—his reply to the 2<sup>nd</sup> Respondent.

The Petitioner sought to contend at the inquiry before this Court that his expulsion was invalid on several grounds. The following grounds were urged by Counsel for the Petitioner – Mr. Razik Zarook, PC namely;

1. The Petitioner was not served with a formal charge sheet before the decision to expel him was taken;
2. No disciplinary inquiry was held as per the Constitution of the UPFA;
3. The Petitioner was not afforded an opportunity to be heard;
4. The principle of *audi alteram partem* was violated;
5. It was an *ex parte* decision;
6. The party took the decision without giving any reason or holding a proper inquiry;
7. In terms of the Constitution of the UPFA, the 2<sup>nd</sup> Respondent (the General Secretary of UPFA) has no power to take disciplinary action against the Petitioner.

### **Scope and Ambit of the Inquiry under Section 63 of the Provincial Councils Elections Act No. 2 of 1988**

Before this Court proceeds to pronounce its determination on the expulsion, this Court bears in mind the scope and ambit of the provisions setting out the boundaries of the inquiry under Section 63(1) of the Provincial Councils Elections Act No. 2 of 1988.

Section 63(1) of the Provincial Councils Elections Act No. 2 of 1988 sets out the following:-

*“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 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 the 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.....”*

The aforesaid provision clearly sets out as to when the jurisdiction of this Court to embark on the inquiry to ascertain the validity or otherwise of an expulsion of an elected member of a Provincial Council is triggered. If the Petitioner invokes the jurisdiction of this Court prior to the expiration of one month of the expulsion, this Court could assume jurisdiction to ascertain the vires of the expulsion and upon such invocation of the jurisdiction of the Court of Appeal within one month of the expulsion, the Petitioner continues to enjoy his status as a member of the Provincial Council until that status is determined by a declaration of this Court that the expulsion is valid. The question before this Court is whether the Petitioner in the instant application has made out a case of invalidity of his expulsion.

#### **Jurisdiction of the Court of Appeal identical to that of the SC**

As could be observed, the jurisdiction conferred on the Court of Appeal by the proviso to Section 63(1) of the Provincial Councils Elections Act No. 2 of 1988, is similar to the jurisdiction conferred on the Supreme Court by the proviso to Article 99(13)(a) of the Constitution in relation to members of Parliament. Fernando J. in ***Dissanayake and Others v. Kaleel and Others***<sup>1</sup> expressed his view on the extent of the Supreme Court's jurisdiction under Article 99(13)(a) thus:

---

<sup>1</sup> SC (Spl) 4 - 11/91 - SC Mins of 03-12-1991

*"Our jurisdiction under Article 99(13) (a) is not a form of judicial review or even of appeal, but rather an original jurisdiction analogous to an action for a declaration, though it is clearly not a rehearing. Are we concerned only with the decision making process or must we look at the decision itself? Article 99 (13)(a) requires us to decide whether the expulsion was valid or invalid. Some consideration of the merits is obviously required ... The burden, if any, must be on the respondents, for it is the denial of natural justice by them which has resulted in these proceedings. I have therefore to consider whether on the merits the respondents have shown that the decision was a good one, thereby disentitling the petitioners to relief."*

Dheeraratne J. described the boundaries of the court's jurisdiction thus in ***Tilak Karunaratne v. Mrs. Bandaranaike and Others***<sup>2</sup>

*"it is not disputed that court's jurisdiction includes an investigation into the requisite competence of the expelling authority; an investigation as to whether the expelling authority followed the procedure if any which was mandatory in nature, an investigation as to whether there was a breach of principles of natural justice in the determining process; and an investigation as to whether in the event of the grounds of expulsion being specified by way of charges at a domestic inquiry, the member was expelled on some other grounds which were not so specified."*

It is clear from the foregoing and on the strength of the authority of ***Gooneratne and Others v. Premachandra and Others***<sup>3</sup> that this court in exercising the jurisdiction conferred on it by Section 63 of the Provincial Councils Elections Act, should inquire whether the expelling body had:

- i. acted within its jurisdiction;

---

<sup>2</sup> (1993) 2 Sri.LR 90

<sup>3</sup> (1994) 2 Sri.LR 137

- ii. followed the procedure laid down in the Constitution of the party; and
- iii. acted in compliance with the principles of natural justice before taking the decision to expel the petitioners; and
- iv. whether the grounds adduced for expelling the petitioners could be sustained; and
- v. whether their alleged misconduct if proved, merited the extreme punishment meted out to them.

### **Breach of Principles of Natural Justice**

The Petitioner has no doubt pleaded that there was an infringement of the rules of natural justice in denying him the right to notice of the charges of alleged misconduct against him, and the right to be heard in answer to those charges by an unbiased tribunal. No response has been proffered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to this accusation.

Justice Kulatunga, in *Dissanayake*<sup>4</sup> observed that:

*“the right of a M.P. to relief under Article 99(13)(a) is a legal right and forms part of his constitutional right as a M.P. If his complaint is that he has been expelled from membership of his party in breach of the rules of natural justice, he will ordinarily be entitled to relief; and this court may not determine such expulsion to be valid unless there are overwhelming reasons warranting such decision. Such decision would be competent only in the most exceptional circumstances permitted by law and in furtherance of the public good the need for which should be beyond doubt.”*

The letter of expulsion (**P3**) dated 06.08.2015 traces the reason for expulsion of the Petitioner from UPFA to the Petitioner becoming a candidate at the General Elections 2015 under an independent group for the Matara District. On the

---

<sup>4</sup> See *Supra* fn 1



propositions laid down by Kulatunga J, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents bear the burden of satisfying this court that their failure to follow rules of natural justice was warranted on the facts and circumstances of the case. In other words, they need to justify that the petitioner's conduct amounted to a non compliance with the constitution which constituted an exceptional circumstance warranting the expulsion without a hearing or that the expulsion of the Petitioners was for the public good. The test that has to be applied is an objective test and not a subjective test. The Respondents have not placed any material before this court to satisfy this objective test that an overwhelming reason or exceptional circumstances existed which merited the expulsion of the Petitioners or that it was done for the public good.

Expulsion from an organisation *ipso facto* gives rise to misgivings of indiscipline and suspicions of infractions of the rules, beliefs or customs of the association concerned. In such a situation the member of such an organization against whom doubts about his suitability to continue to be a member have been created should be afforded a hearing before the specific charges are vindicated.

In this context it is apposite to quote the pertinent observations of Paul Jackson in his seminal work on Natural Justice.<sup>5</sup>

*"There are at least three justifications for requiring a hearing even where there appears to be no answer to a charge. First, experience shows that unanswerable charges may, if the opportunity be given, be answered; inexplicable conduct be explained. Secondly, the party condemned unheard will feel a sense of injustice. Thirdly, suspicion is inevitable that a body which refuses a hearing before acting does so because of the lack of evidence not because of its strength."*

---

<sup>5</sup> Natural Justice, Paul Jackson (Second Edition) 1979 at page 137

As the sanction of expulsion spells a grave punishment, it is nothing but fair that this consequence follows upon the observance of *audi alteram partem*-the time honoured incantation for everyone who decides anything.

Two principles of procedural impropriety have vied for observance by all inclusive of judges who decide rights and liabilities. They are often classified as aspects of fair play in action and have proved to be bulwarks for preserving rule of law in their peremptory declarations that no man shall be condemned unheard and no man shall be a judge in his own cause, as they are famously couched in the Latin tags *audi alteram partem* and *nemo iudex in re sua*.

So the contention that the Petitioner was expelled without a charge sheet and a concomitant hearing, in the absence of material to the contrary, has to be upheld.

This fact alone is sufficient to dispose of the issue before us-namely whether the expulsion as notified in P3 dated 06.08.2015 is valid or not.

Applying the ratio of *Dissanayake and Gooneratne*,<sup>6</sup> to the facts of this application, we hold that the Respondents have failed to observe the principles of natural justice and as such the expulsion as notified in P3 cannot be supported. Thus we determine that the expulsion of the Petitioner as communicated in the letter dated 06.08.2015 is invalid. We grant a declaration to this effect.

**Vijith K. Malalgoda, PC, J. (P/CA)**

**A.H.M.D. Nawaz, J.**

**H.C.J. Madawala J.**

---

<sup>6</sup> See *Supra* fn 1 and fn 3