THE
Sri Lanka Law Reports

Containing cases and other matters decided by the Supreme Court and the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

[2006] 1 SRI L. R. - Part 7

PAGES 169 - 196

PUBLISHED BY THE MINISTRY OF JUSTICE
Printed at the Department of Government Printing, Sri Lanka

Price : Rs. 12. 50

DIGEST

CONSTITUTIONAL LAW- Article 99(13) (a) of the Constitution - Explusion from political party - Mala fides, bias and failure of natural justice - Invalidity of expulsions - Policy of SLMC- Alleged failure to sign a pledge of loyalty to SLMC and its leader - Burden of proof to adduce evidence to support allegations against petitioners.

CONTEMPT OF THE COURT OF APPEAL — Article 105 of the Constitution – Summons / charge sheet – Necessity to disclose any violation of the judgment of the Court

WRIT OF CERTIORARI - Sri Lanka Telecommunications Act, No. 25 of 1991, sections 12, 17, 17(5) and 17(7) - Increase of tariffs -Legality-Locus standii to maintain application -Necessary parties-Tariff adjustment - Could it be effected from a retrospective date? - Is economic criteria a mandatory requirement in granting approval ? - Alternate remedy.

PERIANNAN
vs
BANDARAWELA MULTI-PURPOSE CO-OPERATIVE SOCIETY AND ANOTHER

COURT OF APPEAL
BALAPATABENDI, J. AND
IMAM, J.
CA. 697/2003 (CONTEMPT)
C.A. 621/99 (WRIT)
JUNE 23, AND
OCTOBER 6 AND 11, 2004

Contempt of the Court of Appeal — Article 105 of the Constitution – Summons / charge sheet – Necessity to disclose any violation of the judgment of the court

The petitioner in his writ application – CA 621/99 – obtained a judgment in his favour for all the relief claimed. Inspite of the demand made upon the said judgment the 1st – 9th respondents accused have failed to hand over possession of the premises. The petitioner asserts that there is contempt of court.

Held :

The summons or the charge sheet served on the respondents-accused do not disclose any violation of the judgment of the Court of Appeal and further the summons or the charge sheet do not specify the offences committed by the respondents accused.

> "A person should not be punished for contempt of court unless a charge is formulated either specifically or in the form of a rule nisi.".

APPLICATION under Article 105 of the Constitution.

Case referred to :

1. *K. Velayuthan* vs *Hon. A. C. A. Alles* – 75 NLR 268

S. P. Sriskantha with *A. Paramalingam* for complainant petitioners

M. Ameen, State Counsel, for 10th – 12th respondents

Wijayadasa Rajapakse, P. C. with *Rasika Dissanayake* for 2nd – 9th accused respondents.

Cur.adv.vult

December 14, 2004

JAGATH BALAPATABENDI, J.

The Petitioner-complainant in Case No. CA (Writ) 621/99 had obtained a Judgment in favour of him by this Court, for all the reliefs claimed in the prayer to the Petition filed by him.

In the instant case for contempt of Court the Petitioner-complainant alleged that, inspite of the demand made upon the said Judgment the 1st to 9th Respondents-accused have failed and/or neglected and/or refused to comply with the Orders of this Court, of handing over the vacant possession of the premises bearing Assessment No. 25, Main Street, Bandarawela. Hence the Petitioner-complainant has asserted, the refusal of the Respondents-accused to comply with the said orders of this Court is malicious and/or *malafide* and/or illegal and/or unlawful and/or in contempt of this Court, therefore the Respondent-accused are liable to be punished by this Court for defiance/disrespect/dishonour of the orders of this Court and to be dealt with, in accordance with the law.

In the prayer to the Petition of the instant case for contempt of Court the Petitioner-complainant had prayed for the following reliefs :

(i) issue summons on the Accused-respondents abovenamed ;

(ii) issue notices on the Respondents-respondents abovenamed ;

(iii) charge the accused with contempt of this Honourable Court ;

(iv) inquire into the charge of contempt of this Honourable Court ;

(v) punish the accused found guilty of contempt of this Honourable Court in accordance with the law ;

(vi) *order the accused to hand over peaceful and vacant possession of the premises in suit to the Complainant, or in the alternative, direct the Fiscal of the District Court of Bandarawela to hand over possession of the said premises to the Complainant ;*

(vii) for costs ; and

(viii) for such other and further reliefs as to Your Lordships' Court shall seem fit and proper.

At the inquiry into the instant contempt of Court application, the counsel for the Accused-respondents raised two preliminary objections as follows :–

1) Since the summons served on the 2nd to 9th Respondents-accused do not disclose any violation of the Judgment of this Court by the 2nd to 9th Respondents-accused, this inquiry into the purported contempt of Court cannot be proceeded with; and

2) The Petitioner has failed to serve valid summons and/or charge sheet on the 2nd to 9th Respondents-accused.

Both counsel agreed to resolve the abovementioned Preliminary issues on written submissions.

The contention of the Counsel for the Petitioner-complainant was that, when this matter was taken up on 07.08.2003 the same preliminary objections were raised, and later it was abandoned by the Respondent-accused. On 15.10.2003 the Respondents-accused pleaded "Not Guilty" to the charges framed and the inquiry was fixed for 21.11.2003. Thereafter, as the Counsel for the Respondents-accused indicated to Court that he had personally advised the Respondents-accused to arrive at a settlement several dates were given for a settlement by Court. Later on the inquiry date (23.06.2004), as there was no settlement again the abovementioned preliminary objections were raised. The Counsel contended that the Preliminary Objections based on summons/charge sheet cannot be raised at this stage, as the Respondents-accused had already pleaded "Not Guilty" to the charges, and also the objections raised are untenable in law as the summons clearly indicate the violation of the Judgment by the Respondents-accused. Therefore he urged that the preliminary objections raised be dismissed and fix the matter for further inquiry on the charges framed against the Respondents-accused.

Even though the counsel for the Petitioner stated that the same objections were raised on 07.08.2003, it appears in the Journal Entry dated 07.08.2003 as follows :

" 1st to 8th Respondents take up a preliminary objection that *ex-facie* there are no grounds for contempt of Court and wishes to make submissions on the matter." ..... "Arguments on 15.10.2003."

Thus, it is manifest that the objections raised by the 1st to 8th Respondents on 07.08.2003 were not the same.

The contention of the counsel for the Respondents-accused was that, in writ application bearing No. CA. 621/99 filed in this Court by the Petitioner-complainant had sought the following reliefs :–

(a) grant and issue a mandate in the nature of writ of certiorari to quash the purported Section 2 and Section 5 notices and all the steps taken in acquiring the premises which belonged to the Petitioner under the Land Acquisition Act (Chap. 460) ; and

(b) grant and issue a mandate in the nature of writ of certiorari to quash the vesting and acquisition order published in the Gazette 1059/11 dated 23.12.1998.

(c) grant costs, and other reliefs the Court shall seem meet.

This Court after inquiry had held that the Petitioner-complainant was entitled to the above mentioned reliefs claimed, and also the Petitioner-complainant was entitled to costs of Rs. 10,000/- payable by the 3rd respondent, Bandarawela Multi Purpose Co-operative Society. (As per Judgment dated 30.05.2002).

It had been revealed that the 3rd Respondent-accused – the Multi Purpose Co-operative Society is in possession of the said premises since 1975 as a tenant and the other Respondents-accused are the Directors of the said society. Following the Judgment of this Court dated 30.05.2002 the Petitioner-complainant had sent a letter to the Respondents-accused demanding to hand over the vacant possession of the said premises to him had been refused by the Respondents-accused – on the premise that they are the statutory-tenants of the premises in question.

Hence, the counsel for the Respondents-accused contended that the rights of the tenant which were secured by the statute (the Rent Act) cannot be affected or taken away merely because an order for acquisition was quashed by a writ of certiorari. Also, neither the Petitioner-complainant had sought a relief for ejectment of the 3rd respondent society from the said premises nor had this Court granted a relief to eject the 3rd respondent from the said premises. Besides, there was no order been made against the 3rd respondent to vacate the said premises in the Judgment dated 30.05.2002.

For the reasons aforesaid, the counsel for the Respondents-accused urged that the refusal to vacate the said premises by the Respondents-accused do not constitute an abuse of the process of this Court, and also do not amount to contempt of Court.

In the case of *K. Velayuthan* vs. *The Hon. A. C. A. Alles*[1] it was held that "a person should not be punished for contempt of Court unless a charge is formulated either specifically or in the form of a rule nisi.".

In the circumstances mentioned above, we are inclined to accept the contention of the counsel for the Respondents-accused, that the summons or the charge sheet served on the Respondents-accused do not disclose any violation of the Judgment of this Court and also the summons or the charge sheet served do not specify the offence committed by the Respondent-accused.

Having considered all the circumstances, we uphold the preliminary objections raised by the Respondents-accused. Thus the application filed by the Petitioner-complainant against the Respondents-accused for contempt of Court, is dismissed. No costs.

IMAM, J. — I agree.

Application dismissed.

CONSUMERS ASSOCIATION OF SRI LANKA
vs
TELECOMMUNICATIONS REGULATORY COMMISSION OF SRI LANKA AND OTHERS

COURT OF APPEAL
IMAM, J.
SRISKANDARAJAH, J.
C. A. 1776/03
MARCH 31,
MAY 16,
JUNE 2, 15 AND 29 AND
JULY 19, 2005

Writ of Certiorari - Sri Lanka Telecommunications Act, No. 25 of 1991, sections 12, 17, 17(5) and 17(7) - Increase of tariffs -Legality-Locus standi to maintain application -Necessary parties-Tariff adjustment - Could it be effected from a retrospective date? - Is economic criteria a mandatory requirement in granting approval ? - Alternate remedy.

The petitioner, an Association incorporated under the Companies Act which seeks the welfare of the consumers sought to quash the approval granted by the Telecommunications Regulatory Commission (TRC) to the Sri Lanka Telecom Ltd., the 4th respondent to increase tariff for the year 2003.

On the preliminary objections raised (1) that the petitioners lack *locus standii* ; (2) court cannot consider the correctness of the facts and figures relating to the tariff revision ; (3) that all necessary parties are not before court ; (4) that the petitioners have an alternative remedy ; and (5) that the 4th respondent is not amenable to writ jurisdiction -

Held :

(i) The affidavit filed by the Secretary and some of the members of the Association is to the effect that they are unable to maintain a telephone facility which has become a necessity in the present world because of ever increasing tariffs. It is evident that in the interest of the members of the Association and in the interest of the public in keeping with the objects of the Association the petitioner is questioning the legality of the tariff increase for the year 2003 approved by the 1st respondent in concurrence with the 2nd respondent ; the petitioner is not a busy body.

(ii) The Director General, Telecommunication (DGT) is not a necessary party. The DGT is a member of the 1st respondent Commission (TRC) and he functions subject to the general direction and control of the Commission ; he need not individually be made a party.

(iii) Whether the 4th respondent - Sri Lanka Telecom Ltd., is amenable to writ jurisdiction or not is not a relevant issue. The petitioner is only challenging the approval granted by the 1st and 2nd respondents (Minister of Mass Communication).

(iv) The publication in the newspapers of the proposed tariff increase is not a notification under Section 12 for public hearing and the publication does not call for any representations from the public. There was an alternate remedy to object to the tariff increase.

(v) Court cannot consider whether it is justifiable to grant a tariff increase in 2003 under the prevailing circumstances, as it is a factual assessment, but court can consider whether the approval granted by the 1st and 2nd respondents is *ultra vires* or not.

Preliminary objections overruled.

Held further :

(i) The final tariff revision approved on 27.07.2003, was in accordance with clause 18.3 of the shareholder agreement but not in conformity with the economic criteria laid down in condition 20.1 of the license.

(ii) The Minister's approval in tariff adjustments are related to the relevant years and such adjustments shall have effect from 1st January of the relevant year. Any tariff adjustment for the year 2002, should have been effected from 1st January, 2002. As the public has to be given prior notice on tariff adjustment it cannot be effective from a retrospective date and it has to be effected from a prospective date. Hence any proposal for a tariff adjustment for the year 2002 should have been made before the 1st of January 2002.

(iii) The Minister, the 2nd respondent or the 1st respondent (TRC) could not have approved the tariff adjustment as it cannot come into operation on the 1st of January of the year 2002 ; any adjustment in tariff after 05.08.2002 has to be in accordance with the license conditions 2001 and 2002.

Per Sriskandarajah, J.

"The 4th respondent (Sri Lanka Telecom Ltd.) - entitled for tariff adjustment without limitation under the shareholders agreement is

restricted for the five years commencing from 1998. If it has not utilized its entitlement within that stipulated period it cannot claim the said entitlement after the expiration of the said five year period".

(iv) The approval for tariff adjustment granted to the 4th respondent by the 1st respondent with the concurrence of the 2nd respondent on 27.08.2003, contravenes the economic criteria laid down in licence condition 20.1. Compliance with economic criteria is a mandatory requirement in granting approval to tariff adjustments.

APPLICATION for a writ of certiorari

Cases referred to :

1. *Premadasa* vs. *Wijewardena* (1991) 1 Sri LR 333 at 343
2. *Meril* vs. *Dayananda de Silva* (2001) 2 Sri LR at 41-42
3. *Longreve* vs *Home office* - 1996 QB. 623

Peter Jayasekara with *P. Liyanaratchi* and *Kosala Senadheera* for petitioner.

Sumathi Dharmawardena, State Counsel for 1st-3rd respondents.

Ronald Perara for 4th respondent.

Cur. adv. vult.

July 25, 2005

SRISKANDARAJAH, J.

This is an application for a writ of certiorari to quash the approval granted by the 1st and the 2nd Respondents to the 4th Respondent operator to increase tariff for the year 2003 as stated in P9, P9(a) to (d).

The Petitioner is an Association incorporated under the Companies Act, No. 17 of 1982, which seeks the welfare of the consumers. The 1st Respondent is a Statutory Institution vested with regulatory functions to regulate and control the Telecommunications Industry by virtue of powers vested on it by the Sri Lanka Telecommunication Act, No. 25 of 1991 as amended. The 2nd Respondent is the Minister in charge of the Ministry of Mass Media including the Telecommunications Industry and the 1st Respondent functions under the 2nd Respondent's Ministry.

The 1st, 2nd , 3rd and 4th Respondents raised the following preliminary objections to this application :

(a) The Petitioner has no *locus standi* to make this Application.

(b) In terms of Section 22 b of the Telecommunications Act, No. 25 of 1991 as amended, the Chief Executive of the 1st Respondent Commission is the Director General Telecommunications and the Petitioner has failed to make the said Director General Telecommunications as a party to this application. Hence a necessary party to this application is not made a party to this application.

I will deal with the above two preliminary objections first.

The Respondents submit that the Petitioner has no standing to make this application. The Petitioner instituted this proceeding as a corporate body namely "Consumers Association of Sri Lanka" an Association incorporated under the Companies Act, No. 17 of 1982 which can sue and be sued. The Secretary of the Petitioner Association in his counter affidavit has stated that the Petitioner Association is an Association of Consumers of Sri Lanka and it has filed this application of public interest and on behalf of its members. He claimed that the public as well as the members of the Petitioner's Association are unable to maintain a telephone facility, which has become a necessity in the present world, because of the ever-increasing tariffs. The Memorandum of Association of the Petitioner X2 has one of its Primary Objects in 3(1) as follows :

"To secure the maintenance and improvement of the standards of goods and services sold to the public and represent and protect the interest of the consumers in all fields in Sri Lanka and abroad including litigation for their rights."

The standing rules applicable to applications for prerogative writs have to be considered in the light of the developments taking place in the relevant laws. In *Premadasa v Wijeyawardena and others*[1] at 343 Thambiah J. after analyzing the recent statutory and other development that have taken place in England in regard to standing has observed that :

"The law as to *locus standi* to apply for certiorari may be stated as follows : the writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public he must have sufficient interest to make the application."

In recent years, the standing of persons who have a particular interest or grievance of their own over and above the rest of the community has

been progressively widened. In *Meril v Dayananda de Silva*[2] Gunawardana J. observed :

> "I strongly feel that.....denying *locus standi* to an applicant for judicial review for no better reason than that his interest or grievance is shared by many others in common with the applicant is as illogical and irrational as refusing to treat any one member of the public for a disease which has assumed proportions and has affected virtually the entire community".

On the question of standing of the Petitioner it is necessary to take note of the fact the affidavit filed by the Secretary and some of the members of the Association to the effect that they are unable to maintain a telephone facility, which has become a necessity in the present world, because of the ever-increasing tariffs. It is evident that in the interest of the members of this Association and in the interest of the public in keeping with the objects of the Association that the Petitioner is questioning the legality of the tariff increase for the year 2003 approved by the 1st Respondent in concurrence with the 2nd Respondent. Hence, the Petitioner Association cannot be named as a busy body interfering in the function of the Government or Institution established by law but they have an interest shared with the members of the public. Therefore, this court holds that the Petitioner has the necessary *locus standi* to make this application.

The 2nd preliminary objection is that the Director General Telecommunication is a necessary party to this application but he is not made a party. The Director General is appointed under Section 22B (1) by the relevant Minister as a staff of the Commission namely ; the Chief Executive Officer of the Commission. Subsection (2) of this section provides:

> "The Director-General shall, subject to the general direction and control of the Commission, be charged with the direction of the affairs and transactions of the Commission, the exercise and performance of its powers and duties and the administration and control of the employees of the Commission."

The Commission consists among others the person holding office as the Director-General. In this application, the 1st Respondent is the Commission. The Director-General is a member of the Commission and he functions subject to the general direction and control of the Commission ; hence he need not be individually made a party to this application.

For the above reasons the two preliminary objections raised by the Respondents are overruled by this Court.

The 4th Respondent in addition to the above preliminary objections raised several other preliminary objections. Namely, the 4th Respondent is not amenable to writ jurisdiction of this Court, the Petitioner has not availed itself of the alternate remedy and this Court cannot consider the correctness of the facts and figures relating to the fifth tariff revision.

The preliminary objection of the 4th Respondent is that the 4th Respondent is not amenable to writ jurisdiction, for the following reasons. That the 4th Respondent is a Public Limited Liability Company, the transaction between the Petitioner's members or the customers and the 4th Respondent are contractual in nature and the Petitioner has not demonstrated or established the existence of a statutory duty on the part of the 4th Respondent in respect of the relief claimed.

Whether the 4th Respondent is amenable to writ jurisdiction or not is not a relevant issue in this application. The Petitioner is only challenging the approval granted by the 1st and 2nd Respondents. Their decisions are amenable to writ jurisdiction. The 4th Respondent is made a party to this application as its rights are adversely affected if the relief of the Petitioner is granted and hence 4th Respondent is a necessary party to this application.

The 2nd preliminary objection is that the Petitioner has not availed itself of the alternate remedy by requesting for a hearing under Section 12 of the Sri Lanka Telecommunications Act, No. 25 of 1991 as amended.

The publication in the News Papers of the proposed tariff increase is not a notification under Section 12 of the said Act for public hearing and the publication marked P 11 does not call for any representation from the public. This publication is to fulfil the licence condition that notice of tariff increase have to be given to the general public. Therefore, this publication in News Papers cannot be considered as providing the public an opportunity to object to any tariff increase.

On the other hand, the Petitioner on its own motion had made a complaint and made representations to the 1st and 2nd Respondent by it's letter of 20.03.2003 marked P4 with copies to H. E. The President and Hon. Prime Minister. In that complaint the Petitioner has expressed its concerns of any tariff increase and has requested to give a hearing in the event SLT has asked for any increase in tariff and if the Commission is considering granting the same. However, the Petitioner submitted that no hearing was given to the Petitioner.

The 4th Respondent submitted that the 1st Respondent was correct in not holding an inquiry under Section 12. In terms of the Shareholders Agreement P9 (d) and the Amendments to the Licence P3a, the 1st Respondent is bound to approve tariff revisions submitted prior to 5th August 2002. The application for the current tariff revision was submitted by the 4th Respondent on 30th July 2002. Hence, the 1st Respondent has correctly decided not to hold an inquiry under Section 12.

In these circumstances, the preliminary objection that the Petitioner had an alternate remedy to object to the tariff increase cannot be accepted.

The 3rd preliminary objection of the 4th Respondent is that this Court in exercising writ jurisdiction cannot consider the correctness of the facts and figures relating to the fifth tariff revision. The Petitioner even though complains that there is no justification for the increase in tariff for the year 2003 for various reasons, which may involve in complicated question of facts, which this court cannot consider in this application. It has also sought to quash the approval granted by the 1st and 2nd Respondents to the 4th Respondent to increase the tariff for the year 2003 on the basis of ultra vires the powers of the 1st and 2nd Respondent as it violates the conditions of the licence. This Court cannot consider in this application, whether it is justifiable to grant a tariff increase in 2003 under the prevailing circumstances, as it is a factual assessment but this Court can consider whether the approval granted by the 1st and 2nd Respondents is ultra vires or not.

For the reasons stated above this Court overrules the preliminary objections raised by the 4th Respondent.

The Petitioner submitted that the Minister in charge of the subject of Telecommunications is authorized to issue license to operate a Telecommunication system in Sri Lanka on the recommendation of the 1st Respondent in terms of Section 17 of the Sri Lanka Telecommunications Act, No. 25 of 1991 as amended. Section 17(5) (c) provides that the licence shall set out the terms and conditions subject to which the license is being granted. The conditions that are to be included in the licence are provided in Subsection (7) of Section 17. One of the conditions that could be included in the licence is provided in Subsection (7) (k) of Section 17, *i.e.* –conditions specifying acceptable economic criteria in accordance with which the Commission shall approve tariff adjustments proposed by an operator. The Petitioner submitted that when the first licence was issued to Sri Lanka Telecom dated 08.08.1991 P2 in condition 20.1 thereof, the

1st and 2nd Respondents had prescribed that adjustment in tariffs shall be in accordance with the economic criteria of inflation.

On 5th August 1997, the Government of Sri Lanka and NTT Company of Japan entered into an agreement and NTT invested in the 4th Respondent. After the participation by the Japanese investor, the said licence had been modified and among other conditions, condition 20.1 of the said licence was modified as set out in the schedule to the 'Modifications to the Licence Granted to "Sri Lanka Telecom" dated 5th August 1997 P3.

The modification P3 provides as follows in its schedule at paragraph 4(7):

The following shall be inserted as Condition 20.4 of schedule 3 :–

"Conditions 20.1 and 20.2 will not come into force prior to 5th August, 2002 and the Operator shall be entitled prior to such date to propose any adjustment without limitation in tariffs as seen in its commercial judgement suited best to promote its objects and to fulfil the condition of its licence"

The Petitioner submitted that the above provisions suspended the economic criteria which was laid down in Conditions 20.1 and 20.2. The Petitioner further submitted that since 1998 the 4th Respondent with the approval of the 1st and 2nd Respondents had increased tariff four times *i. e.* in 1998 by 25%, 1999 by 25%, 2000 by 20% and in 2002 by 15%. When the 4th Respondent Company while promoting the initial public offer of its shares to the public has stated in newspapers and in the electronic media that it had earned over Rs. 3 billion as profits for the year 2003. The Petitioner submitted that its members came to hear various news reports that the 4th Respondent has again applied for a further increase in tariffs for the year 2003 hence the Petitioner association made representations to the 1st Respondent that it was opposing any further tariff increase by the 4th Respondent. The Petitioner association made this request trusting that the 1st Respondent under Section 12 or Section 9 of the said Act would consider their presentation. It has also requested the 1st Respondent to give the Petitioner Association a hearing in the event the 4th Respondent has asked for any increase in tariffs and if the 1st Respondent is considering granting the same. This request was acknowledged by the Director General of the 1st Respondent Commission by letter dated 27th March, 2003. A copy of the aforesaid letter of request of the Petitioner was sent to other authorities and in response to it the

Petitioner received a letter dated 08.04.2003 P6 from the Co-ordinating Secretary to the Honourable Minister for Consumers Affairs informing the Petitioner Association that its fears are adequately addressed on the directions of the Honourable Prime Minister.

The Petitioner submits that due to technological development in the world and in particular due to the revolution in information technology, the per line operating cost in the international telecommunications industry including in the SAARC countries is gradually decreasing at a rate of 10% annually. It also submitted the increase in per line usage has also increased approximately by 13% to 15% internationally and in Sri Lanka. These facts contribute for decrease in the tariff. Despite of this on the first week of August 2003 the members of the Petitioner Association came to know that the 1st and 2nd Respondents had approved the tariff increase requested for by the 4th Respondent. It subsequently came to know about a paper publication by the 4th Respondent outlining the increase in tariffs it would levy from 1st September 2003. The Petitioner submits that the increase in tariff approved in 2003 by the 1st and 2nd Respondents for the 4th Respondent is arbitrary, illegal, capricious, unreasonable, unfair and *mala fide*.

The 4th Respondent submitted that Sri Lanka is a member of the World Trade Organization (WTO) and as a result certain conditions are imposed on Sri Lanka. One of which was to have a cost based tariff structure for the telecommunications service as the tariff structure prevailing at that time subsidized the tariff for domestic calls through a high tariff for international calls. The relevant part of the WTO undertaking is marked 4R4; in terms of the said undertaking this Respondent was compelled to increase the tariff for domestic calls while the cost of international calls were reduced. In order to minimize the effect on the subscriber the tariff increase was spread over a period and done in stages. Thus, the total domestic revenue was planned to be increased in slabs of 25%, 25%, 20%, 15% and 15% per year as compared to the previous year over a five-year period starting from 1998. In a similar way the tariff for overseas calls were to be reduced over the same period. However due to delays in granting approval, the tariff revision due to be effected in 2001 was in fact effected only in 2002 and the tariff revision which was due to be effected in 2002 was effected in 2003.

The 4th Respondent submitted that the fifth tariff revision that is being challenged in this application was made on an application of the 4th Respondent to the 1st Respondent dated 31.07.2002 in terms of the license granted to it and the Telecommunications Act, No. 25 of 1991 as

amended. In terms of Condition 20.4 of Schedule 3 of the license as modified "Condition 20.1 and 20.2 will not come into force prior to 5th August 2002 and the operator shall be entitled prior to such date to propose any adjustment without any limitation in tariff as seen in its commercial judgment suited best to promote its objects and to fulfil the condition of its license". The 4th Respondent's position is that it has proposed tariff adjustments on 31.7.2002 *i. e.* before 5th August, 2002 hence the tariff adjustment is not subject to any limitation. In proof of this application, the 4th Respondent did not annex any document but annexed only an acknowledgement by the 1st Respondent dated 7.8.2002 marked 4R7. The 4th Respondent submitted that for this application of tariff adjustment the approval was duly granted by the 1st Respondent under and in terms of the Act and the license on or about 24.7.2003, 4R8. This Respondent further submitted that their net profits for the year 2002 was Rs. 2,681 million and for the year 2003 was Rs. 2,383 million and this Respondent has invested over Rs. 40 billion since 1997 for the development of telecommunication network and for the improvement of the services to subscribers 4R9 to 4R15.

The 1st, 2nd and 3rd Respondents submitted that in pursuant to the Shareholder's Agreement dated 5th August, 1997 entered into between the Government of Sri Lanka, Nipon Telephone Corporation of Japan and Sri Lanka Telecom Ltd., R 1, Conditions 20.1(a), 8(b) of the licence of the 4th Respondent was temporarily suspended. The governing criteria in case of tariff increase were set out in Clause 18.3 of the Shareholder's Agreement. Clause 18.3 of the Shareholder's Agreement mandates the Minister of Post, Telecommunications and Media to approve adjustments in the rates and amounts charged in the main tariff items for the year 1998 and 1999 by each not less than 25% (including inflation) year 2000 by not less than 20% and for years 2001 and 2002 by not less than 15%. On this basis the tariff revisions were determined by the 1st Respondent in consultation with the Minister. These Respondents further submitted that 11.5% was the final tariff revision which was approved by the 1st Respondent and communicated to the 4th Respondent on 24.07.2003 even though 4th Respondent requested for a 15% tariff increment. The said tariff increase was in respect of rental and installation charges. This tariff revision is beneficial to the operator and the Telecom industry as a whole and there is no significant disadvantage to a subscriber whose consumption is below 200 units, per month. These Respondents admit that the final tariff revision approved on 27.07.2003 was in accordance

with Clause 18.3 of the Shareholder's Agreement and not in conformity with the economic criteria laid down in Condition 20.1 of the licence.

Clause 18.6 of the Shareholder's Agreement provides that the provisions of Clause 18 shall have the same effectiveness as if they were fully set out in the Licence. Clause 18.3 reads as follows :

18.3 Notwithstanding anything contained in the Licence GOSL shall procure that for each of the five years commencing on 1st January 1998 the Minister of Posts, Telecommunication and the Media (or his successor) shall approve an adjustment in the rates or amounts charged for the Main Tariff items which will have the effect that the total revenue generated by the SLT from the Main Tariff items, based on the number of subscribers, the number of domestic calls and the number of connections in the immediately preceding year, shall increase :-

(a) for each of the years 1998 and 1999, by not less than 25% (Including inflation) ;
(b) for the year 2000, by not less than 20% (Including inflation) ;
(c) for each of the years 2001 and 2002 by not less than 15% (Including inflation).

provided that :

(i) such adjustment shall have effect from 1st January in the relevant year ;
(ii) .....
(iii) .....
(iv) .....

By the Modification of Licence P3 dated 5th August 1997 Conditions 20.1 and 20.2 of the Licence which stipulates criteria for adjustment in Main Tariff Items were suspended until 5th August 2002. By Clause 18.3 of the Shareholder's Agreement which is made part and parcel of the License, a different criteria was introduced for adjustment in the rates or amounts charged for the Main Tariff items for each of the five years commencing from 1st January 1998. It also provides that the Minister of Posts, Telecommunication and the Media (or his successor) shall approve an adjustment in the rates or amounts charged for the Main Tariff Items as per the percentage of increase specified for the each of the five years. Clause 18.3 further provides that such adjustment shall have effect from 1st January in the relevant year. It is evident from these provisions that

the Conditions 20.1 and 20.2 of the licence is suspended only for five years and the operator was given an opportunity to propose any adjustment without limitation in tariff within that five years. Even if the operator proposes adjustments without limitation at any time within the said five year period the Minister shall approve an adjustment subject to the limitation set out of each year in Clause 18.3 of the Share holder's Agreement. Accordingly, the Minister's approval in tariff adjustments are related to the relevant years and such adjustment shall have effect from 1st January in the relevant year. Therefore, any tariff adjustment for the year 2002 should have been effected from 1st January 2002. As the public has to be given prior notice on tariff adjustment it cannot be effected from a retrospective date and it has to be effected from a prospective date hence any proposal for a tariff adjustment for the year 2002 should have been made before the 1st of January, 2002 and approved. The position of the 4th respondent is that he made a proposal for tariff increase for the year 2002 on 31st of July 2002. A copy of this proposal is not annexed to the 4th Respondent's affidavit but the Counsel admitted that the proposal contains a tariff adjustment which is not in terms of the Condition 20.1 of the Licence. He submitted that the 4th Respondent is entitled to propose any adjustment without limitation before 5th August, 2002. The approval for tariff adjustment was granted by the 1st Respondent based on two letters of the 4th Respondent dated 31st July 2002 and 27th January, 2003 Copies of these letters are neither annexed to the affidavit of the 4th Respondent nor to the other Respondents. Therefore, the Court is not in a position to ascertain which of these letters contained the actual proposal for a tariff revision. It is significant for the reason that no unlimited proposal for tariff revision could be made after 5th August, 2002. Whatever it may be the approval of the Tariff revision was granted by the 1st Respondent on 24.07.2003 4R8 and directed to implement this revision after giving 30 days notice to its customers. After giving 30 days notice this revision came into effect from 1st September 2003. The approval letter of 4R8 has a caption "Fifth Tariff Re-balancing" but it does not refer to the year. The Respondents submitted that the fifth tariff re-balancing refers to the tariff revision provided for the year 2002 in Clause 18.3 of the Shareholder's Agreement. If that position is correct then the Minister the 2nd Respondent or the1st Respondent could not have approved this tariff adjustment as it cannot come into operation on the 1st of January of that year (2002) as provided by the 1st proviso to Clause 18.3 of the said agreement and on the other hand it is

very much after the 5th August, 2002. By this time the suspension on the licence Condition 20.1 and 20.2 has been lifted and it is in full force. Therefore, any adjustment in tariff after 5th August, 2002 has to be in accordance with the Licence Condition 20.1 and 20.2. These conditions provide :

20.1 The operator shall be entitled to propose such adjustments in tariffs as seen in its commercial judgment suited best to promote its objects and to fulfil the conditions of its Licence. These adjustments in tariffs shall be in accordance with the following criteria :

(a) With respect to Main Tariff Items :

(i) the rate of aggregate increase may be equal to or less than the rate of inflation less two (2) percentage points over the period since the previous adjustment in Main Tariff Items ;

(ii) the rate of aggregate increase shall be determined by calculating the percentage increase in total revenue from the Main Tariff Items which would result from the proposed adjustments in tariff to any item therein as specified in (iii) below on the assumption that the numbers of subscribers and the domestic calls and the relevant composition thereof (call mix) are held constant ;

(iii) the operator shall be entitled to propose different rates or amounts for any item comprised in the main Tariff Items provided that the aggregate increase does not exceed the increase specified in Sub-paragraph (i) as calculated in Sub-paragraphs (ii) and (iv) and provided that no item may be increased by more than the rate of inflation ;

(iv) the rate of inflation specified in Paragraph (i) shall be the percentage increase in the level of Colombo Cost of Living Index between the last month of publication prior to the date of the proposed adjustment in Main Tariff Items and the month of publication of equivalent interval of elapsed time prior to the date of the previous adjustments in Main Tariff Items, provided that in the case of the first proposed adjustment, the date on which this licence enters into force shall be deemed to be the date of the previous adjustment in Main Tariff Items.

(b) .....

(c) .....

20.2 If the rate of inflation has been negative for any twelve months period following a change in Main Tariff Items, the Authority may require the operator to propose changes in tariffs such that the rate of decrease in Main Tariff Items is equal to or greater than the rate of deflection over a period since the previous adjustment in Main Tariff Items.

20.3 In this Condition –

"Main Tariff Items" mean business rentals, domestic rentals and call charges excluding international call charges.

The Counsel for the Respondents submitted that the approval granted by the 1st Respondent by 4R8 is not in conformity with or under Condition 20.1 of the Licence but it was granted in lieu of the tariff adjustment the 4th Respondent is entitled for the year 2002 during which year the Licence Condition 20.1 was suspended. The 4th Respondent's entitlement for tariff adjustment without limitation under the Shareholder's Agreement is restricted for the five years commencing from 1998. If it has not utilised its entitlement within the stipulated period it cannot claim the said entitlement after the expiration of the said five-year period. For the reason that the suspension of licence conditions are lifted after the said five years and the Licence Conditions are in force, they impose limitation on tariff adjustments. The unlimited tariff adjustment for the year 2002 under Clause 18.3 should have come into effect from the 1st January of the year 2002 but in any event, it cannot come into effect on 1st September, 2003 as it contravenes Condition 20.1 (the economic criteria) of the licence. As provided by Section 17(7) (k) of the said Act, economic criteria is laid down in Condition 20.1 and 20.2 of the licence in accordance with the Commission shall approve tariff adjustments proposed by the operator. The approval for tariff adjustment granted to the 4th Respondent by the 1st Respondent with the consultation of the 2nd Respondent on 24.07.2003 4R8 contravenes the economic criteria laid down in Licence Condition 20.1. Compliance of economic criteria is a mandatory requirement in granting approval to tariff adjustments. Hence the approval granted by 4R8 is unlawful.

The Counsel for the Respondents invited the court to take into consideration the effect of granting relief to the Petitioner by quashing the tariff increase effected on 1st September, 2003. Over 870,000 customers

have paid the revised tariff rates to the 4th Respondent and 4th Respondent has paid tax to the Government from the amount charged from the customers from 1st September, 2003 to date and this will have serious consequences. The court also has to take into consideration that the Petitioner has filed this application in October 2003 and sought an interim order staying the implementation of the increased tariff. In a comparable situation in an English case, *Congreve v Home Office*[3] the Home Office had issued many thousands of demands and had to undertake a big operation to repay money unlawfully received. In this case, the increase in licence fees took effect on a fixed date and it was in no way unlawful for a licence-holder to obtain a licence during the currency of their previous licence in order to avoid the sharp increase in the licence fees before that date at a lower fee. The Home Office had no power to prevent this, but they tried to enforce a policy of exacting a higher fee by resorting to their power to revoke licence. Lord Denning MR said ;

> "But when the licensee has done nothing wrong at all, I do not think the Minister can lawfully revoke the licence, at any rate, not without offering him his money back and not even then except for good cause. If he should revoke it without giving reasons, or for no good reasons, the court can set aside his revocation and restore the licence. It would be a misuse of power conferred on him by Parliament ; and these courts have the authority-and, I would add, the duty-to correct a misuse of power by a Minister of his department, no matter how much he may resent it or warn us of the consequences if we do.".

For the reasons stated above this Court issues a writ of certiorari quashing the approval of the 1st Respondent to the 4th Respondent to increase tariffs by its letter of 24.07.2003 and the Court allows this application without cost.

IMAM, J. – I agree.

Application allowed.

AMEER ALI AND OTHERS
VS
SRILANKA MUSLIM CONGRESS AND OTHERS

SUPREME COURT,
S. N. SILVA, CJ,
JAYASINGHE, J,
UDALAGAMA, J,
DISSANAYAKE, J AND
FERNANDO, J,
SC (EXPULSIONS) NO. 2/2005 WITH SC (EXPULSIONS) NOS 3 AND 4/2005
31ST MAY AND 3RD AND 7TH JUNE, 2005.

Constitutional Law- Article 99(13) (a) of the Constitution - Explusion from political party - Mala fides, bias and failure of natural justice - Invalidity of expulsions - Policy of SLMC- Alleged failure to sign a pledge of loyalty to SLMC and its leader - Burden of proof to adduce evidence to support allegations against petitioners.

The petitioners in Applications Nos. 2 and 3/05 contested the Parliamentary elections as SLMC candidates and were elected to the Batticaloa and Trincomalee Districts respectively. The petitioner in Application No. 4/05, a SLMC member contested the Wanni District as a UNP candidate and was elected as Member of Parliament for that District, in terms of an electoral pact between the SLMC and the UNP.

The petitioners supported the then President's National Advisory Council for Peace and Reconciliation and were appointed Project Ministers for Batticaloa, Trincomalee and the Wanni Districts respectively. This resulted in a letter by the 3rd respondent, Secretary, SLMC addressed to the petitioners calling upon them to sign a pledge of loyalty to the SLMC and its leader (the 2nd respondent) and the High Command, and to follow their policies and directions. The petitioners severely criticized the leader and the party for not joining the peace process to the detriment of Muslims.

Consequently, the 3rd respondent informed the petitioner that disciplinary action will be taken against the petitioners. The 2nd respondent denied the allegations against the SLMC and threatened disciplinary action against the petitioners. The allegations by the petitioners against the SLMC included criticism for signing an amended electoral pact witht the UNP and allowing three SLMC members to join the UNP.

In the absence of clarification as to who was the disciplinary authority, whether it was the High Command of the politbureau as asserted by the 3rd respondent and criticism against the SLMC and its leader, the petitioners refused to attend an inquiry at a hotel and were summarily expelled from the SLMC by the High Command by letter dated 04.04.2005, and without hearing them.

Held :

Notwithstanding a purported withdrawal of the letters of expulsions by the 3rd respondent on 28.05.2005 whilst the petitions were pending -

(a) The Supreme Court had jurisdiction to determine the validity of expulsions ;
(b) The expulsions were contrary to natural justice, mala fide and ultra vires the SLMC constitution ;
(c) Minutes of the meetings of the High Command and polibureau were not produced in evidence. The burden of producing such evidence was on the respondents;
(d) The expulsion of the petitioner in Application No. 4/05 based on his purported expulsion from the UNP was invalid ;
(e) expulsions of the petitioners from their political party were invalid;
(f) a Member of Parliament cannot be expelled from his party save on cogent grounds which are beyond doubt, in the public interest. The benefit of the doubt will be resolved in favour of the Member.

Cases referred to :

1. *Tilak Karunaratne* v. *Sirimavo Bandaranaike* (1993) Sri LR 91
2. *Gamini Dissanayake* v. *M. C. M. Kaleel and Others* (1993) 2 SriLR 135, 234

APPLICATIONS challenging expulsions from party.

D. S. Wijesinghe, P. C. with *Sanjeewa Jayawardena*, *Priyanthi Goonaratne*, *Kaushalya Molligoda* and *M. I.M. Azver* for petitioners in Application Nos. 2/ 2005 and 3/2005

Wijayadasa Rajapase, P. C. with *Kapila Liyanagamage* and *Rasika Dissanayake* for petitioner in Application No. 4/.2005

Romesh de Silva, P. C. with *Harsha Amarasekera* for 1st and 2nd respondents in Application Nos. 2, 3 and 4/2005.

Ikram Mohamed, P. C., with *A. A. M. Illias*, *Nizam Kariapper* and *Padma Bandara* for 3rd respondent in Application Nos. 2, 3 and 4/2005

K. N. Choksy, P. C. with *L. C. Seneviratne*, P. C. *Daya Pelpola*, *S. J. Mohideen*, *Ronald Perera* and *Shamila Amarawickrema* for 4th, 5th and 6th respondents in SC Application No. 4/2005.

I. Demuni de Silva, Senior State Counsel for 4th and 5th respondents is SC Application Nos 1 and 3 of 2005 and for 7th and 8th respondents in SC Application No. 4/2005

Cur.adv.vult.

1st July 2005

JUDGMENT OF THE COURT

The Petitioner in application No. 2/2005 has been a member of the 1st Respondent Party (SLMC). He contested the general election held in April 2004, as a candidate nominated by the SLMC and was the only nominee of the Party to be returned as a Member of Parliament for the Batticaloa District.

The Petitioner in application No. 3/2005, has been a member of the SLMC and contested the general election held in April 2004, as a candidate nominated by the party and was returned as a Member of Parliament for the Tricomalee District.

The Petitioner in application No. 4/2005 has been a member of the SLMC and was a nominee of the United National Party at the general election in April 2004, for the Wanni District. His name was included in the nomination paper of the United National Party on the basis of an electoral agreement with the SLMC and was returned as a Member of Parliament.

The three Petitioners have been expelled from the SLMC by letters dated 4th April 2005, sent by the 3rd Respondent, being the Secretary General of the Party. SInce the expulsions were effected by letters bearing the same date and in view of the similarity in the relevant facts and circumstances, it was decided to hear these matters together.

These Petitioners have filed applications in terms of the proviso to Article 99 (13) (a) of the Constitution seeking declarations from this Court that their respective expulsions from SLMC and in the case of the Petitioner in application No. 4/2005, the consequential expulsion from the United National Party, are invalid and that the seats held by them in Parliament have not become vacant consequent to such expulsions.

The circumstances leading to the impugned expulsions are similar in respect of all three applications. The Petitioners contend that they had serious differences of views in regard to the manner in which the Members elected from the SLMC should conduct themselves in Parliament, with the 2nd Respondent, being the Leader of the Party. The charges on which the expulsions were made have a direct bearing on these differences.

According to the sequence of events the first incident relevant to the expulsions is a letter dated 5.10.2004, sent by the General Secretary of the Party requesting the Petitioners to sign a pledge in the specimen form that was annexed, declaring loyalty and total allegiance to the Party, to its Leader and the High Command. The pledge also required the person to follow *inter alia* the policies and directions of the Leader and the High Command.

The Petitioners refused to sign the pledge and when they were called for explanations wrote letters dated 13.11.2004, stating, inter alia, that the requirement to sign the pledge is ultra vires the Constitution of the Party and they also raised questions as to whether three members of the Party were permitted to take membership of the United National Party, prior to their being nominated as Members of Parliament.

In the interim period the Petitioners wrote a joint letter dated 25.10.2004, to the Leader of the Party (P7) setting out serious criticisms of the conduct of the Leader in relation to the interests of the Party and of the Muslim community who have reposed confidence in the Party. In particular they criticized the decision of the Leader in not attending the meeting of the National Advisory Council for Peace and Reconciliation (NACPR) convened by Her Excellency the President to bring about a national consensus to achieve a just and durable solution to the ethnic problem that has devastated the country for more than two decades. They alleged that the failure of the Leader to cooperate in the national endeavour will have a serious impact on the interests of the Muslims of the North and East, who have been languishing in abject poverty and destitution in refugee camps for several decades. Further, that the mandate they received at the election was to make use of every opportunity to work towards a viable solution that would encompass the just and reasonable aspirations of the Muslims of the North and East. Accordingly, they informed the Leader that they would extend their fullest support to the Government in its endeavour to find a lasting solution to the problems identified by them which will benefit the Muslims in particular and the country at large, in general.

Shortly thereafter the 3 Petitioners were appointed as Project Ministers for Rehabilitation and Development for the Batticaloa, Trincomalee and Wanni Districts, being the three Districts from which they have been elected.

The reply of the Leader to the Party is contained in a single letter dated 05.11.2004, addressed to all three Petitioners, the contents of which would be referred to later.

The Petitioners thereafter received letters dated 19.11.2004 that were similary worded, requiring them to show cause as to why disciplinary action should not be taken against them, inter alia for any one or more of the following, summarized as follows :

(a) failure to sign the pledge of allagiance to the Party and to the Leader;
(b) the acceptance of the post of Project Minister ;
(c) The active support extended to the Government;
(d) joining the ranks of the Government Members in Parliament

The letters have been signed by the General Secretary and state that the action is taken on a decision of the High Command.

The Petitioners were requested to show cause on or before 30.11.2004, and be present at a meeting of the High Command to be held at the headquarters of the Party on 09.12.2004.

The Petitioners responded by letter dated 29.11.2004, requesting time to answer and were granted an additional 10 days time and were required to be present at the meeting of the High Command scheduled for 09.12.2004.

The Petitioners replied to the charges by letter dated 07.12.2004, denying the allegations and setting out most of the facts and circumstances included in the letter previously addressed to the Leader referred to above. They further stated that there is no validly constituted High Command in force and accused the General Secretary who wrote the letter that he would be liable to be dismissed from the Party in view of his signing the amended electoral agreement with the United National Party which had been disputed by the Petitioners in their previous correspondence.

By letter dated 20.12.2004, the Secretary General, disputed the contents of the reply and informed the Petitioners that they could present their case to the High Command and requested that a date be nominated in the month of January, on which date the matter would be heard at one of the Hotels that were specified.

It appears that no further action was taken in the matter until March 2005, when letters dated 01.03.2005, was received by the Petitioners, signed by the Secretary General who informed them that the Politbureau

will go in to the show cause notice at a meeting on 12.03.2005 to be held at the Earls Court, Trans Asia Hotel at 5.00 p.m. The Petitioners were requested to be present. Another letter was received by the Petitioner bearing the same date sent by the Secretary General requesting the Petitioner to be present on Sunday 13th March at 5.00 p. m. at the same venue for a meeting of the High Command and at which meeting the High Command will go into the show cause notice that had been issued.

The Petitioners replied by letters dated 11.03.2005, referring to the two sets of Inquiries to be held by two bodies of the 1st Respondent party and stated that they were puzzled as to how they have been summoned to face two disciplinary inquiries on two successive dates in respect of allegations set out in one show cause notice The Petitioners sought specific clarification as to which particular body would seek to exercise disciplinary control. Thereupon letter dated 14.03.2005 was sent by the General Secretary to the Petitioners requiring them to be present at a meeting of the High Command to be held on 23.03.2005 at the Hotel specified above at 7.00 p.m.

The Petitioner responded by letter dated 21.03.2005, stating that the General Secretary has failed to clarify the several fundamental issues raised in letter dated 14.03.2005, and as such would not attend the meeting of the High Command on 23.03.2005. Thereupon the 2nd Respondent notified the expulsion of the Petitioners by letter dated 04.04.2005, referred to above. It is claimed that the decision for expulsion has been taken at the meeting of the High Command said to have held on 23.03.2005.

The Petitioners have challenged the expulsions on the following grounds :

(a) that the decisions for expulsion have been made in violation of the principles of natural justice, without affording a proper hearing to the Petitioners at a time when they had raised serious issues as to the particular body of the party that could exercise disciplinary control;

(b) that there are no grounds for the expulsion of the Petitioners, since they have acted at all times in the best interests of the SLMC, its collective membership and in keeping in mind the interests of the Nation;

(c) that the expulsions were mala fide and intended to victimize the Petitioners ;

(d) that the expulsions lack bona fides, since 3 members of the Party have been permitted to take membership of the United National Party, in violation of the Constitution of the 1st Respondent party.

(e) that the decisions have been activated through bias arising from differences within the Party by a group hostile to the Petitioners.

After this Court issued notice on the Respondents and when pleadings were completed, by letter dated 28.05.2005, addressed to the respective Petitioners, General Secretary of the Party stated that the High Command has taken into consideration the statements in the affidavits filed in Court and since the Petitioners have taken up the position that they were not afforded a hearing prior to adopting the extreme measure of expulsion, the High Command has decided to withdraw the expulsions communicated by letter dated 04.04.2005 in order to give a further opportunity to present their position before the Party. The withdrawal of the expulsions has also been communicated by letter bearing the same date to the Secretary General of Parliament.

Counsel for the 1, 2 nd and 3rd Respondents, being the Party, its Leader and Secretary General, submitted that since the expulsions have been withdrawn it is unnecessary for this Court to make any decision as to the validity of the expulsions and that the proceedings should be accordingly terminated. On the other hand, the Petitioners contended that the withdrawal of the expulsions is conditional and restricted only to one of the grounds on which the expulsions have been challenged before this Court, namely the failure to comply with the principles of natural justice. The Petitioners contended that this Court should hear and determine the matter in its entirety.

In terms of Article 99(13) (a) of the Constitution, where a Member of Parliament ceases by expulsion to be a member of a recognized party on whose nomination paper, his name appeared at the time of becoming such Member of Parliament,his seat becomes vacant upon the expiration of a period of one month from the date of his ceasing to be such member. The proviso to the Sub-article states that the seat will not become vacant if prior to the expiration of one month the member applies to the Supreme Court and this Court detemines in such application that the expulsion was invalid. It is to be noted that the withdrawal of the expulsion by the 3rd Respondent on behalf of the 1st Respondent party was done on 28.05.2005, after a period of one month had elapsed from the date of the impugned expulsions. Thus the withdrawal was done at a time when this Court was

seized with the matter and in terms of the proviso the seat will not become vacant only if this Court makes a determination that the expulsion is invalid. Accordingly the withdrawal by the 3rd Respondent does not *per se* result in a position where the expulsions become invalid and the Petitioners are correct in requesting a determination to be made by Court as to the invalidity of their expulsions.

The Petitioners submitted the letter seeking to withdraw the expulsions on the alleged non-compliance with principles of natural justice in arriving at a decision to expel the Petitioners, and this should be taken as a concession on the part of the 1st, 2nd and 3rd Respondents of this ground of invalidity.

The sequence of events outlined above reveals that serious differences of views had arisen between the Petitioners, who were elected from 3 different Districts, presumably on the basis of the support extended by the voters of the respective Districts to the cause of the 1st Respondent party and their personal preference of the respective Petitioners as candidates most suited to serve their needs on the one hand and, the Leader of the Party on the other.

The long letter dated 25.10.2004 addressed by the Petitioners collectively to the Leader, the contents of which have been referred to above clearly state the concerns of the Petitioners from a perspective of what should be the policy of the party in relation to the ethnic issue and the serious adverse impact it has on the Muslims in the North and East. They have expressed serious concern as to the stand taken by the Leader on these issues and indicated that they would support the Government to serve the cause of the Muslims and their electorates best. This Court cannot in any way decide on the correctness of the matters stated by the Petitioners in their letter. Suffice it to state for the purpose of these applications, that the matters raised by the Petitioners relate to questions of policy to be decided by the Party in the interests of the Party and its voters. We have to note that there is no element of personal acrimony disclosed in the letter sent collectively by the Petitioners to the Leader.

The reply of the Leader dated 05.11.2004, on the other hand, commences on a note of hostility with the opening paragraph which reads as follows :

"I wish to deny all the assertions, comments and allegations contained in the said letter under reference, since they are false and made with an