PADMANATHAN
v.
SUB-INSPECTOR PARANAGAMA, OIC, NATIONAL INTELLIGENCE BUREAU, VAVUNIYA AND OTHERS

SUPREME COURT
FERNANDO, J.,
GUNAWARDANA, J. AND
WEERASEKERA, J.
S.C. APPLICATION NO. 361/98
FEBRUARY 15, 1999

Fundamental rights – Arrest and detention under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 – Sections 6 (1) and 7 (1) of the Act – Articles 13 (1) and 13 (2) of the Constitution.

The petitioner was a driver employed by the Vavuniya District Branch of the Sri Lanka Red Cross Society. On 29.5.98 he drove a Red Cross vehicle with three passengers (Dr. Jayalath Jayawardena, MP, Father Alexander, a Catholic priest and Kishore, the Honorary Secretary of the Vavuniya District Branch) from Vavuniya to the Madhu Church, which was an area controlled by the Liberation Tigers of Tamil Eelam (LTTE). Dr. Jayalath Jayawardena and the priest had come to Vavuniya on 29.5.98 with Father Alexander, having made prior arrangements with Kishore to travel to Madhu. The next day the petitioner drove Kishore to Thunukkani to the office of one "Sudah" an LTTE official. According to Kishore he visited Thunukkani to discuss with Sudah the handing over of one Nayanajith, a soldier held in captivity by the LTTE. Consequently, on 31.5.98 Sudah brought that solider to Madhu Church. Thereafter, the ICRC brought him to Vavuniya. On 7.6.90, the 1st respondent (SI Vavuniya) arrested the petitioner under the PTA allegedly for having discussions with the LTTE leaders and concealing information relating to the murder of police officers and the collecting of explosives. The petitioner was brought to the CID office in Colombo and interrogated regarding his trip to Madhu with Dr. Jayawardena. After three days in police custody he was produced before the Magistrate on 10.6.1998 and remanded indefinitely. No plaint was ever filed against him. On 28.12.1998, the Attorney-General advised the police (with copy to the Magistrate) that there was insufficient evidence to initiate proceedings. He was released from remand belatedly on 13.1.1999.

Held:

1. The petitioner had not been informed of any valid reason for his arrest; and the respondent police officers did not in fact suspect (reasonably or otherwise) that he was connected with or concerned in any unlawful activity or offence under the PTA; and his arrest was violative of Article 13 (1) of the Constitution.

Per Fernando, J.

"it is far more likely that the petitioner had really been arrested for extraneous reason – in the hope that something might turn up which incriminated Dr. Jayawardena."

2. A lawful arrest under section 6 (1) of the PTA is a condition precedent to entitle the police to detain a suspect for 72 hours in terms of section 7 (1) of the Act. The petitioner was not duly arrested under section 6 (1). Hence Article 13 (2) was infringed in two respects; non-production before the nearest Magistrate and detention for three days.

Per Fernando, J.

"The human resources available to the State to detect, investigate and prosecute crime are scarce and they should have been devoted to that purpose rather than to the harassment of the petitioner."

3. The petitioner's detention on remand was subject to the discretion of the Magistrate. Hence, it did not constitute "executive or administrative" action in respect of which, relief could be granted for infringement of the petitioner's fundamental rights.

Cases referred to:

1. *Jayathevan v. AG* (1992) 2 Sri LR 356, 371.
2. *Farook v. Raymond* (1996) 1 Sri LR 217.
3. *Perera v. AG* (1992) 1 Sri LR 199, 247.

APPLICATION for relief for infringement of fundamental rights.

T. Marapana, PC with *Anuja Premaratne* for the petitioner.

P. D. Ratnayake, SC for the respondents.

Cur. adv. vult.

March 4, 1999.

FERNANDO, J.

The petitioner was a driver permanently employed, since 1.1.95, by the Vavuniya District Branch of the Sri Lanka Red Cross Society. On 29.5.98 he drove a Red Cross vehicle, with three passengers (Dr. Jayalath Jayawardena, MP, Father Alexander, a Catholic priest, and S. Kishore, the Honorary Secretary of the Vavuniya District Branch) from Vavuniya to the Madhu Church, which is in an area controlled by the Liberation Tigers of Tamil Eelam (LTTE); Dr. Jayawardena and the priest stayed at the Madhu Church. The next day the petitioner drove Kishore to Thunukkani to the office of one "Sudah", an LTTE official; and at Thunukkani, Kishore had gone into Sudah's office, carrying a file, and returned some time later, while he remained in the vehicle. He claimed that he did not know Sudah's post, except that he was the Secretary of Tamilchelvam; and that on previous trips made in the course of his duties he had met, but not spoken to Tamilchelvam, but had spoken to Sudah and other LTTE members. On 30.5.98 his only contact was with one LTTE member who had spoken to him while he was in the vehicle. That member had disclosed that a soldier was in the custody of the LTTE; that the International Committee of the Red Cross (ICRC) had visited him; and that he had not been ill-treated. The petitioner and Kishore then returned to Madhu Church the same day. At about 8.00 pm on 31.5.98 he heard that Sudah had come to Madhu Church, but he did not see Sudah. The next day, 1.6.98, he drove the same three passengers back to Vavuniya. His position was that throughout this trip he had acted on the instructions of Kishore.

Thereafter, when the petitioner reported for work on 6.6.98, Kishore told him that the Police wanted him to report to the Criminal Investigation Department (CID) office at Vavuniya. He did so on 7.6.98. There he was questioned by the 1st respondent (a Sub-Inspector, CID, Colombo) at 9.30 am, and was then allowed to go. He was again asked to come in the afternoon, which he did, and was questioned by both the 1st respondent and the 2nd respondent (SP, CID), who

was in charge of the investigation. On both occasions he came with Kishore. He was arrested by the 1st respondent at 5.30 pm on 7.6.98; detained overnight at the Vavuniya Police station; brought to the CID office at Colombo on 8.6.98, and kept in Police custody till 10.6.98, on which date, at 6.00 pm, he was produced on a "B" report at the residence of the Magistrate, Colombo Fort, who remanded him indefinitely. However, no plaint was ever filed. The Attorney-General informed the Police, by letter dated 28.12.98 (copies to the Fort Magistrate), that there was insufficient evidence to institute proceedings. He was released belatedly, a fortnight later, on 13.1.99.

"The petitioner complained to this Court that his arrest and detention were in violation of Articles 13 (1) and 13 (2). Leave to proceed was granted on 19.6.98, the respondents were granted time till 31.7.98 for their objections, the petitioner two weeks thereafter for his counter-affidavit, and the hearing was fixed for 2.10.98; certified copies of the "B" report and the proceedings of 10.6.98 were called for from the Magistrate's Court.

DELAY AND SUPPRESSION

I must at the outset refer to the unacceptable delay on the part of the respondents in filing their objections, as well as their suppression of material documents.

Objections were not filed by 31.7.98. By a motion dated 28.8.98 an extension of time was sought till 18.9.98, "as the detailed observations to prepare the objections has not been received". Objections were filed only on 30.9.98, with a motion stating that "due to practical reasons the detailed observations and the documents required . . . could not be obtained from the respondents . . . and therefore the objections . . . could not be tendered". It was impossible for counsel to get instructions from the petitioner (who was still on remand) in time for the hearing fixed for 2.10.98, let alone to prepare a counter-affidavit. The Court had either to refuse to accept the respondents' objections on the ground that they had not been filed in time, or – in order to ascertain the truth – to postpone the hearing. There being no cause then to doubt the reason given by the respondents,

the hearing was postponed for 15.2.99. After judgment was reserved, I called for the Magistrate's Court record, and that gave rise to much disquiet. Both counsel were allowed time to make further submissions in writing.

Although applications for extension of time had been made to this Court on the basis that "detailed observations" and documents had not been received from the respondents, the original Court record in this application contains a copy of a letter dated 29.7.98 from the 3rd respondent (the Director, CID) to the Attorney-General, "forwarding *the detailed observations* of the 1st to 3rd respondents". That copy had been received in the Registry, according to the date stamp, on 4/5.8.98. It is reasonable to assume that the original was received in the Attorney-General's Department at the same time. Further, the Magistrate's Court record contains a report by the Police, dated 7.10.98, in which it was stated that the inquiry notes and the copies of the evidence, including extracts, had been sent to the Attorney-General for advice, but that advice had not been received; and that even on 6.10.98 an officer had been sent to the Attorney-General's Department, and had been told that advice would be sent without delay. In another report dated 14.10.98 it was stated that the Police had been informed that steps were being taken to forward an indictment, and that accordingly bail was objected to. Thus, the position taken up by the Police in the Magistrate's Court was that their observations and the relevant documents had reached the Attorney-General in early August, and that the delay in deciding whether the petitioner should continue to be detained was because advice had not been received from the Department.

The objections filed by the respondents consisted of an affidavit from the 1st respondent, to which were annexed copies of (*a*) three statements made by the petitioner (the first at 9.30 am on 7.6.98, the second at 4.30 pm the same day, and the third at 12.10 pm on 10.6.98), (*b*) an "authority to investigate into offences under the PTA" dated 6.6.98 issued by the 2nd respondent, (*c*) a "B" report dated 10.6.98 signed by the 2nd respondent, (*d*) certain entries pertaining to a visit by the petitioner's brother on 10.6.98, and

(*e*) two letters dated 10.6.98 to the petitioner's brother and the Human Rights Task Force (HRTF) notifying them of his arrest. They did not produce copies of the complaint or statement which gave rise to the investigation, statements made by any other persons, and the relevant Police notes and entries pertaining to the investigation. This was quite surprising because the 1st respondent made it quite clear to the petitioner at the outset that the investigation was in respect of *discussions between Dr. Jayalath Jayawardena*, MP, and a *terrorist organization*: but no complaint about Dr. Jayawardena, or statement by him, was produced. Further, the petitioner's position was that he had acted throughout on Kishore's instructions. During the oral argument we expressed surprise that no attempt had been made to verify that position, as it then appeared that no statement had been recorded from Kishore. State counsel was unable to throw any light on that matter. However, the Police report dated 7.10.98 (which came to our notice only after judgment was reserved) contained summaries of statements made by seven others, including Kishore, Father Alexander, and a soldier named Kumara Nayanajith. As I shall presently show, not only does Kishore's statement corroborate and exculpate the petitioner, but the other two statements substantially corroborate Kishore.

On the question of delay and suppression, I must say that it is unfortunate that what the 3rd respondent wrote to the Attorney-General on 29.7.98, what the Police reported to the Magistrare's Court on 7.10.98, and what the respondents' instructing AAL represented to this Court, are inconsistent in material respects.

The respondents and their legal advisers owed an obligation to the judiciary and the administration of justice to make their best efforts to obtain all material relevant to the issues before the Court, and to bring that material to the notice of the Court – and that, too, with all reasonable speed – especially because a citizen continued to be deprived of his personal liberty. That obligation was not honoured, making it more for this Court to ascertain the truth, and causing undue delay in reaching a decision. Unfortunately, this was by no means the first such instance.

PREVENTION OF TERRORISM ACT

The relevant provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, (PTA) are these:

6. (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary –

(*a*) *arrest any person;*
(*b*) enter and search any premises;
(*c*) stop and search any individual or any vehicle, vessel, train or aircraft; and
(*d*) seize any document or thing,

connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity . . .

7. (1) Any person *arrested under subsection (1) of section* 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate *shall,* on an application made in writing in that behalf by a police officer not below the rank of Superintendent, *make order that such person shall be remanded until the conclusion of the trial of such person:*

Provided that, where the Attorney-General consents to the release of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody.

(2) Where any person *connected with or concerned in or reasonably suspected to be connected with or concerned in the*

commission of any offence under this Act appears or is produced before any Court other than in the manner referred to in sub-section (1), such Court shall order the remand of such person until the conclusion of the trial: provided that . . . " [emphasis added].

ARREST AND DETENTION

The petitioner maintained that he was not told the reason for his arrest. He described what happened at 5.30 pm just after his second statement was recorded on 7.6.98:

" . . . the 1st respondent received a telephone message and thereafter the 1st respondent informed me that a senior officer of the Police had instructed him to arrest and detain me and therefore that he would be compelled to produce me to the Vavuniya Police Station and detain me until he receives further instructions from his senior officers."

In his affidavit, the 1st respondent stated that he arrested the petitioner in terms of an authority, granted to him by the 2nd respondent under section 6 (1) of the PTA, which authorised him to "perform all acts specified" in section 6 (1). He admitted the telephone call, but failed to produce any entry regarding the fact or the contents of that message; he also failed to specify the precise reason which he had communicated to the petitioner – concealing information or having discussions with terrorists. He claimed:

" . . . while I was in the process of recording a further statement of the petitioner I received a telephone call from the Criminal Records Division (CRD). It was in reply to an inquiry that I had made previously in respect of Sudah, whose name transpired in the initial statement of the petitioner. I was informed by the CRD that Sudah is a person wanted in connection with the terrorist activities of the LTTE. I state further, that I took the petitioner into custody at 17.30 hrs having explained the reason for his arrest . . ."

It would seem that it was only then that the 1st and 2nd respondents first became aware that Sudah was wanted, and why; if so, was it reasonable for either of them to have assumed that the petitioner was better informed? He also asserted that:

> " . . . the petitioner's visit to the LTTE terrorist-controlled area of *Thunukkani to meet one Sudah* in the company of Kishore had not been within the scope and course [of] his normal duties . . .
>
> . . . according to the Sri Lanka Red Cross Society the petitioner's trip to *Madhu* was not within the scope and course of his official duties." [emphasis added]

However, the respondents gave differing reasons for arrest in contemporaneous documents. The reason which the 1st respondent recorded at 5.30 pm was the petitioner's *failure to disclose information* concerning the murder of Police officers, and the collection of explosives, guns and offensive weapons without legal authority, by LTTE terrorists. But, the "B" report filed on 10.6.98 made no reference to a failure to disclose information; it mentioned a complaint made on 6.6.98 (not produced) and stated that the CID had credible information (not disclosed) that the petitioner had taken a group of persons in a Red Cross vehicle to an LTTE-controlled area *for a discussion with an LTTE leader named Sudah*, describing Sudah as being one of those responsible for sending specially trained squads to Colombo and other places to bomb transformers, telephone installations, etc. In the letter to the petitioner's brother no reference was made to discussions; instead, it was alleged that the petitioner *had concealed information regarding terrorism.* To the HRTF it was stated that the petitioner *had discussions with LTTE leaders* and had *concealed information about them.*

As for his detention, the petitioner explained the circumstances thus:

> "After I was brought to the Criminal Investigations Department the 3rd respondent interrogated me and told me that "interested

parties" had wanted me to be kept in custody and further *threatened me with assault and torture if I do not reveal the full details of the trip to Madhu with Dr. Jayawardene."* [emphasis added]

While the 1st respondent did say in his affidavit that the petitioner "was never produced before the Director, CID", it is unlikely that the 1st respondent would have had personal knowledge of what the petitioner did throughout the entire period of about two days during which the petitioner was detained at the CID. This was a serious allegation made against the 3rd respondent, and he refrained from filing an affidavit to deny it. There is thus insufficient reason to doubt the petitioner's version.

It was thereafter, that the Colombo Fort Magistrate remanded the petitioner. In the circumstances, it is likely that he did not know under what legal provision he was produced and remanded.

Although the 1st respondent claimed that he had arrested the petitioner under section 6 (1), in the "B" report the Police sought a remand order under section 7 (2) – although it seems to me that it was section 7 (1) alone which applied. However, I do not consider that defect as vitiating the remand order.

THE FACTS

I must now turn to certain other material facts which are in dispute. The petitioner stated in his affidavit that:

"As a driver of the Sri Lanka Red Cross Society I have been assigned to carry out the duties *that are assigned to me by the Chairman and the Secretary* of the said Society . . . in [that] capacity I have visited the North and the Eastern Provinces on official duty on several occasions . . .

. . . in my capacity as a driver attached to the Sri Lanka Red Cross Society I travel to the North and the Eastern areas, uncleared by the government forces, transporting mail bags, dead bodies of the security forces from the uncleared areas to be handed

over to the authorities in Vavuniya, and the transport of dead bodies of the LTTE cadres handed over by the security forces, to the Sri Lankan Red Cross, to be handed over to the LTTE in the uncleared areas."

In reply, the 1st respondent claimed to be unaware of the petitioner's duties, but acknowledged that "he had stated the same facts in his [statements]". That suggests that he did not know and had not checked – on 7.6.98 or even three months later when he signed his affidavit – what those duties were. But, quite inconsistently, he went on to claim that the petitioner's trips to Madhu and Thunukkani were not within the scope of his duties. How could he have come to that conclusion unless he had investigated and ascertained what those duties were? And if he had, he should have stated what those duties were, and should have produced a supporting statement from an official of the Red Cross. He did neither.

The report made to the Magistrate's Court on 7.10.98 included summaries of statements said to have been made by Kishore the Secretary-General of the Society – whether those statements had been made before the petitioner's arrest, *or* after arrest but before 10.6.98, *or* after 10.6.98, is not clear. I refer to these summaries not as evidence, but as the material available to the respondents on which they acted, or should have acted. Kishore's statement confirms that the petitioner drove to Madhu, and thereafter to Thunukkani, on Kishore's directions. The Secretary-General's statement reveals that he had told Kishore not to go to Madhu with Dr. Jayawardena because Dr. Jayawardena was a politician; but even if Kishore was at fault at that respect that was not a matter for the criminal law. That statement contains not a word which suggests that Kishore's trip to Thunukkani was unauthorised, or that the petitioner was acting outside the scope of his duties in obeying his instructions. If at all anyone was to blame, it was Kishore and not the petitioner.

The summaries revealed that Dr. Jayawardena came to Vavuniya on 29.5.98, with Father Alexander, having made prior arrangements with Kishore to travel to Madhu; *not* to Thunukkani. According to

Kishore, the object of Kishore's visit to Thunukkani was – by prior arrangement with an LTTE leader – to discuss with Sudah the handing over of a soldier held captive by the LTTE; and subsequently, on 31.5.98, Sudah came to Madhu Church with that soldier. That soldier was Nayanajith, whose statement was to the effect that he was held captive by the LTTE; and that after Kishore's discussion with Sudah. Sudah brought him to Madhu Church on 31.5.98 (which Father Alexander's statement confirmed); and that thereafter the ICRC brought him to Vavuniya.

I have, therefore, no hesitation in rejecting the respondent's version.

LEGALITY OF ARREST

As at 6.6.98, there was no complaint or allegation against the petitioner. The only matter being investigated was the alleged discussion between Dr. Jayawardena and the LTTE. The entirety of the petitioner's trip, from 29.5.98 to 1.6.98 – to Madhu, Thunukkani, and back – was on the instructions of his superior, and within the scope and in the course of his employment. What is more, the purpose of Kishore's visit to Thunukkani was for a lawful and, indeed, desirable purpose: to obtain the release of a soldier from LTTE captivity. The two statements made by the petitioner on 7.6.98 could not have given rise to any reasonable suspicion of wrongdoing of any kind. But, even assuming that the 1st and the 2nd respondents did have some suspicion about the trip to Madhu and, or Thunukkani, they were under a duty to verify the petitioner's version from Kishore – and Kishore was readily available at Vavuniya, having accompanied the petitioner to the Police Station twice on 7.6.98. The summaries do not indicate whether Kishore's statement had been recorded before or after the petitioner's arrest but that makes no difference. If it had been recorded *before*, then it provided corroboration of the petitioner's version; but if it had been recorded *after*, then the arrest was premature, made without due care being exercised to check the truth of the petitioner's statements. Either way, any suspicion which the respondents entertained was not reasonable.

The fact that the respondents have alleged varying reasons for arrest, taken together with the failure to establish the contents of the telephone message, suggests that the petitioner was not given a reason for arrest. According to the 1st respondent, the telephone message revealed that Sudah was wanted for terrorist activities, and that was not a sufficient ground for arresting the petitioner because he had had no discussion with him on 30.5.98, and his previous contacts were for lawful purposes. It is far more likely that the petitioner had really been arrested for extraneous reasons – in the hope that something might turn up which incriminated Dr. Jayawardena.

I hold that the petitioner had not been informed of any valid reason for arrest; that the 1st and 2nd respondents did not in fact suspect (reasonably or otherwise) that he was connected with or concerned in any unlawful activity or offence under the PTA; that his arrest was arbitrary, capricious and unlawful, and for a collateral purpose.

LEGALITY OF DETENTION

Article 13 (2) requires that every person arrested be brought before the Judge of the nearest competent Court according to procedure established by law; and not further deprived of his personal liberty otherwise than in terms of the order of such Judge.

The petitioner should, therefore, have been produced before a Magistrate in Vavuniya the same evening. The 1st and 2nd respondents deliberately refrained from doing so, with the intention of taking him to the CID office in Colombo the next day. Even then, he was not produced before a Magistrate until 10.6.98.

The respondents rely on section 7 (1) of the PTA to justify detention for three full days. The PTA was passed with a two-thirds majority (SC SD 7/79), and if the petitioner had been detained in conformity with section 7 (1), there would be no violation of Article 13 (2).

Article 13 (2) applies to every person arrested (or held in custody, etc); and not only to persons "*lawfully* arrested", or "arrested in

conformity with Article 13 (1)". Section 7 (1) on the other hand applies only to persons "arrested *under* section 6 (1)"; and that means persons *duly* arrested, or persons arrested *in accordance with* section 6 (1). It does not include persons *purportedly* arrested under section 6 (1), or arrested *contrary* to section 6 (1) – and even if there had been some ambiguity, being a provision affecting personal liberty, section 7 (1) could not have been so interpreted.

I hold that the petitioner was not arrested "under" section 6 (1), but otherwise than in accordance with section 6 (1). Accordingly, the 1st and 2nd respondents did not have the right to keep him in custody in terms of section 7 (1), but were obliged to comply with Article 13 (2). Article 13 (2) was infringed in two respects: non-production before the nearest Magistrate, and detention for three days.

The period of detention after 10.6.98 gives rise to a different question as to the legality of detention upon a Magisterial remand order. Was that a *judicial* act, or was it *executive or administrative?* It cannot be said that the act of a judicial officer is necessarily "judicial", and never "executive or administrative" – because an act which is not an exercise of the judicial power of the people may be executive or administrative in character: *Jayathevan v. AG*[1]. If a judicial officer has been deprived by the law of the power of deciding and acting according to his own judgment, he cannot act "judicially": *Farook v. Raymond*[2] citing *Perera v. AG,*[3] where de Alwis, J. held that a remand order made by a Magistrate was not in the exercise of a judicial discretion, since he had none under the Emergency Regulations, and that therefore the unlawful detention of the petitioner in that case had been by executive or administrative action.

Here the Magistrate did have a discretion, whether to remand or not, in two respects. First, whether he acted under subsection (1) or (2), he had to consider whether the person was "connected with or concerned in or reasonably suspected of being connected with or concerned" in any unlawful activity or offence under the PTA; if not, he could not make a remand order. Second, he could remand a person only "until the conclusion of the trial". Accordingly, if a trial was then not in contemplation – as, for instance, if the Police had

announced that they had no intention of instituting proceedings – the Magistrate had no power to order remand. A remand order in such a situation would have been tantamount to indefinite detention. Article 13 (3) makes it clear that detention "pending trial" is not punishment. It follows that detention when no trial is contemplated would amount to punishment without trial and conviction. In that respect, too, the Magistrate had a discretion. Indeed, if at any subsequent stage the material on record showed that a trial was not in contemplation, the foundation of the original remand order would disappear, and he had the power and the duty to review it.

Detention was, therefore, not by executive or administrative action, and no relief can be granted in these proceedings in respect of the remand order made on 10.6.98, even if it was wrong: for that, the petitioner could have sought relief in other judicial proceedings.

However, it was clear from a very early stage that there could be no trial of the petitioner. Although the Attorney-General's opinion was expressed and communicated only on 28.12.98, there is no doubt that the Police were aware (at the latest by 7.10.98) that a trial was not reasonably possible. An "act" includes an omission, and likewise "executive or administrative action" includes an omission to act, at least where there is a duty to act. Having obtained a remand order against the petitioner operative until the conclusion of his trial, it was the duty of the Police to notify the Magistrate as soon as it became clear to them that no trial was possible.

ORDER

Learned State Counsel cited the Emergency (Proscribing of LTTE) Regulations, No. 1 of 1998, which made it an offence to attend meetings and other contacts with the LTTE. However, Regulation 5 made an exception in regard to the right of any international organization, which had entered into an agreement with the Government, "to engage in any activity connected with the rendering of humanitarian assistance".

Even if the activities of the Sri Lanka Red Cross, Vavuniya District Branch might not strictly fall within that provision, yet it was engaged in humanitarian activities on behalf of the Government and the people of Sri Lanka. The petitioner was just a small cog in that machine. He was entrusted with seemingly insignificant duties, which most people would find less than congenial, and which had to be performed amidst anxiety, tension, and hostility. The human resources available to the State to detect, investigate and prosecute crime are scarce, and they should have been devoted to that purpose rather than to the harassment of the petitioner.

I grant the petitioner a declaration that his fundamental rights under Articles 13 (1) and (2) have been infringed, and direct the State to pay him a sum of Rs. 200,000 as compensation and costs, and to forward proof of payment to the Registrar, on or before 9.4.99.

GUNAWARDANA, J. – I agree.

WEERASEKERA, J. – I agree.

Relief granted.