SARATH AMUNUGAMA AND OTHERS

v.

KARU JAYASURIYA, CHAIRMAN, UNITED NATIONAL PARTY AND OTHERS

SUPREME COURT
AMERASINGHE, ACTG. CJ.,
BANDARANAYAKE, J. AND
ISMAIL, J.
SC SPL.(E) NO. 4/99 WITH
SC SPL.(E) NO. 5/99
SC SPL.(E) NO. 6/99
SC SPL.(E) NO. 7/99
SC SPL.(E) NO. 8/99
26TH AND 27TH JANUARY, 2000

Expulsion of members of a recognized political party who are Members of Parliament - Article 99(13)(a) of the Constitution - Validity of the expulsion - Procedural justice - Audi alteram partem rule.

Five petitioners (whose cases were heard together) were Members of Parliament representing the United National Party which is a recognized political party. They were summarily expelled from the membership of the Party on a decision of the Working Committee of the Party. The immediate ground of expulsion was that the petitioners had met President Chandrika Bandaranaike Kumaratunga and assured her of winning the Presidential Election 1999 when in fact the United National Party had nominated its leader Ranil Wickremasinghe as a candiate at that Election. Two more allegations made especially against petitioner Amunugama were (1) announcing to the national media about the formation of a national government without a mandate from the Party and (2) that he had told the BBC that he would leave the UNP if the Party failed to respond to his national government concept.

No explanations were called for from the petitioners, no charge sheets were served and no inquiry was held giving an adequate opportunity to the petitioners to defend themselves. The Working Committee took the decision for immediate expulsion on the basis that the petitioners' conduct adversely affected the election campaign, much damage had been done to the Party and an urgent decision had to be taken to protect the welfare of the Party and to ensure the unity of its members.

Held :

1. There was no mandatory requirement that disciplinary proceedings shall only be conducted by a Disciplinary Committee (other than the Party Working Commitee) appointed by the Party Working Committee.

2. There was no justification for the failure of the respondents to observe the principles of natural justice and grant the petitioners a hearing before they were expelled. The expulsions of the petitioners were, therefore, invalid.

Per Amerasinghe, Actg. CJ.

"I am of the view that the respondents have failed to establish that the expulsions fell within the category of extraordinary, urgent circusmtances recognized by courts of law."

Cases referred :

1. *Gamini Dissanayake v. M.C.M. Kaleel and Others* (1993) 2 Sri LR 135, 155-164, 186
2. *Stevenson v. United Road Transport Union* (1997) 2 ALL E.R. 941, 951
3. *Lau Liat Mena v. Disciplinary Committee* (1968) A.C. 391
4. *Board of Trustees of Maradana Mosque v. Badi-ud-din Mahmud, Minister of Education* (1967) 1 A.C. 13; (1966) 68 N.L.R. 217
5. *Hanson v. Church Commissioners for England* (1978) Q.B. 823, 838
6. *R v. Thames Magistrates' Court, ex p. Polemis* (1974) 1 W.L.R. 1371, 1375, 1378.
7. *R v. Pharmaceutical Services Committee ex. p. Gordon D. Conway Ltd* the Times, November 7, 1970.
8. *Morris v. Lawrence* (1977) R.T.R. 205
9. *Russel v. Duke of Norfolk* (1949) 1 ALL E.R. 109, 118
10. *R. v. Secretary of State for the Home Department, ex p. Doody* (1994) 1 A.C. 531, 560, 563
11. *Premaratne v. Srimani Athulathmudali and others S.C.* (SPL) 1/96 S.C. Determination of 27 February 1996
12. *Ridge v. Baldwin* (1964) A.C. 40
13. *A.G. v. Ryan* (1980) A.C. 718
14. *Abbott v. Sullivan* (1952) 1 K.B. 189,198
15. *Cooper v. Wandsworth Board of Works* (1863) 14 C.B. (N.S.) 180

16. *R v. Chancellor of the University of Cambridge* (1723) 1 Str. 557, 567
17. *R v. Justices of West Riding of Yokshire, ex p. Thornton* (1837) 7 Ad. on E. 583, 589
18. *R v. Wilson* (1835) 2 ad. on E. 817, 826
19. *Wood v. Wood* (1874) L.R. 9 Ex 190, 196
20. *Board of Education v. Rice* (1911) A.C. 179, 182
21. *R v. Leman Street Police Station Inspector, ex p. Venicof* (1920) 3 K.B. 72
22. *Nakkuda Ali v. Jayaratne* (1950) 51 NLR 457; (1951) A.C. 66
23. *Hounslow L.B.C. v. Twickenham Garden Developments* (1971) Ch. 233, 258
24. *R v. Aston University Senate ex p. Roffey* (1969) Q.B. 538, 552
25. *John v. Rees* (1970) Ch. 345, 382, 402
26. *General Medical Council v. Spackman* (1943) A.C. 627, 644
27. *Ramamoorthy and Rameshwaran v. Douglas Devananda and Others* (1998) 2 Sri LR 278, 285
28. *Anamunthundo v. Oilfield Workers Trade Union* (1961) A.C. 945, 956
29. Chief Constable of Police v. Evans (1982) 1 W.L.R. 1155, 1160
30. *R v. Secretary of State for the Environment, ex p. Brent* L.B.C. (1982) Q.B. 593, 734
31. *R v. Secretary of State for Education, ex p. Prior* (1994) C.R. 877
32. *R v. Sussex JJ., ex p. Mc Carthy* (1924) 1 K.B. 256, 259
33. *Altco Ltd v. Sutherland* (1971) 2 Lloyd's Rep. 515
34. *Maxwell v. Department of Trade* (1974) 1 Q.B. 523, 540
35. *Fullbrook v. Berkshire Magistrates' Courts Committee* (1971) L.G.R. 75, 97
36. *Scott v. Aberdeen Corporation* (1976) S.L.T. 141
37. *Council of Civil Service Unions v. Minister for the Civil Service* (1985) A.C. 374
38. *Lloyd v. McMahon* (1987) A.C. 625, 702
39. *Durayappah v. Fernando* (1966) 69 NLR 265, 267 (1967) 2 A.C. 337, 345
40. *Pratt v. Wanganui Education Board* (1977) 1 N.Z.L.R. 476, 485
41. *Earl v. Slater & Wheeler (Airlyne) Ltd.* (1973) 1 W.L.R. 51
42. *Tilak Karunaratne v. Mrs Sirimavo Bandaranaike and Others* (1993) Sri L.R. 90

APPLICATION in terms of Article 99(13)(a) of the Constitution challenging expulsion from the United National Party.

E. D. Wickremanayake with *Gomin Dayasiri, Nigel Hatch* and *U. Abdul Najeem* for the petitioners in Nos. 4 - 7/99.

D.S. Wijesinghe, P.C. with *Asoka Somaratne, Dr. Jayamapthy Wickremaratne* and *C. Samaranayake* for the petitioner in No. 8/99.

Tilak Marapana, P.C. with *Dulinda Weerasuriya, Nalin Ladduwahetty, Jayantha Fernando, Anuja Premaratne, Dhammika Jayanetthi* and *Janaka Marapana* for 1st to 4th respondents in Nos. 4 and 7/99.

Shibly Aziz P.C. with *Daya Pelpola, S.J. Mohideen, A.P. Niles, R.L. Perera, Ronald Perera* and *S. Dayaratne* for the respondents in Nos. 5 - 6/99.

Daya Pelpola with *Anil Rajakaruna, Luxman Perera* and *Ronald Perera* for respondents in No. 8/99.

Cur. adv. vult

3rd February, 2000

AMERASINGHE, ACTING C.J.

It was agreed by the Counsel for the petitioners in this matter that all five cases should be heard together since they essentially related to similar issues.

The fifth respondent is the Secretary-General of Parliament and has been made a party for the purposes of notice only. A reference to "respondents" hereinafter means and includes only the 1st to 4th respondents.

The petitioners are Members of Parliament. They were members of the United National Party, a recognized political party. At the time of becoming Members of Parliament their names appeared on the nomination papers of the United National Party. In a letter dated the 8th of November 1999, the General Secretary of the United National Party (the second respondent) wrote to each of the petitioners as follows:

"The Working Committee of the United National Party at its meeting held on 21st October 1999 having considered the Proclamation issued by H. E. the President under Art.31

(3A)(a)(i) of the Constitution declaring her intention of appealing to the People for a mandate to hold office by election for a further term, decided to oppose the mandate so sought, by nominating a candidate to contest at the said election with a view to securing the election as President of Sri Lanka a member of the United National Party.

The Working Committee further resolved that the Leader of the Party Hon. Ranil Wickremesinghe MP, should be the Party's candidate.

The aforesaid decisions of the Party Working Committee were ratified at a Special Convention of the Party held on 31st October 1999 and also by the Party Parliamentary Group and received publicity in the print and electronic media.

The Working Committee at its meeting held today (8th November 1999) at 9.00 a.m., took note of the fact that you have nevertheless, without prior authority or sanction of the United National Party, attended a meeting at Temple Trees on 5th November 1999 at which were present H. E. Chandrika Bandaranaike Kumaratunga (who is the rival Presidential candidate of the People's Alliance) and several of her Party colleagues. At this meeting you signified your intention and willingness to support her candidature at the forthcoming election as against that of our Party candidate. You had also participated in discussion of policy issues such as formation of a national government without prior discussion within or a mandate of the Party.

The said meeting and your presence and the statements thereat and the pledge to support her as against the Party's candidate received wide publicity in the daily press, the state controlled electronic media as also other electronic media.

The Working Committee notes additionally that you have acted as above despite your being a United National Party Member of Parliament . . .

Your aforesaid conduct is a serious and flagrant violation of Party loyalty and discipline and a violation of your duty to act according to and uphold the Constitution of the United National Party.

In view of the above, the Working Committee of the Party at its said meeting held today and acting under the powers vested in it under Article 6.3(a) read with Article 7.15 of the Constitution of the United National Party resolved that you be expelled with immediate effect from membership of the Party in as much as your aforesaid conduct is a gross violation of the provisions of Articles 3.3(a), (b), (c) and (d) read with Article 2.1 and 2.2 of the Constitution of the Party."

On the 6th of December 1999, three of the petitioners filed applications (E) 4/99 - (E) 7/99 in the Supreme Court in terms of Article 99(13)(a) of the Constitution. On the 7th of December 1999, the fourth petitioner filed a similar application (E) 8/99.

Article 99(13)(a) of the Constitution states as follows :

"Where a Member of Parliament ceases by resignation, expulsion or otherwise to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, 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 Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that expulsion was valid the expulsion shall occur from the date of such determination."

The petitioners pray that the Court declares their expulsion from the membership of the United National Party invalid and of no legal effect; sets aside the order and/or decision of the Working Committee of the United National Party expelling them from the Party; and declares that the petitioners remain members of the United National Party.

The reliefs claimed are based, among others, on the averment that the expulsions were in contravention of the mandatory provisions of the Party Constitution and/or Disciplinary Rules of the Party. The petitioners allege that:

(i) although under the Party Constitution the Working Committee mandatorily has to appoint a disciplinary committee to inquire into allegations of misconduct or indiscipline against party members, and it is only such a committee that could conduct any inquiry into any allegations of misconduct or indiscipline, no notice of the appointment of such a commitee was given, and in fact no such committee was appointed;

(ii) they were not notified that complaints had been made against them and/or that disciplinary proceedings had been initiated against them;

(iii) no explanation was called for from the petitioners;

(iv) no charge sheet was served on them;

(v) the date, time and place of inquiry were not notified to the petitioners and they were not called upon to attend such an inquiry;

(vi) no inquiry was held against the petitioners.

The petitioners submitted that it was a recognized condition of the membership of the Party that disciplinary action would be taken in accordance with the procedures prescribed by the Party's "Guidelines." The petitioners state that they

were expelled in contravention of the Party Guidelines. Therefore the expulsions were unreasonable and/or arbitrary and in contravention of their "legitimate expectations". Consequently, the expulsions were invalid and of no effect.

The decision to expel the petitioners was taken at a meeting of the Working Committee on the 8th of November, 1999. Article 6.3(a) of the U.N.P. Constitution empowers the National Executive Committee "to enforce the Constitution, standing orders and rules and the code of conduct of the Party, and to take any action it deems necessary for such purpose, whether by way of disciplinary action including expulsion or suspension against any individual member or an office bearer or otherwise . . ." Article 7.15 states that "The Party Working Committee shall have the power to exercise the powers, functions and duties vested in it by the National Executive Committee . . ." Admittedly in terms of paragraph 01 of the U.N.P. "Guidelines for the conduct of disciplinary inquiries", "The General Secretary of the Party should write to the member concerned informing him that a complaint had been received and notifying him of the Panel of Party Members appointed by the Working Committee to inquire into and report through the Disciplinary Committee on the complaint." Article 7.13 of the U.N.P. Constitution states that "The Party Working Committee shall appoint a Disciplinary Committee." However, in my view, there was no "mandatory" requirement that disciplinary proceedings shall only be conducted by a Disciplinary Committee (other than the Party Working Committee) appointed by the Party Working Committee. The decision to expel the petitioners cannot be assailed on the ground that the Working Committee lacked authority. Cf. per Fernando, J. in *Gamini Dissanayake* v. *M.C.M. Kaleel and Others*.[1].

With regard to the averment that there was no inquiry, assuming that the Working Committee itself conducted the investigation on the 8th of November 1999, such investigation did not proceed on the basis of the Guidelines which provide as follows :

"05. The inquiry should commence with the Panel briefly outlining to the member the nature of the evidence the Committee has available . . . The Committee should then question the complainant, if any further clarification is necessary, in the presence of the member. Also, any other witnesses. The member should be given the opportunity to cross-examine the complainant and the witnesses.

06. Unlike a Court of Law, a panel conducting a domestic inquiry is entitled to take steps on its own initiative to obtain information and documents etc. relevant to the charges. However, if the Panel intends taking into consideration any such material, it must inform the member concerned during the inquiry, and give him an opportunity of explaining the same.

07. The Panel has the flexibility to adopt its own procedure on which the above-stated guidelines (text obscure) . . . What is important however is to provide the member a fair hearing and a fair chance to explain or controvert the evidence against him.

08. The member concerned will be entitled to give evidence on his own behalf or to call relevant witnesses and produce documents. The Panel will be entitled to question the member or his witnesses to obtain any clarification.

09. It will be advisable to maintain notes of the main matters transpiring in evidence etc. at the inquiry. These notes should be signed by the Chairman of the Panel . . ."

According to the minutes of the meeting of the Working Committee, pursuant to which the letters of expulsion were issued, as far as the matters under consideration were concerned, what took place, was as follows :

"Presidential Election 1999"

The General Secretary of the Party referred to the Presidential election. Since Her Excellency the President Chandrika

Bandaranaike Kumaratunga had sought election for a further term of six years, the United National Party had decided that its party leader, Mr. Ranil Wickremasinghe, should be its candidate at that election. There is a pronouncement that on the 5th of November 1999 eight gentlemen (who are named and include the petitioners) met the President and assured her of winning the election. Their pronouncement has been conveyed to the public through the radio, television and printed means of communication. The relevant newspaper reports were tabled. The conduct of these gentlemen violate Articles 2(i), 2(ii) and 3:3(a) (b) (c) (d) of the Party Constitution. Notice of the meeting taking place today has been given to Mr. Nanda Matthew, Mr. Susil Moonesinghe and Dr. Stanley Kalpage and they have by Fax stated that they are unable to be present.

Further, it was stated that a letter dated 03/11/99 had been sent to Mr. Sarath Amunugama requiring him to show cause why he should be excused for announcing to the national media about the formation of a national government without the permission of the leader of the Party and of its Working Committee.

Mr. John Amaratunga, M.P., observed that some of the people concerned were officials of the U.N.P. and members of its Working Committee and that at this time the misconduct of these people would adversely affect the election campaign and confuse the minds of voters. Because of wide publicity, much damage had been done to the Party. Moreover, he said, they had violated the rules of the Party and the conditions of their membership. An urgent decision had to be taken to protect the welfare of the Party and to ensure the unity of its members. He proposed the immediate expulsion of the eight persons.

Mr. Gamini Lokuge, M.P., spoke in support of the proposal, and the members of the Working Commitee unanimously voted in favour of the proposal. Mr. Ranil Wickramasinghe abstained from voting. It was decided that the Secretary-General of Parliament be informed of the expulsion of five Members of Parliament.

A Committee of six persons was appointed to deal with other members who worked against the Party.

The U.N.P. Guidelines provide that where a complaint is received against a member of the Party,

"01. The General Secretary of the Party should write to the member concerned informing him that a complaint had been recieved and notifying him of the names of the Panel of Party Members appointed by the Working Committee to inquire into and report through the Disciplinary Committee on the complaint . . .

02. The Panel should examine the complaint made, and the Chairman of the Panel should write to the member concerned requesting his explanation, in the first instance. A copy of the complaint should be forwarded to the member. A period of seven/ten days could be allowed for the submission of the member's explanation.

03. If the explanation submitted is unsatisfactory or unacceptable, and the Panel is of the view that further inquiry is necessary, a charge-sheet should then be prepared by the Panel and forwarded to the member . . .

04. The Panel should notify the complainant also to be present at the inquiry."

Admittedly, as far as the petitioner in Application (E) 4/99, Dr. Sarath Amunugama, is concerned, a letter dated the 3rd of November 1999 had been sent to him by the General Secretary of the U.N.P. (Mr. Gamini Atukorale, the second respondent). That letter stated as follows :

"The Daily News in its publication of Monday 1st November 1999, under the headline Sarath Amunugama tells BBC he will quit U.N.P. has stated "he will definitely leave the U.N.P. if there is no proper response from the Party for his National Government concept." It is further noted that there has been

no denial by you as to the making of this statement or the accuracy of the contents of the article under reference. (Copy of the article enclosed).

You have thus acted in breach of the Party Constitution, Party Discipline and contrary to the conduct required of a U.N.P. Member in Parliament and the deicision of the Parliamentary Group at its meeting held on 22-10-99, that no member makes any statements to the media withour prior approval of the Party.

I would be grateful to have your immediate explanation and response to the aforesaid to reach me not later than Sunday 7th November 1999."

On the 5th of November, 1999, Dr, Amunugama responded as follows :

"Without prejudice to my rights to proffer a fuller response, I wish to inform you that you have failed to inform me to what provisions of the Party Constitution I have contravened or what aspect of party discipline and/or the conduct required of a U.N.P. Member in Parliament that I have allegedly acted in breach of.

Your said letter is accordingly vague and incomplete as regards material particulars. You have also failed to afford me sufficient time to respond to your said letter; and in the circumstances as I require time to not only collate information in order to respond to your said letter but also be furnished with the above mentioned information, I request that you inform me of what precise provision/s I have breached and send me a copy of the Party Constitution and all other documents you rely on in connection therewith, and afford me at least a week therefrom to respond. I also wish to reiterate that I remain a member of the U.N.P."

According to the minutes of the Working Committee, the two letters tabled related to Dr. Amunugama's activities

concerning the formation of a national government. He had asked for clarification of the charges against him. He had wanted to know what provisions of the Party Constitution he had violated and called for a copy of the Constitution and all other documents relied upon in support of the charge, and he asked for time to submit his defence. Sometimes "A case may be of so uncomplex a character and the issues may be so well known to all parties concerned that no more particular notice of any charge may be required." Per Buckley, L.J. in *Stevenson* v. *United Road Transport Union*,[2]. The case against Dr. Amunugama was complex and the issues were far from clear. He had a legal right to know the precise charge he had to meet. The charge should have been distinctly stated. He was expelled for two reasons : (1) Participation in the discussion of policy issues such as the formation of a national government without prior discussion of mandate of the Party; and (2) supporting H.E. Chandrika Bandaranaike Kumaratunga. The sole charge in the letter to Dr. Amunugama was that he had told the BBC that he would leave the U.N.P. if there was no response from the Party for his National Government concept and that he had thereby acted in breach of the "Party Constitution, Party Discipline and contrary to the conduct required of a U.N.P. Member in Parliament and the decision of the Parliamentary Group at its meeting held on 22/10/1999 that no Member makes any statements to the media without prior approval of the Party. That was somewhat different to the charge relating to the matter of a national government as set out in the letter conveying the decision to expel him.

Even assuming that he had notice of the first charge, Dr. Amunugama had no notice of the second, and therefore as a matter of law, he could not have been expelled. Eg. see *Lau Liat Mena* v. *Disciplinary Commitee*,[3] , where notice was given of proposed action on ground X but action was taken on ground Y of which no notice, or inadequate notice, had been given. In *Board of Trustees of Maradana Mosque* v. *Badi-ud din mahmud, Minister of Education*,[4], the Privy Council held that there had been a breach of natural justice where the Minister told the

managers of a school of one allegation against them to which they prepared a defence but, in his decision, made it plain that he was taking over the school in reliance on a breach of a statutory provision of which the managers had no notice at all.

Dr. Amunugama had asked for time to respond. As a matter of law, he was entitled to sufficient time to have the opportunity of presenting an effective answer or defence: *Hanson v. Church Commissioners for England*,[5]; *R* v. *Thames Magistrates' Court, ex p. Polemis*[6]; *R* v. *Pharmaceutical Services Committee, ex p. Gorden D. Conway Ltd.*[7]; *Morris* v. *Lawrence*[8]. He received no response whatever to his letter whether on the question of time or the other matters raised by him. In the circumstances, did his failure to respond to the charge made against him, namely of supporting or sponsoring the concept of a national government, before the meeting held on the 8th of November make him guilty of conduct warranting expulsion, or for that matter any other form of discipline, on the 8th of November? The 'show- cause' letter had been dated the 3rd of November 1999. According to paragraph 02 of the U.N.P. Guidelines, a period of seven/ten days should be allowed for a member's explanation. In any event, if the Working Committee was on the 8th of November 1999 acting as a disciplinary committee, Dr. Amunugama was not invited to that meeting.

Mr. Nanda Matthew (the petitioner in (E) 5/99) and Mr. Susil Moonesinghe (the petitioner in (E) 7/99) were invited to attend the meeting of the Working Commitee as Members of that Committee, but without any intimation that the agenda of the meeting included disciplinary action against them. They did not attend the meeting due to prior engagements. Indeed, the disciplinary proceedings are reported in the minutes of the meeting under the caption "Presidential Election 1999". Mr. Wijepala Mendis and Mr. Chula Bandara, not being members of the Working Committee, were not invited to attend the meeting and did not have even a remotely possible, albeit inadequate, opportunity of defending themselves.

Both Dr. Amunugama as well as the other petitioners ought, in my view, to have had a reasonable opportunity of presenting their cases and making representations on their own behalf. See per Tucker L.J. in *Russell v. Duke Norfolk*.[9]. This was distinctly contemplated by the Party Guidelines. Procedural fairness generally requires that persons liable to be directly affected by a decision of a person or a body of persons be given adequate notice of what is proposed so that they may be in a position to make representations on their own behalf. This has been described as a proposition of common sense. See per Lord Mustill in *R. v. Secretary of State for the Home Department, ex p. Doody*,[10].

The petitioners' averments that no explanations were called for, no charge-sheets were served, no notice of the date, time and place of inquiry were given, and that the petitioners were not called upon to attend the inquiry, were not disputed at the inquiry by this Court. In fact, the petitioners had no opportunity for contradicting, correcting or explaining anything prejudicial to their views. They were expelled summarily.

On the face of the evidence on record. I hold that the averment that the Party Guidelines in respect of disciplinary inquiries were not observed has been established.

In deciding to expel the petitioners there was a failure on the part of the respondents to follow the usual, salutary procedural steps laid down by the political party to which the petitioners belonged. The Guidelines of the Party prescribed a process for disciplinary action to ensure fairness, and as a condition of membership it was to be expected that the usual process would be duly followed.

In the absence of proof of circumstances permitting such failure, the failure to follow the prescribed procedures of the political party of the petitioners would ordinarily, make an expulsion invalid since, as far as the petitioners are concerned, it is unlawful, null and void and of no force or avail in fact or

in law. *Premaratne v. Srimani Athulathmudali and Others*,[11]; Cf. *Ridge v. Baldwin*,[12]; *A-G., . v. Ryan*,[13]; Paul Jackson, *Natural Justice*, 1979, p. 194. The respondents ought not to have condemned the petitioners without giving them an opportunity of being heard in their own defence. Cf. *Abbott v. Sullivan*,[14].

The petitioners allege that their expulsions were also invalid because the respondent failed to comply with the principles of "natural Justice." "Natural Justice" is an ambiguous phrase, and consigned from time to time to the lumber room as a term "sadly lacking in precision". E.g. see Paul Jackson, *op. cit.*, pp. 1-22; Those who decline to accept any form of justice as natural may take their choice from a wide range of alternative phrases, including, "substantial justice", "fair play in action", "fair play written large and juridically". De Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, (1995), pp. 377-378. Whatever the uncertainty inherent in the phrase, "natural justice" connotes, above all, the maxim *audi alteram partem*.

What is the fuss about natural justice and the right to a fair hearing about? The right to a hearing has been accepted as a basic principle in many civilizations and over many years. In Greece, the requirement of hearing both sides before reaching a conclusion formed a part of the Athenian judicial oath and is referred to by Aristophanes, Euripedes and Demosthenes. The Greeks inscribed the precept that no man was to be judged unheard upon images in places where justice was administered. The Romans too accepted the principle. Seneca in *Medea* referred to the injustice of reaching a decision without a full hearing - *Qui statuit aliquid parte inaudita altera, aequum, licet statuerit, haud aequus fuerit;* and the *Digest* contained a prohibition on a *paterfamilias* killing his son without a hearing. As might be expected, in Sri Lanka too matters were adjudicated after hearing both sides: "*ubhaya paksayen ma adyanta asa ganna dadek da*", says the *Saddharmarathnavaliya* 365. Only Rhadamanthus, the cruel judge of Hell, it seems punished before he heard.

Indeed, having regard to the widespread acceptance of that basic principle, G. Del Vecchio in *Justice* went so far as to suggest that it belongs "rather to the common consciousness of mankind than to juridical science." The rule has been described as being of "universal application and founded on the plainest principles of justice". *Per* wiles, J. in *Cooper v. Wandsworth Board of Works*,[15]. (On the historical development of the concept of "natural justice", see de Smith, Woolf & Jowell, *op. cit.* pp. 377-399; H.W.R. Wade & C.F. Forsyth, *Administrative Law*, (1995) pp. 497-578).

As far as the law is concerned, we have in Sri Lanka in this area closely followed the common law which, from very early times, recognized the right to a fair hearing. In *R. v. Chancellor of the University of Cambridge*,[16], support for the right to a hearing was based by Fortescue J. on the events in the Garden of Eden; "I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where art thou'? 'Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also".

Throughout the nineteenth century the English courts freely, and sometimes vigorously, imputed an obligation to observe the rule. Two dicta of Lord Denman illustrate the importance attached to the right to a fair hearing during that era. "No rule is more invariable than that a person shall not be prejudiced in any manner without being heard." *R. v. Justices of West Riding of Yorkshire, ex p. Thornton*,[17]. "It is implied by nature justice . . . that no one ought to suffer any prejudice . . . without having first an opportunity of defending himself." *R v. Wilson*,[18].

The rule was not confined to the conduct of strictly legal tribunals but was said to be "applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to litigants." *Per* Kelly, C.B. in *Wood v. Wood*,[19].

The rule continued to be liberally applied in the early part of the twentieth century. Thus Lord Loreburn in *Board of Education v. Rice*,[20], said that to "act in good faith and fairly listen to both sides . . . is a duty lying upon everyone who decides anything."

Commencing perhaps with *R v. Leman Street Police Station Inspector, ex p. Venicof*,[21], the *audi alteram partem* rule suffered debilitation, at first, partly on account of the exigencies of unsettled wartime conditions. But the climate of judicial opinion persisted even after hostilities had ended. Eventually, it entered what has been described as its "twilight" years. And that era was influenced by the decision in *Nakkuda Ali v. Jayaratne*,[22], in which it was decided by the Privy Council that a Ceylon trader could be deprived of his trading licence without any trial or hearing, although Judges of the Supreme Court of Ceylon (as Sri Lanka was then known) were, in general, firmly committed to the principle of hearing the other side.

Since the House of Lords case in *Ridge v. Baldwin, (supra)*, the courts have so energtically extended frontiers of natural justice that Megarry, J. was impelled to recommend that its principles "must be confined within proper limits and not allowed to run wild." *Hounslow L.B.C. v. Twickenham Garden Developments*,[23].

Today, in certain circumstances, natural justice may not always involve a right to a fair hearing. E.G. *R. v. Aston University Senate, ex p. Roffey*,[24], per Donaldson, J. and, as we shall see, the respondents in this inquiry rely upon that position. Yet it must be noted that the rule of law requires some form of due process designed to ascertain the truth and that the precepts of natural justice insure that legal order will be impartially and regularly maintained. John Rawls, *A Theory of justice*, (1972), p. 239. It must also be noted that fair proceedings aim not merely at such instrumental ends as accuracy but that they are also a constituent element of the legal and democratic process which should treat individuals with concern and respect. De Smith, Woolf & Jowell, p. 376, note 2.

I have briefly set out the ground lying behind the issues pertaining to the matters before me, particularly the *audi alteram partem rule*, so that what follows may be better understood. The respondents do not deny the importance of the rule; their case is that, in the circumstances of the matters before us, the petitioners were not entitled to a hearing. Two reasons were given: (1) Uselessness and (2) urgency.

I am unable to accept the submissions of learned counsel for the respondents that a hearing would have been "useless" for several reasons.

A hearing was not useless, for a hearing before the offending decision of expulsion might have assuaged the pain caused to the petitioners as well as their families, friends and supporters. As Megarry, V.C. observed in *John v. Rees*,[25]: "Those with any knowledge of human nature who pause to think for a moment (are not) likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

Wade & Forsyth, *op. cit.* p. 526, point out that "in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly." The observations of Lord Wright in *General Medical Council v. Spackman*,[26] (cited later in my judgement), are quoted in support. "If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

I should also refer to the following observations of de Smith, Woolf & Jowell at p. 500: "The Courts have rightly cautioned against the suggestion that no prejudice has been caused to the applicant because the flawed decision would inevitably have been the same. It is not for the Courts to substitute their opinion for that of the authority constituted by law to decide the matters in question."

The respondents maintained that a fair hearing would have been futile. It would have made no difference to the result. Numerous newspaper reports relating to events before the expulsion were read, it was said by learned counsel for the respondents - to establish the guilt of the petitioners - and after the expulsion - "to throw light" on the petitioner's intentions and "corroborate" the evidence available against them when the decision to expel them was taken. Learned counsel for the respondents submitted that there was clear and sufficient evidence that the petitioners supported candidate President Chandrika Bandaranaike Kumaratunga, although the U.N.P., of which the petitioners were members, had nominated its leader, Mr. Ranil Wickramasinghe, to oppose President Chandrika Bandaranaike Kumaratunga at the forthcoming Presidential Election. It was pointed out that the petitioners were expelled for violating Article 3.3 of the U.N.P. Constitution which states that

"In accepting membership a person agrees

(a) To accept the principles, policy and code of conduct of the Party.

(b) To conform to the Constitution, Rules and Standing Orders of the Party.

(c) To give all possible support to the candidates nominated by the Party and in no way to support any other person standing against such candidates . . .

(d) Not to take part in any political or other activities which conflict or might conflict with the above undertakings and not to bring the Party into disrepute.

(e) . . ."

The respondents submitted that the crucial issue was not the question of a national government, which the petitioners had stressed at the inquiry before this Court, but the fact that

the petitioners had pledged their support for, and in fact supported, a person who was standing against the leader of the U.N.P. who had been nominated by the U.N.P. In the circumstances, even if the petitioners had been formally charged, noticed to appear and heard, there could have been no defence to the charge and there was nothing that could have altered the decision arrived at by the Working Committee. The principles of natural justice would have been of no avail. A hearing would have been useless.

Procedural objections may be made by unmeritorious parties and relief may sometimes be refused because a fair hearing could have made no difference to the result. However, experience shows that unanswerable charges, may, if the opportunity be given, be answered; inexplicable conduct may be explained. Wade & Forsyth, *op. cit.*, p. 527; Jackson, *op.cit.* p. 137. Megarry, J. in *John v. Rees, (supra),* followed with approval by this Court in *Ramamoorthy and Rameshwaran* v. *Douglas Devana and others*,[27], and in *Gamini Dissanayake* v. *M.C.M. Kaleel and Others, (supra),* observed as follows :

"When something is obvious, it may be said, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."

The matters before us, could hardly be described as "open and shut" cases. I am in agreement with learned counsel for the respondents that this Court should not act in vain and waste its time by insisting on useless formalities. Yet in these matters the Court was not concerned with useless formalities.

For instance, The only charge Dr. Amunugama had been called upon to answer was, as we have seen, that he had made statements to the press about the formation of a national government. However, he was expelled on other grounds.

Mr. Bandara, the petitioner in (E) 08/99 states that he did go to the official residence of the President, but that his visit was brief - because he had to be in the Court of Appeal - and that his participation was limited to answering a call to explore the possibility of the formation of a national government rather than supporting a rival candidate.

Certain petitioners reject some of the newspaper reports as not being attributable to them. Other petitioners lay stress on the need to have a national, rather than a partisan approach, to questions of national significance. Mr. Pelpola described the national government idea as a "hoax", a "camouflage", disguising the real intention of the petitioners, namely, to oppose the candidate nominated by the U.N.P. However, the stated grounds of dismissal were two separate charges, namely, that (1) at a meeting with President Chandrika Bandaranaike Kumaratunga and several of her party colleagues, the petitioners had signified their intentions and willingness to support the President who was a rival candidate to the leader of the U.N.P., Mr. Ranil Wickramasinghe; and (2) that the petitioners had "participated in discussion of policy issues such as the formation of a national government without prior discussion or mandate of the Party."

What was the truth? The petitioners claim they had something to say with regard to their meeting the rival candidate and even supporting her on the question of a national government. The flawed decisions may or may not have necessarily been the same had the petitioners been heard. Perhaps, after hearing the petitioners fairly, the respondents may have concluded that all that talk about a national government was a sham, and the result may have been the same. Yet, in my view, that decision was not arrived

at fairly and must therefore be set aside. Lord Wright said in *General Medical Council* v. *Spackman, (supra)*; Cf. *Anamunthundo* v. *Oilfields Workers Trade Union*,[28], "If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the essential principles of justice. The decision must be declared to be no decision." I must make it clear that I am not in the process of substituting my opinion for that of the Working Committee of the U.N.P. It is not for me to do so. E.g. see *per* Lord Hailsham in *Chief Constable of Police* v. *Evans*,[20]; see also per Lord Brightaman, 1173. See also *John* v. *Rees,(supra)*; *R* v. *Secretary of State for the Environment ex p. Brent L.B.C.*[30]; *R* v. *Secretary of State for Education, ex p. Prior*,[31] *per* Brooke, J.

If the petitioners deserved to be expelled, and justice had been done, in making their decision, was justice also *seen to be done?* The petitioners complain that the principles of natural justice have been violated. Natural justice is not always or entirely about the fact or substance of fairness. It has also something to do with the appearance of fairness. De Smith, Woolf & Jowell, *op. cit.*, p. 500. Public confidence in the settlement of disputes requires that even in so called "open and shut" cases the principles of natural justice must be observed so as to ensure not only that justice was done but also, to use the time hallowed phrase used by Lord Hewart C.J. in *R.* v. *Sussex JJ., ex p. McCarthy*,[32], that it should be "manifestly and undoubtedly be seen to be done." See also *per* Donaldson, J. in *Altco Ltd.* v. *Sutherland*.[33].

Lord Widgery C.J. in *R.* v. *Thames Magistrates' Court, ex p. Polemis, (supra)*, 1375, said: "It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same.' That is mixing up doing justice with seeing that justice is done." Lawton L.J. in *Maxwell* v. *Department of Trade*,[34]

said: "Doing what is right may still result in unfairness if it is done in the wrong way."

The U.N.P. is a major political party. The General Secretary of the Party was quoted as stating that it was a "disciplined party." In the handling of these matters, it would not, in my view, have been an useless exercise to have adhered to the principles of natural justice for the sake of preserving public confidence. In discussing the justifications for requiring a hearing even where there appears to be no answer to a charge, Jackson, *op. cit.* p. 137, observed that "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."

Learned counsel for the petitioners pointed out that some of the newspaper reports that were produced at the inquiry before the Court implicated some, but not the other petitioners. Some reports attributed certain statements to certain petitioners but not the others. Moreover, some of the statements were ambiguous, and others had to understood in the context of the endeavour to forge a national consensus on matters of general, public concern. Further, there were reports of things that were not told to the reporters but were supposed to have been said to other persons. In the circumstances, a fair hearing would have been useful to ascertain the truth and to apportion blame fairly and enable the Committee to impose appropriate sanctions. Indeed the petitioners in their petitions stated that the sanction of expulsion was "excessive and totally disproportionate" to their conduct.

The respondents case was that the petitioners were all in this thing together, acting collectively with one purpose in mind, namely to oppose the U.N.P. candidate and support his rival at the election. There was a repudiation of the conditions of their membership. Their conduct was tantamount to crossing the floor of the House and joining the ranks of the other side. Their statements and conduct reduced the petitioners to being caught as it were in *flagrante delicto* and there was therefore no need for further inquiry.

The petitioners may have been guilty of grave misconduct; but as Stephenson J. pointed out in *Fullbrook* v. *Berkshire Magistrates' Courts Committee*,[35], "There are, after all, degrees of grave misconduct and explanations if not excuses for it."

In *Ridge* v. *Baldwin, (supra)* it had been decided by the trial judge that the Chief Constable had no right to be heard by the Watch Committee since "out of the Chief Constable's own mouth at the Central Criminal Court, for the purposes of his trial, for all the world as well as the Watch Committee to hear, the plaintiff convicted himself of unfitness to hold the office of Chief Constable." The House of Lords, reversed the trial judge on this point because, even if the Chief Constable could not have hoped in the disciplinary proceedings to persuade the Watch Committee that he ought to be allowed to continue in his position, the committee had open to it a number of courses and, if they had heard the Chief Constable, might have followed the most lenient course."

In the matters before me, in my view, the hearing would not have been a useless formality, for the Working Committee had a choice of sanction. It was quite unlike *Scott* v. *Aberdeen Corporation*,[36], where there was a statutory duty to dismiss the person. In that case Scott argued that the Corporation, although under a statutory duty to dismiss him, had an obligation to give him a hearing before doing so. Lord Aronside at p. 147 in rejecting that claim, said: "It cannot be a denial of 'natural justice' to refuse a man the right to attempt to persuade those entrusted with the administration of substantive law to breach the law which it is their duty to uphold."

The respondents submitted that the rules of natural justice were in the circumstances of the case excluded by practical considerations. The election campaign was on and it was imperative that the cohesiveness of the party was safeguarded. The petitioners were not only expressing their open support for the rival candidate, they were also attempting to persuade others at grass roots level to vote against the party. Immediate action was called for.

Urgency has, in certain circumstances, been regarded as permitting a departure from the need to give a hearing before action is taken. For instance, the right to a fair hearing may have to yield to overriding considerations of national security. *Council of Civil Service Unions* v. *Minister for the Civil Service,*[37]. The right may also have to yield to considerations of public health or safety. Obviously, a hearing cannot be held about whether a fire brigade, in the course of a fire, should destroy a building. De Smith, Woolf & Jowell, *op. cit.*, p. 375. A public authority may need to seize and destroy bad meat exposed for sale or to order the removal to hospital of a person with an infectious disease without a hearing. In general, whether the need for urgent action outweighs the importance of notifying and hearing an affected party is a matter on which opinions may differ. However, having regard to the decisions in which urgency has been held to be a defence, (E.g. see de Smith, Woolf & Jowell, *op. cit.* pp. 482 - 488, Wade & Forsyth, *op.cit.*, 519 - 520 and 570 *et seq.*) I am of the view that the respondents have failed to establish that the expulsion fell within the category of extraordinary, urgent circumstances recognized by courts of law.

The content of fair procedures is flexible. As Lord Bridge has put it: "the so-called rules of natural justice are not engraved on tablets of stone." *Lloyd* v. *McMahon,*[38]. "The principles of fairness are not to be applied by rote in every situation. What fairness demands depends on the context of the decision". Lord Mustill in *R v. Secretary of State for the Home Department, ex p. Doody,(supra).* Admittedly, the opportunity of a fair hearing may have been limited in the circumstances. For instance, the time for responding to a charge sheet, or making submissions may have had to be reduced. Yet, the petitioners were entitled to be told what they were charged with and afforded some opportunity of explaining themselves. The petitioners were Members of Parliament and expulsion could have led to losing their seats. The very gravity of the matter required that at least a limited hearing was given to the petitioners before a decision was taken to expel them.

Lord Upjohn in *Durayappah* v. *Fernando,*[39], observed that ". . . while great urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable." Although the need to act swiftly may modify or limit what natural justice requires, it must not to be thought 'that because rough, swift or imperfect justice only is available that there ought to be no justice' : *Pratt* v. *Wanganui Education Board,*[40] *per* Somers, J."; Jackson *op. cit.*, p. 136.

The summary dismissals were intrinsically unfair even though they may have been fully justified: Cf. *Earl* v. *Slater and Wheeler (Airlyne) Ltd.*,[41]. In my view, there was no justification for the failure of the respondents to observe the principles of natural justice and grant the petitioners a hearing before they were expelled. I therefore determine that the expulsions of the petitioners were void and of no force or effect in law and therefore, for the purposes of Article 99(13)(a) of the Constitution, invalid.

Mr. Aziz submitted that, if the Court determines that the expulsions were invalid because of the failure to observe the rules of natural justice, it was obliged to decide whether on the merits the expulsions were valid. He relied principally on certain observations of Fernando, J. in *Gamini Dissanayake* v. *Kaleel and Others, (supra).* In that case, it was admitted that the petitioners were neither informed of the allegations and the evidence against them, nor afforded an opportunity (i) to submit an explanation (ii) to be heard in their defence or (iii) to make any submissions on the law and the facts, as to whether misconduct warranting disciplinary action had been proved, and, if so, whether a lesser penalty than expulsion was necessary. Therefore there was a violation of the *audi alteram partem* rule.

However, Fernando, J. at p. 198 stated as follows: "Our jurisdiction under Article 99(13)(a) is not a form of judicial review, or even appeal, but rather an original jurisdiction

analagous to an action for a declaration, though it is clearly not a re-hearing. Are we concerned only with the decision-making process, or must we also look at the decision itself to decide whether the expulsion was valid or invalid . . . Had these proceedings been purely by way of judicial review, it may well be that we would have to shut our eyes to the merits of the decision, and look only at the decision making process . . ." Fernando, J. went on to hold that the expulsion of six of the petitioners was invalid but that the expulsion of two of them was valid. In the same case, the majority held that the expulsions of all the petitioners were valid.

Kulatunga, J. (with whom Wadugodapitiya, J. agreed) stated at p. 242 that "since the petitioners had not been prepared to submit themselves to the party councils, then, there is no force in their complaint that the Working Committee had failed to give them a hearing. I hold that the Working Committee acted fairly and reasonably in taking disciplinary proceedings against the petitioners in the way it did.

Kulatunga, J. went into the merits of the case and concluded at p. 246 that "the remedy of expulsion befits the mischief unleashed by the petitioners".

However, Kulatunga, J. seems to suggest that it is not in every case that the Court should go into the merits. At p. 234 His Lordship said: "The right of a M.P. to relief under Article 99(13)(a) is a legal right and forms part of his constitutional rights as a M.P. If his complaint is that he has been expelled from the 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." If there is any doubt about such matters, "the expulsion will be struck down."

In *Tilak Karunanaratne* v. *Mrs. Sirimavo Bandaranaike and Others*,[42], the petitioner, a Member of Parliament, was expelled from his party on a decision of the Executive Committee of the party to which he refused to submit. He challenged his expulsion in terms of Article 99(13)(a) of the Constitution. Dheeraratne, J. at p. 115 stated that, in view of the conclusion His Lordship had reached, namely that "the petitioner's impugned statements are justified" in that he was exercising his Constitutional rights of freedom of speech and association, it was "unnecessary" to deal with certain questions, including a "failure to observe principles of natural justice in the decision making process." Dheeraratne, J. (Wijetunga, J. agreeing) held that the expulsion of the petitioner was invalid. Dheeraratne J. said at pp. 101-102 that Article 99(13)(a) conferred an original jurisdiction on the Court empowering it to go into the merits and shield Members of Parliament from being "unlawfully and/or capriciously" expelled from their parties. His Lordship did not accept the submission of learned counsel, Mr. H.L. de Silva, P.C., that investigations by the Court should be restricted to the question whether proper procedures had been followed, lest judges might find themselves wandering into the "political thicket", and cited with approval the observations of Fernando, J. quoted above in *Dissanayake* on that question. In *Karunanayake, (supra)*, Ramanathan, J. at p. 117, rejected the proposition that the business of the Court in the exercise of its jurisdiction under Article 99(13)(a) of the Constitution extends to deciding whether an expulsion is right or wrong after deciding whether a fair procedure had been followed.

In *Ramamoorthy's case, (supra)*, the Court (G.P.S. de Silva, C.J., Wijetunga and Shirani Bandaranayake, JJ.) did not refer to the observations of Fernando, J. in *Dissanayake*, but held that the expulsions were invalid, without going into the merits of the decision that was challenged, quoting with approval the observations of Kulatunga, J. in *Dissanayake* referred to above. The Court at p. 287 held that the "weighty considerations" in *Dissanayake* did not exist in the matter

before them and therefore "strict compliance with the *audi aleram partem* rule was a precondition to a valid expulsion from the party."

In *Premaratne* v. *Srimani Athulathmudali and Others, (supra)*, the Court (Amerasinghe, Wadugodapitiya, and S.N. Silva, JJ) held that the expulsion was invalid and did not proceed to decide on the reasonableness or rationality of the decision.

Assuming without deciding that I may go into the quality of the decision, I would not do so in this case for at least three reasons: (1) The evidence is incomplete; the respondents have not furnished the Court with the evidence relating to the radio and television broadcasts they relied on for their decision; Nor were the reports said to have been tabled at the meeting of the Working Committee identified, if they were among the reports tabled at this inquiry; (2) unlike *Dissanayake* (see pp. 142 and 242) the facts in the matters before me are in dispute; (3) there are no "weighty considerations" which compel me to advance beyond the realm of procedural justice, and therefore I should follow the course of action suggested by Kulatunga, J. in *Dissanayake* and taken by the Court in *Ramanoorthy*. I hold the decision to expel the petitioners invalid for want of procedural propriety.

For the purposes of Article 99(13)(a) of the Constitution, for the reasons given in my judgment, I determine that the expulsions by the respondents of Sarath Amunugama, Nanda Mathew, Wijayapala Mendis, Susil Kumar Moonesinghe and R.M.R. Chula Bandara were invalid.

In all the circumstances, I make no order as to costs.

BANDARANAYAKE, J. - I agree.

ISMAIL, J. - I agree.

Expulsions of the petitioners from the party determined invalid.