

**JEGAN AND ANOTHER
VS
INSPECTOR GENERAL OF POLICE AND OTHERS**

SUPREME COURT
SHIRANEE TILAKAWARDENE. J.
MARSOOF. PC. J
SRIPAVAN, J
SC FR 21/2008
OCTOBER 28, 2009

Fundamental Rights – Provincial Councils Elections Act No. 2 of 1988 – Section 92 – Complaint against Provincial elections – Two separate remedies available? – Constitutional right guaranteed under the Constitution and Election Petition.

The petitioner sought a declaration based on alleged acts of rampant violation, acts of intimidation and acts leading to fear psychosis in the Provincial Councils elections held in the Batticaloa district. The respondents objected to the application on the basis that the only necessary remedy which could be invoked by the petitioners was in terms of Section 92 of the Provincial Councils Elections Act.

On The Preliminary objection taken,

Held:

- (1) Every citizen whether he or she is a candidate or a voter is empowered in terms of the Fundamental Rights Chapter of the Constitution to seek relief for his or her own personal benefit, in respect of an executive or administrative act or omission which resulted in a violation of constitutionally guaranteed rights.
- (2) The range of remedies available would extend to declarations of such violations in terms of the Constitution, directions on the Police and Election Authorities with regard to their specific action or inaction and or commensurate award of compensation.
- (3) In terms of the Provincial Councils Elections Act a specific candidate whose election results have been materially affected is

enabled to seek remedy under the specific provisions of Section 92 within the limitations prescribed.

- (4) Undoubted safeguard contained in Section 92 and the other related sections in the Provincial Councils Elections Act which protect the fairness of elections do not detract or preclude the constitutional jurisdiction of the Supreme Court. This is a right that must be recognized, cherished, safeguarded and upheld.

APPLICATION under Article 126 on a preliminary objection taken.

J. C. Weliamuna with Pulasthi Hewamanne for petitioner

Ms. Indika Demuni de Silva DSG for respondents

Cur.adv.vult.

March 30, 2009

SHIRANEE TILAKAWARDANE. J.

A preliminary objection was taken by Mrs. De Silva, D. S. G., that the application of the petitioners should be dismissed in limine on the following grounds:-

- (1) That in its pith and substance, the petitioners had sought a declaration based on alleged acts of rampant violence, acts of intimidation and acts leading to fear psychosis in the Provincial Council elections held in the Batticaloa district. If credence is to be given to this application, then the only remedy available to the petitioners, would be to seek recourse under Section 92 of the Provincial Councils Election Act No. 2 of 1988 to seek a declaration that the election of the aforesaid district be declared null and void, in other words, to seek an avoidance of the said election. This objection she stated was substantiated on the several pleadings contained in paragraphs 8 and 18 of the petition. Her argument was therefore that the only necessary remedy which could be invoked by the petitioners was in terms of Section 92 of the said Act. Even if the avoidance was to be limited to a single member,

this was the only and limited remedy that was available to the petitioner.

- (2) That in any event, under the Provincial Councils Election Act No. 2 of 1988 the Court could not grant relief to the petitioners and make findings against the respondents without setting aside the entire election. This would undoubtedly affect those who were duly elected as members as any such findings made would be adverse to their interest. They are not parties to this application, but would be necessary parties who would be directly affected by the avoidance of the said election. Under the circumstances the application cannot be entertained by this Court.

Having considered the submissions made by both Deputy Solicitor General and the counter submissions made by learned Counsel Mr. Weliamuna appearing for the petitioners, this Court finds that two separate remedies are available to a party who complains about the Provincial elections. The first is under the Provincial Councils Election Act No. 2 of 1988 and the second is by invoking the Fundamental Rights Chapter of the Constitution. These remedies which are available are distinctive and different. The reliefs prayed for and claimed are also separate, different and distinct.

A citizen, indeed every citizen of Sri Lanka, whether he or she is a candidate, or a voter, is empowered in terms of the Fundamental Rights chapter of the Constitution to seek redress for his or her own personal benefit, in respect of an executive or administrative act or omission which resulted in a violation of constitutionally guaranteed rights. The range of remedies available would extend to declarations of such violations in terms of the Constitution, directions on the Police and Election Authorities with regard to their specific action or inaction and/or commensurate award of compensation.

It is to be understood that in terms of the Provincial Councils Election Act No. 2 of 1988 as amended, a specific candidate whose election results have been materially affected is enabled to seek remedy under the specific provisions of section 92, of the Provincial Councils Election Act No. 2 of 1988 as amended, within the limitations prescribed under the scope and ambit of this Section. Indeed, this Court is appreciative of the fact that the fundamental rights application of the petitioners invokes a specific constitutional right leading to a constitutional remedy which is guaranteed by the constitutional jurisdiction vested in the Supreme Court.

We, therefore hold that undoubted safeguard contained in Section 92 and the other related Sections of the Provincial Councils Election Act which protects the fairness of elections do not detract or preclude the constitutional jurisdiction of this Court.

Indeed, every citizen who is prevented in any manner whatsoever from exercising his or her right to vote, which is after all an integral part of his or her freedom of expression and choice is entitled to claim an unimpeded passage, free of violence and/or other unlawful incursion to cast his or her ballot in a free and unobstructed manner. This is a right that must be recognized, cherished, safeguarded and upheld by this Court.

We accordingly overrule and dismiss the preliminary objections of the respondents.

The main argument is fixed for 15.02.2010.

MARSOOF – I agree.

SRIPAVAN. J. – I agree.

Preliminary objection over ruled Main Matter set down for argument.