SASANASIRITISSA THERO AND OTHERS
v.
P.A. DE SILVA, CHIEF INSPECTOR, C.I.D. AND OTHERS

SUPREME COURT
H.A.G DE SILVA, J., BANDARANAYAKE, J. AND KULATUNGA, J.
S.C. APPLICATIONS 13/88, 14/88 and 15/88
MAY 17, 18, 19, 29 & 30, 1989

Fundamental Rights – Mala fide arrest and detention for political reasons – Articles 12(1), 12(2), 13(1), 13(2) and 14(1) of the Constitution – Time-base

At the Katana Mahapola celebration held at Harischandra Vidyalaya a bomb explosion took place to disrupt the procession and two hand grenades were thrown – one of which struck a student and rolled on to the ground without exploding a few yards from the Hon. Amarasiri, Minister of Trade and Hon. Wijayapala Mendis, Minister of Textile Industries (5th respondent) and the others exploded causing injuries to the 6th respondent (the 5th respondent's Public Relations Officer). The 1st petitioner is the patron of the SLFP and a prominent party worker opposed to the Government while the 2nd and 3rd petitioners were his van driver and aide respectively. The 1st petitioner's van driven by the 2nd petitioner had been about 75 yards away from the place where the bomb exploded. The van had come to the town to change tyres and neither the 2nd or 3rd petitioner's had anything to do with the incident. The 1st petitioner had gone to the house of one Justin Silva and with him gone to the temple but came to know on the day of the incident itself (9.10.87) that his driver and aide had been taken into custody. On the same day in the night, he was arrested by the 1st

respondent who did not inform him of the reason for the arrest. He was kept in the same cell with his driver and aide. They were kept in Police custody and prison and on 1.1.88 they were brought back to the New Magazine Prison where they were served with a detention order dated 20.12.87 under Regulation 17(1) of the Emergency Regulations signed by the Secretary, Ministry of Defence. After their arrest they were not produced before a Magistrate. The 2nd and 3rd petitioners stated they went to change tyres and the bomb throwing occurred when the vehicle was passing Harischandra Vidyalaya. The van stopped in the consequent confusion and traffic block and they had been taken into custody. The detention until 20.12.87 was under Regulation 19(2).

The respondents contend that the arrests were on 09.10.87, 22.10.87, 21.11.87 and 20.12.87 and the application of the petitioners made on 29.01.88 was time barred. In any event the complaint was regarding the detention order of 20.12.87. Further the petitioners knew they had been wrongly arrested and detained and representations had been made on their behalf to His Excellency the President on 11.10.87 and earlier to the 7th respondent on 13.10.87.

Held –

(1) Before delay in coming before Court within a period of one month from the date of infringement can be excused for want of knowledge the petitioner was not free to come before Court. Knowledge of the contents of the detention order was here essential. Further the impugned detention was a continuing infringment.

(2) Regulation 17(1) does not require the service of a copy of the detention order on the detainee at the time of his arrest. Under Regulation 17(2) such Order would be sufficient authority to any Police Officer or member of the Forces to detain in custody the person named therein without informing him of the reason.

(3) Regulation 17(5) requires the Secretary to the Ministry of Defence to afford the earliest practicable opportunity to the defence to make representations to the President and inform him of his right to make his objections to the Advisory Committee established under Reg. 17(4).

(4) The entire period of detention from 20.12.87 is a single detention though several detention orders were issued. It would lead to injustice if the petitioners were limited to the detention order of 20.12.87.

(5) An Additional Secretary can sign the detention order not as a result of delegation of power but because he is empowered to sign by Regulation 17(1) read with Regulation 2(1).

(6) In its narrow sense mala fides means personal animosity, spite, vengeance, personal benefit to the authority itself or its relations and friends. At times the Courts use the phrase 'male fides' in the broad sense of any improper exercise or abuse of power. It does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended. Where power is used unreasonably or for improper purpose such conduct is mala fide even though the authority may not be guilty of intentional dishonesty. Even a mistaken opinion will not invalidate a detention order and want of good faith can be established only by proof positive that the Secretary did not form that opinion.

(7) The driver and the lay aide were arrested because they were at the scene in the Thero's van. The Thero was arrested because all the persons who were questioned suspected him. It is difficult to treat an arrest effected in these circumstances as reasonable.

(8) The detainees were kept in custody for 73 days under Reg. 19(2) pending investigations. When the maximum period of detention under Reg. 19(2) was about to expire the 7th respondent recommended an order under Reg. 17(1) and the Order made on 20.12.87 was kept continued indefinitely. On the facts the onus had shifted to the 7th respondent to negative mala fides. This he failed to do.

(9) The allegation was that the Thero discussed the elimination of Ministers and high Police Officers and the collection of arms and money by robbery to finance JVP activities but the Thero vehemently denied this and identified Susil Karunanayake on whose statement the 2nd and 7th respondent relied as being a person who had reason to be ill disposed towards him. These respondents must take full responsibility for the unfounded allegations made by them and for the incarceration of the petitioners referable to such allegations. The 7th respondent (and his Additional Secretaries) signed orders mechnically on the request of their subordinates. The 2nd and 7th respondents acted mala fide in making serious allegations not supported by any material worthy of credit. The 7th respondent and his Additional Secretaries never held the opinion they claim to have entertained.

(10) The power of preventive detention is qualitatively different from that of punitive detention. The essential concept of preventive detention is the opinion that the detention is not to punish.

(11) No reasonable person could have on the available material formed the opinion that the petitioner should be detained in the interest of national security or maintenance of public order. Once they were cleared on the bomb throwing charge they were entitled to have been released. The failure to release is evidence of malice in law. The detention order is therefore unlawful.

Cases referred to:

1. *Siriwardena* v. *Rodrigo* 1986 1 Sri LR 384, 387
2. *Gamaethige* v. *Siriwardena* 1988 1 Sri LR 384, 402
3. *Kumaranatuge* v. *Samarasinghe* FRD (2) 347, 360
4. *Kottunage Somaratne Ranasinghe* v. *Ceylon Plywood Corporation* FRD (1) p. 91
5. *Gunasena Thenabadu* v. *University of Ceylon* FRD (1) p. 63
6. *Jayasena* v. *Soysa* FRD (1) p. 97
7. *Ganeshanathan Jeganathan* v. *Attorney-General* FRD (2) p.257
8. *Sahul Hameed* v. *Stanley Ranasinghe* et al SC Appln. No. 78/87 - Supreme Court Minutes of 20.06.89
9. *Liversidge* v. *Sir John Anderson* 1942 AC 206
10. *Hirdaramani* v. *Ratnavali* 75 NLR 67

11. *Greene* v. *Secretary of State for Home Affairs* 1942 AC 284

12. *Jaichand* v. *West Bengal* AIR 1967 SC 483, 485

13. *Gunasekera* vs. *Ratnavale* 76 NLR 316

14. *Yapa* v. *Bandaranayake* 1988 1 Sri LR 53

APPLICATION for infringment of fundamental rights.

A.A. de Silva with *K. Tiranagama, Ms. S. Jayatilleke, Nimal Punchihewa* and *M.C. Jayaratne* for Petitioners.

D.S. Wijesinghe with *Ms. D. Dharmadasa* for 1st respondent

J.W. Subasinghe, P.C. with *Ms. T. Keenawinna* and *Ms. R. Dolwatte* for 2nd respondent

Ben Eliyathamby, P.C. with *S.J. Mohideen* and *Ms S. de Silva* for 3rd respondent

L.C. Seneviratne, P.C. with *M. Abdul Rahuman* for 5th and 6th respondents.

Rohan Jayatilleke, D.S.G. with *Suhada Gamlath, S.C.* for 4,7,8 and 9th respondents.

Cur. adv. vult.

July 27, 1989.

KULATUNGA, J.

The petitioners in applications Nos. 13-15/88 have sought reliefs from this Court for infringement of fundamental rights arising from their arrest and detention under the Emergency Regulations. They were arrested on 09.10.87 as a result of a bomb explosion on the occasion of the Mahapola Celebrations at Harischandra Vidyalaya, Negombo.

Of consent the applications 13-15/88 were consolidated and heard together. The petitioner Thero in application No. 13/88 is, according to his petition, the Viharadhipathi of Susiridinitharamaya Katuwapitiya in the Katana electorate and Viharadhipathi of Sri Dharmaraja Viharaya of Hellawagedera in the Divulapitiya electorate. He is the patron of the Sri Lanka Freedom Party Central Organisation in the Katana electorate. His work for the party includes the collection of funds and enrolment of members for the party. The petitioner in application No. 14/88 one Saman Kumara was his driver and the petitioner in application No. 15/88 one Jayawardena was his lay aide during the relevant period.

On 06.10.87 the petitioner in application No. 13/88 addressed a S.L.F.P. rally at Raddoluwa, Seeduwa. The rally was also addressed by Mrs. Sirimavo Bandaranaike. The petitioner says that in his speech he was critical of the government and the 5th respondent,

Member of Parliament for Katana. According to the newspaper report P2, the main topic was the Peace Accord with India.

It is the position of the petitioner that on account of political and other differences the 5th respondent was displeased with him and along with the 6th respondent caused him and the petitioners in the other two applications to be arrested and detained mala fide and on political considerations in derogation of his rights guaranteed by Articles 12(1), 12(2), 13(1), 13(2) and 14(1) of the Constitution.

The petitioner states that meetings of an organisational nature were also held in his temple on behalf of the party and that his van No. 27 Sri 9955 is used for private as well as religious activities of the area and also for propaganda work of the S.L.F.P. and people in Katana and Negombo electorates are well aware that the said van belongs to the petitioner. The fact that the said van was being so used was not seriously challenged at the hearing.

It is common ground that 09.10.87 was a day on which the Katana Mahapola Celebrations were being held at Harischandra Vidyalaya, Negombo. The 5th respondent states that Mr. M.S. Amarasiri, Hon. Minister of Trade & Shipping was the chief guest on that date and was being conducted with him to the school when a bomb explosion occurred around 6.30 p.m. when the procession was entering the school premises. According to the 5th respondent two objects which he recognised to be hand grenades were thrown one of which struck a student in the procession and rolled on to the ground a few yards from Mr. Amarasiri and himself, but it did not explode. The other exploded causing injuries to several persons including the 6th respondent, his Public Relations Officer. He was not aware who threw the grenade.

The petitioner states that he came to know that at the time his van driven by its usual driver Saman Kumara and his aide Jayawardena had been about seventy five yards away from the place where the bomb had exploded. He states that the van had come to the town to change tyres and denies that the driver or the aide had anything to do with the incident.

The petitioner admits that at the time of the bomb explosion, he was in the house of one Justin de Silva two miles away from the scene and had thereafter gone to a temple with the said de Silva to make arrangements for a religious function. He had no knowledge of the incident but came to know on 09.10.87 itself that the said van

with the driver and aide had been taken into custody by the 1st respondent who was the Chief Inspector, Negombo Police.

According to the petitioner, he returned to his temple at Katuwapitiya in the night of 09.10.87. The same day he was arrested by the 1st respondent without informing him of the reason therefor and was taken to the Negombo Police Station without permitting any dayakaya to communicate with him or to visit him. He was kept by the cell in which Saman Kumara and Jayawardena were detained.

The petitioner alleges that he was kept in the Police Station in the custody of the 1st respondent till 22.10.87 when the 2nd respondent succeeded the 1st respondent as Headquarters Inspector. He was then brought to Pelawatte Prison Camp and kept in custody and on 15.11.87 transferred to the New Magazine Prison where he was kept until 25.12.87 on which date he was taken to the Negombo Police Station along with Saman Kumara and Jayawardena representing that this was to effect their release. However, they were in fact detained in the Negombo Police Station till 01.01.88.

On 01.01.88 the petitioner and the other two detainees were brought back to the New Magazine Prison and he was served with a detention order under Regulation 17(1) of the Emergency Regulations dated 20.12.87 signed by the 7th respondent (P4). The petitioner alleges that after his arrest he was not produced before a Magistrate or any competent Court. He now understands that his detention till 20.12.87 had been on detention orders made by the 3rd respondent under Regulation 19(2) of the Emergency Regulations which orders were not shown to, or served, on him.

The petitioner contends that his original arrest on 09.10.87 and custody and detention and continued custody under detention order P4 are violative of his fundamental rights under Articles 12(1), 12(2), 13(1), 13(2) and 14(1) in that he had been arrested without any evidence and that such arrest and detention were contrary to law, mala fide and made at the behest of the 5th and 6th respondents to prevent him from speaking against the government and the 5th respondent and to cause harm and prejudice to him and his political ideas; and further alleges that in furtherence of such motivation the 1st respondent was transferred out of Negombo to the CID and the 2nd respondent who was willing to oblige the 5th respondent was appointed as Headquarters Inspector, Negombo to inquire into the alleged bomb throwing at Mahapola on 09.10.87.

Upon the service of the detention order on 01.01.88 the petitioner took steps to file his application within one month from such service and for that purpose had to obtain the special permission of the Inspector General of Police to sign his proxy and affidavit. In his petition filed on 29.01.88 the petitioner prays for a declaration that the detention order dated 20.12.87 is illegal and invalid, for a declaration for his release from detention, and for damages in a sum of Rs. 100,000/-.

The petitioners in applications Nos. 14 and 15/88 who were also detained on similar orders state that they were taking the van No. 27 Sri 9955 to change tyres and the bomb throwing occurred when the vehicle was passing Harischandra Vidayalaya and in the confusion that ensued and the consequent traffic block the van stopped and they were taken into custody by the 1st respondent. They deny having committed any offence and believe that they were taken into custody because they were the driver and lay aide respectively of the petitioner Thero. They complain that the detention order dated 20.12.87 is violative of their fundamental rights guaranteed by Article 13 of the Constitution. They also rely on the facts set out in the Thero's affidavit and pray for a declaration that the said detention order dated 20.12.87 is illegal and invalid and for damages which each of them assesses at Rs. 30,000/-.

The detention imposed by the order dated 20.12.87 on each petitioner was continued during subsequent months by fresh orders whenever the emergency was extended. The petitioner was released when the emergency was revoked on 09.01.89 whilst the other two petitioners had been released in December, 1988.

Objection was taken particularly by the 1st and 3rd respondents that the petitioners cannot invoke the jurisdiction of this Court as they have filed their applications after the lapse of one month prescribed by Article 126(2) of the Constitution. It was submitted that they were arrested on 09.10.87 and the detention orders under reference were made on 09.10.87, 22.10.87 and 21.11.87 and 20.12.87. It was urged that the applications filed on 29.01.88 are time barred in the circumstances and that in any event the Thero could have filed his application within one month of the alleged infringement of his rights particularly having regard to the fact the representations were made on his behalf to His Excellency the President by Jeyaraj Fernandopulle Attorney-at-Law and President of the Central

Organisation of the SLFP in Katana electorate on 11.10.87 (P5) and to the 7th respondent on 13.10.87 (P6).

It was also submitted that in any event each of these petitioners has sought relief only in respect of the detention order dated 20.12.87 and as such they may not canvass the validity of the original arrest or the detention orders made prior to or after the detention order dated 20.12.87. Mr. Subasinghe P.C. submitted that the only point for decision by us is the validity of the detention order dated 20.12.87.

I agree that each of the petitioners have in their petitions sought reliefs only in respect of the detention order dated 20.12.87. Their explanation for filing the application on 29.01.88 is that the said order was served on them on 01.01.88. This is confirmed by the 2nd respondent's objections wherein he states that the said orders were received on 31.12.87 and accordingly the detainees were transferred to the Welikada remand prison on 01.01.88.

It is true that the want of knowledge of the infringement may in an appropriate case be accepted as a valid excuse for the delay in coming before this Court within a period of one month from the date of the infringement. *Siriwardena v. Rodrigo* (1) *Gamaethige v. Siriwardena*(2).

However, before the delay can be excused for want of knowledge it must be established that without such knowledge the petitioner was not free to come before this Court. In this case, it may be argued that the petitioners were in custody which they all along alleged to be unlawful and hence the lack of knowledge of any detention order was not a constraint in seeking reliefs at an earlier date. As against this there is the fact that they were originally arrested for an alleged bomb throwing and were detained under Regulation 19(2) of the Emergency Regulations. If upon the termination of such detention it was sought to detain them under Regulation 17(1) the petitioners may justifiably contend that they could not have made any effective application for relief unless they were informed of the fresh ground of their continued detention.

Regulation 17(1) does not require the service of a copy of the detention order on the detenu at the time of his arrest. Under Regulation 17(2) such order would be sufficient authority to any Police Officer or a member of the Forces to detain in custody the person named therein; and such person may be lawfully seized

without informing him of the reason therefor as is required in the case of an arrest for an offence – see *Kumaranatunge v. Samarasinghe*(3).

However, Regulation 17(5) requires the Secretary to the Ministry of Defence to afford the earliest practicable opportunity to the detenu to make representations to the President and to inform him of his right to make his objections to the advisory committee established by Regulation 17(4). Even though the service of the detention order is not required at the time of taking him into custody the right to make representations would carry with it the right to be provided with a copy of such order the knowledge of which is vital to the effectual exercise of such right.

The knowledge of the detention order could, in a particular case, be even more vital if the detenu chooses to seek relief for the violation of his fundamental rights. I am of the opinion that this is such a case and that without the knowledge of the order time will not run against the petitioners.

The preliminary objection to these applications can be disposed of on another ground although the Counsel for the petitioners did not raise it before us. The ground is that the impugned detention is a continuing infringement and that it would be competent to a detenu to make his application within one month from any date on which he suffers such detention and not necessarily within one month from the date of such order. If so, these applications filed on 29.01.88 are in strict compliance with Article 126(2) of the Constitution and no question of our considering any excuse for delay arises. The exact date of these applications would in this view of the matter only be relevant to the quantum of relief under Article 126(4).

For the foregoing reasons, I overrule the preliminary objection raised by the respondents.

Before I leave this part of the judgment, I must express my view on the submission that the only point for consideration is the detention order of 20.12.87. I cannot agree. Even though we cannot grant relief on the ground of the original arrest and the detention prior to 20.12.87 whether on account of the time bar or on account of the fact that the petitioners have not sought reliefs in respect thereof, still for all those events are relevant in considering the issues in this case.

As regards the continued detention subsequent to the order dated 20.12.87, this Court is competent to rule on the entire period of

detention of the petitioners covered by the relevant detention orders. All such subsequent orders were made under the same regulations and on the same ground. With his further affidavit dated 13.12.87 7th respondent filed seven such orders (7R2-7R8) and sought to defend them as against the Thero, in view of the present state of security in the country. Even though no further detention orders have been produced in respect of the other two petitioners, I presume that their continued custody is covered by similar detention orders.

In my view, the entire period of detention from 20.12.87 is a single detention in respect of which relief may be sought. It would lead to injustice if the petitioners were limited to the order dated 20.12.87 in the matter of relief. If it were otherwise it could even lead to an absurdity in that we would be compelling them to file as many fundamental right applications as there are detention orders all of which have been made after the petitioners invoked the jurisdiction of this Court.

I now proceed to examine the merits of the case for the petitioners. The main objections have been filed in application No. 13/88 in respect of the Thero and similar objections have been filed in applications Nos 14 and 15/88 in respect of his driver and the lay aide. As such, I shall first examine the Thero's case.

The affidavits of the 7th and 8th respondents dated 21.04.88 are very brief. The 7th respondent (Secretary, Ministry of Defence) states that he issued the detention order under Regulation 17(1) of the Emergency Regulations in respect of the petitioner at the request of the 8th respondent (Inspector General of Police) after due consideration of the material placed before him by the 8th respondent and on that material forming the opinion that it was necessary to do so to prevent the petitioner from acting in any manner prejudical to the national security or to the maintenance of public order.

The 8th respondent states that the material placed before him by the 3rd respondent (DIG Ekanayake) indicated that the investigations were incomplete as at 20.12.87 and requested the 7th respondent to issue a detention under Regulation 17(1) of the Emergency Regulations and the 7th respondent issued a detention order dated 20.12.87.

The 3rd respondent in his affidavit dated 29.04.88 admits having issued three detention orders (3R1, 3R2 and 3R3) under Regulation 19(2) of the Emergency Regulations covering the petitioner's

detention up to 20.12.87 on the reports of the Superintendent of Police (3R1(a), 3R2(a) and 3R3(a)). These reports request the detention of the petitioner who had been taken into custody in connection with the bomb throwing incident on 09.10.87 pending investigations. The report 3R1(a) in particular shows that the investigations referred to were in respect of the bomb throwing incident involving offences under Regulations 23B and 36(1) of the Emergency Regulations. The 3rd respondent denies that the said orders were issued arbitrarily and adds that he acted bona fide in the performance of his duties.

As regards the detention order dated 20.12.87 the 3rd respondent states that he does not carry out investigative functions and is unaware of the facts and circumstances of the petitioner's detention; and submits that as the said order was made by the 7th respondent the detention of the petitioner is not due to any executive or administrative action taken by him and as such the application is misconceived in so far as it seeks relief against him.

There is thus no support in the 3rd respondent's affidavit for the position taken by the 8th respondent which is to the effect that in applying to the 7th respondent for a detention order under Regulation 17(1) he relied on the material placed before him by the 3rd respondent. On the contrary, the 3rd respondent disclaims any responsibility in his part for the said order.

However, the position taken by the 3rd respondent would not in the circumstances of this case require us to reject the version of the 8th respondent. Even though the 3rd respondent has formulated his defence in language which is capable of the construction that he had not placed any material before the 8th respondent for the purpose of obtaining a detention order under Regulation 17(1), the affidavit of the 2nd respondent and in particular, the document 2R1 shows that the 3rd respondent was the DIG Greater Colombo Range which includes Negombo. As such, it is probable that the request for the detention order might have been channeled through him.

Even so, the position taken by the 3rd respondent is relevant to another issue which I shall consider later on in this judgment namely whether the 7th respondent or the officers who advised him gave their minds at all to the conditions precedent for an order under Regulation 17(1) as asserted by them.

The 2nd respondent who succeeded the 1st respondent as Headquarters Inspector, Negombo in his affidavit dated 04.05.88 refers to his report dated 09.12.87 addressed to his Assistant Superintendent of Police, Negombo (2R1). He states therein that as the petitioner and the other two detainees who had been taken into custody in connection with the bomb throwing would complete 73 days of detention on 20.10.87 and as the investigations in that regard were not over he would recommend the submission of the case to the Secretary, Ministry of Defence for an order under Regulation 17(1) of the Emergency Regulations.

The A.S.P.'s recommendation to his Superintendent of Police was that there was no evidence to connect the suspects with the bomb throwing incident. The S.P. summoned the A.S.P. for a discussion at which, according to the 2nd respondent, the O.I.C. Counter Subversive Unit, Negombo was present. After the discussion, it was decided that the investigations were incomplete and that papers should be prepared to obtain an order under Regulation 17(1). The 2nd respondent prepared the necessary papers and forwarded the same to the A.S.P.(1), Negombo.

The 2nd respondent urges the following grounds as justifying the detention of the petitioner and the other two suspects under Regulations 17(1).

1. There was information that the petitioner had in defiance of the curfew with a number of youths put up black flags against the Peace Accord in July, 1987.
2. The petitioner had been holding frequent meetings in his temples attended by youths.
3. At the time of his arrest the petitioner had in his possession a JVP pamphlet which the petitioner explained had been given to him by some person at the SLFP meeting on 06.10.87.
4. The petitioner's van and the other two suspects had been found in close proximity to the place where the explosion took place.
5. Subsequent investigations led to the arrest of one Sunil, a close relative of the petitioner and several other JVP suspects. The investigations revealed –

   (a) that the said Sunil and other subversives had met the petitioner at the Katuwapitiya temple;

(b) that they discussed with the petitioner the elimination of Ministers of State, High Police Officials and those working against the JVP;

(c) that there had been discussions as to the acquisition of arms and money by robbery.

In his affidavit dated 13.12.88, the 7th respondent has repeated almost verbatim the said grounds adduced by the 2nd respondent in justification of the order under Regulation 17(1), and adds that one of the persons arrested by the Police on 15.04.88 had stated that the petitioner had instigated them to commit robbery of fire arms and other articles for the benefit of the JVP. This was backed up by further affidavit dated 14.12.88 by the 2nd respondent to which is annexed marked 2R2 the statement dated 09.05.88 of one Susil Karunayake whom he states is the man referred to as "Sunil" in his affidavit dated 04.05.88. This suspect had been arrested on 15.04.88 along with four others.

According to the 2nd respondent, Police recovered from Karunanayake's house weapons inlcuding a gun and a kris knife, a hand bomb, a motor cycle, a push bicycle and other valuables. In his statement 2R2 he admits being a JVP member and a robber and makes the following references to the pettioner.

1. that he is related to the petitioner
2. that youths visit the temple at night and on certain days they plot against the UNP;
3. one day he with another JVP member met the petitioner at the temple and discussed the future of the JVP;
4. he with others who used to visit the temple pasted anti government posters.

The statement 2R2 is produced presumably to support the allegations contained in the affidavits of the 2nd and 7th respondents. However, it does not support the most serious allegations made by them namely:

(a) That they discussed with the petitioner the elimination of Ministers of State, High Police Officials and those working against the JVP.

(b) That the petitioner either discussed or instigated the robbery of money and fire arms and other articles for the benefit of the JVP or for other reason.

In his further affidavit dated 03.08.88 the petitioner denies the allegations made against him by the 2nd and 7th respondents and states that Susil Karunanayake is angry with him as he (the petitioner) is the chief witness for the prosecution in M.C. Negombo case No. 22676 (P7) in which the said Karunayake is charged with having cut one Appuhamy with a sword on 10.06.86. The petitioner also produced marked P8 a copy of a letter dated 07.03.88 sent by the Attorney-General advising the Police on the case relating to the aforesaid bomb throwing incident of 09.10.87 that no further action is contemplated against the petitioner and the other two persons and that they could be discharged.

The petitioner reiterates that his continued detention is mala fide and invalid.

The 1st respondent (H.Q.I. Negombo Police) states that on 09.10.87 the driver and the lay aide of the petitioner were taken into custody upon reasonable suspicion of having been concerned in the bomb throwing; that at the time he visited the scene they had been arrested by Police Officers attached to the Mahapola Police Post; that persons present at the scene were questioned and all suspected the petitioner for the bomb throwing; that the van had followed the motor-cade of the Minister; that on the ground of information gathered at the scene he caused the petitioner to be arrested; that he had reasonable suspicion that the petitioner was concerned in the commission of an offence under Emergency Regulations especially having regard to the fact that an attempt had been made on the life of two Ministers and public officers including Police Officers. No statement recorded of a by-stander at the scene has been placed in evidence before us.

The 5th and 6th respondents deny the allegation that they had instigated the arrest and detention of the petitioner. All the other respondents deny the allegation that they acted at the behest of the 5th and 6th respondents and deny the alleged violation of fundamental rights.

I also observe that out of the eight detention orders produced in respect of the petitioner 3 have been signed by the 7th respondent whilst five have been signed by Additional Secretaries of Defence on behalf of the 7th respondent. Learned Counsel for the petitioners submitted that this is a delegation of power which is not permitted by Regulation 17(1). Under Regulation 2(1) "Secretary to the Ministry of Defence" includes any Additional Secretary to the Ministry of

Defence. Such an Additional Secretary is also empowerd to sign a detention order. He derives his power from Regulation 17(1) read with Regulation 2(1) and hence no question of delegation of power arises.

In considering the claims of the petitioner it would be appropriate to first dispose of the case against the 1st, 3rd, 4th, 5th, 6th and 8th respondents. In view of my finding that the petitioners have sought relief only in respect of the detention order dated 20.12.87 there is no case for the 1st respondent to answer. As regards the 3rd respondent, he was only the channel of communication for the transmission of the request for the relevant detention order to the 7th respondent which fact would be insufficient by itself or considered with his other conduct in the case to found a claim for relief against him. The 4th respondent (Commissioner of Prisons) states that on 12.12.87 the Superintendent, Magazine Prison gave a message to the H.Q.I. Negombo Police that the period of detention of the petitioners would expire on 20.12.87 and that they were due to be released on that date; and thereafter detained them on detention orders dated 20.12.87 issued by the 7th respondent. He cannot be held liable for any infringement of fundamental rights on this material.

The 5th and 6th respondents have denied the allegation that they instigated the arrest and detention of the petitioners for political reasons. Mr. L.C. Seneviratne P.C. submitted that the allegations including the alleged threats by those respondents against the Thero are vague and have not been established by admissible evidence; that some of the allegations are based on mere belief not founded on personal knowledge or other facts; that there is no corroborative evidence in support of the allegations.

The learned Counsel drew our attention to the fact that even though Mr. Jeyaraj Fernandopulle Attorney-at-Law and chief organiser of the SLFP in Katana had sent communications to His Excellency the President on 11.10.87 (P5) and to the 7th respondent on 13.10.87 (P6) making allegations against the 5th respondent he has failed to give an affidavit in support of such allegations; and that the charge against the 5th and 6th respondents has not been made out.

In *Kottunnage Somaratne Ranasinghe v. Ceylon Plywood Corporation*(4) this Court dismissed the application for the reason that the alleged discrimination on the ground of the petitioner's political opinion had been denied and has not been established as a

fact. In *Gunasena Thenabadu v. University of Colombo*(5) it was held that the petitioner is obliged to supply sufficient proof of the averments which are denied by the respondent.

In *Jayasena v. Soysa*(6) where allegations of political motivation were made this Court was unable, considering the gravity of the charge, to hold that the allegation had been established. The Court observed that – "apart from the bare assertions contained in the petition and affidavit of the petitioners, we do not find any other material which directly substantiate these imputations".

The allegations against the 5th and 6th respondents are of a serious nature which if proved will carry with them serious consequences. They must therefore be strictly proved by cogent evidence. *Ganeshanathan Jeganathan v. Attorney-General*(7). Such consequences are not limited to acts of persons acting in an executive capacity. The Court has the power to grant relief (including damages) even in respect of non-executive acts where the respondent is proved to be guilty of impropriety or connivance with the executive in the wrongful acts violative of fundamental rights. *Sahul Hameed v. Stanley Ranasinghe et al* (8).

In the light of the relevant principles of the law and the facts, I hold that the allegations against the 5th and 6th respondents have not been established.

The only part played by the 8th respondent is that he requested the 7th respondent to make the impugned detention order. It is not alleged that such request was made mala fide or for an improper purpose. As such, he has not violated the fundamental rights of the petitioner.

That brings me to the 2nd and 7th respondents. It was submitted in their behalf that the impugned order was for preventive detention which is lawful under our Constitution; that according to precedents both in England and Sri Lanka an order valid on its face is a sufficient defence; the decision to detain the petitioners to prevent them from acting in any manner prejudicial to national security or to the maintenance of public order is a subjective decision which is not justifiable except on the ground of mala fide which the petitioner must establish; and that on the available material the petitioners have failed to discharge this burden. Further it appeared to me during the hearing that in the opinion of the learned Deputy Solicitor General, there was overwhelming justification for making the detention order on the basis of the available material.

Learned Counsel for the 2nd respondent submitted that the further affidavits of the 2nd and 7th respondents were really not necessary and were filed in deference to a direction of this Court given on 09.12.88. Learned Counsel attributed this direction to an acceptance of the minority judgment in *Liversidge v. Sir John Anderson* (9). My own analysis of the evidence has led me to the conclusion that the said order was warranted even upon the application of authorities relied upon by learned Counsel in that the available material suggested a prima facie inference that the detention order was not made in good faith and the onus had shifted to the 7th respondent to negative such inference. See *Hirdaramani v. Ratnavale* (10).

Now this case can be decided on the basis of the principles hitherto laid down in England and in this country and applicable to the relevant Emergency Regulations. What is required is not a search for legal principles in the matter but the application of the principles already settled by Courts to the particular facts of this case.

In the English decisions the power of the Secretary of State for Home Affairs to make an order that a person be detained under Regulation 18B of the Defence (General) Regulation 1939 came for interpretation. He is empowered to make an order where he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him. In the *Liversidge case*, the appellant who had been detained sued the Home Secretary claiming damages for false imprisonment and applied for particulars as to the grounds of belief on which the order was made. The good faith of the Secretary was not challenged. The Secretary made no affidavit in defence but denied the allegation of unlawful detention. It was held, Lord Atkin dissenting, that what is in issue is the state of mind of the Se etary and the order being a matter for executive discretion cannot be examined by Court provided that he acts in good faith. The Court will not compel the Secretary to divulge the grounds in view of confidentiality and the public interest.

In *Greene v. Secretary of State for Home Affairs* (11) the relief by way of a writ of habeas corpus was sought against an order under Regulation 18B. It was held that the production of the Secretary's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the application; and there is no need to submit an affidavit. The circumstance that the Secretary was not bound to disclose the grounds or some of the

grounds on which he formed his belief was considered relevant to such a conclusion.

It is apparent that in the cases of *Liversidge* and *Greene,* the House of Lords determined the scope and the extent of the Secretary's discretion with the least impediment to the war effort emphasising the need to secure public safety and the defence of the realm over the liberty of the individual.

Under Regulation 17(1) of the Emergency Regulations the Secretary may make an order if he is of the opinion that such order is necessary for any of the purposes set out therein. In the *Hidaramani* case this court was called upon to interpret Regulation 18(1) which corresponded to the present Regulation 17(1). It was held applying the principles in *Liversidge* and *Greene's* cases that the production of the order concludes the matter, unless good faith is negatived; that unless a prima facie case of bad faith is made out the onus does not shift to the Secretary to establish his good faith; that if the onus has not shifted to him he need not file an affidavit and if he does no adverse inference can be drawn from the circumstance that the grounds actually stated in the affidavit may be vague or incomplete.

The ruling in the *Hirdaramani* case was reached in circumstances which are very different from those present in the English cases. Thus the impugned order was not made under war legislation but in terms of Emergency Regulations made in the background of the 1971 insurrection which of course gave rise to a grave emergency. At the time of his detention, there were allegations of serious violations of the law relating to exchange control against the corpus. The petitioner alleged that the order was made with an ulterior motive namely to facilitate intensive investigations into the alleged exchange control offences. The Secretary filed an affidavit wherein inter alia, he referred to an admission by the detenu that he had paid a sum of Rs. 1,729,00/- to certain foreign nationals in Ceylon in consideration of payments of foreign currency illegally made abroad to the credit of the detenu but stated that he could not by reasons of public security disclose all the matters which led to his opinion. Nevertheless the Secretary added that he was prepared to make the relevant material available for the perusal of the Court – an offer which the Court described as a mark of good faith. Eventually the Court did review the order itself, H.N.G. Fernando CJ, stating that he considered it necessary, in view of the confident challenge to the good faith of the

Secretary, to pronounce upon the merits of that challenge in the public interest.

The Hirdaramani judgement is particularly important for reason that it expounds the doctrine of mala fides in administrative law with particular reference to the exercise of powers under Emergency Regulations.

In its narrow sense mala fides means personal animosity, spite, vengeance, personal benefit to the authority itself or its relations or friends. At times the Courts use the phase 'mala fides' in the broad sense of any improper exercise or abuse of power – see Principles of Administrative Law Jain & Jain 4th Edition 562. The author cites the decision in *Jaichand v. West Bengal* (12) in which the Court observed –

> "..... mala fide exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended".

Where power is used unreasonably or for an improper purpose such conduct is mala fide even though the authority may not be guilty of intentional dishonesty – Wade Administrative Law 5th Edition 391.

In what situations may the Court interfere with the order of the Secretary on the ground of mala fides? It was contended that the detention of Hirdaramani was made with an ulterior motive. The Court held that the petitioner had failed to estabish a prima facie case of such motive. H.N.G. Fernando CJ observed – "..... it will not by any means suffice for the petitioner to establish that the Permanent Secretary was mistaken in thinking that the detention of the detainee was necessary for the stated purpose. Even a mistaken opinion will not invalidate a detention order, and want of good faith can be established only by proof positive that the Secretary did not indeed form that opinion".

The Chief Justice proceeded to state his views as to the nature of the facts which may justify the Court in examining an allegation of bad faith such as antecedent motive and bias and adds –

> "There may be instances in which the truth of a reason or an opinion stated by an official in an executive order, can be disproved by evidence or statements of the official containing some different reason or opinion, or tending to show that the stated reason or opinion is incorrect or untrue. It is also remotely

possible that an opinion stated in an executive order is manifestly absurd or perverse".

G.P.A. Silva J. referred to collateral purpose whilst Samarawickrema J. referred to fraud as a vitiating fact and added that the burden of proving such an allegation is a heavy burden to discharge and the raising of mere suspicion is not sufficient. In another part of the judgment Samarawickreme J. said –

> "again if there is overwhelming ground for believing that no reasonable Permanent Secretary could form the opinion that it is necessary to make the detention order in respect of the person affected, it might show that the Permanent Secretary is acting in bad faith and that the detention order was not made on the basis of an opinion required by the Regulation but for an improper purpose".

G.P.A. Silva J. explaining the circumstances in which the Court may call upon the authority for an explanation on the ground that the onus has shifted to him to establish his good faith stated that –

> ..... a person complaining against an excess of power by the executive can only invite the Court's interference by proof of mala fides on the part of the officer concerned, at least to the extent of creating in the mind of the Court substantial and disquieting doubts as to his bona fides, which would warrant an explanation".

In the opinion of Samarawickrema J. the question of onus only arises where the evidence on either side is evenly balanced. On the facts, all three Judges reached the conclusion directly or by implication that on the available material the detention order was justified.

In *Gunasekera v. Ratnavale* (13) in which a challenge to a detention order made by the Permanent Secretary on the ground of mala fides failed there was substantial material against the detenu. Thus, there was evidence to the effect that on 18.03.71 the detenu had in his possession –

(a) a map of Ahangama showing the location of the Ahangama Police Station indicating the mode in which it might be attacked;

(b) posters and newspapers of the Janatha Vimukthi Peramuna (which was proscribed subsequently);

(c) a set of five lectures setting out the reasons for and the methods by which the government of Ceylon should be overthrown.

Investigations also revealed, in addition to other incriminating facts, that on 18.03.71 the detenu was residing at the Headquarters of the Janatha Vimukthi Peramuna at Ahangama. Having examined the facts, Alles J. ruled that the presumption of good faith had not been rebutted. On the contrary, the Secretary had disclosed relevant and cogent grounds why he thought the corpus should be detained although there was no obligation on him to state these grounds. The Court found that malice had not been established in fact or in law.

It is relevant to note that during the period the detention orders in the *Hirdaramani* and *Gunasekera* cases were made the available remedy against such detention was an application for a writ of habeas corpus in terms of Section 45 of the Courts Ordinance and that such detention did not give rise to an application for relief on the ground of infringement of fundamental rights. Besides, it was held in the *Gunasekera* case, Wijayatilaka J. dissenting, that Regulation 55 which suspended the writ of habeas corpus in the case of persons detained under Emergency Regulations ousted the jurisdiction of the Court even on the issue of good faith, a view which did not commend itself to the majority of Judges in the *Hirdaramani* case. These factors coupled with the circumstances that there were very few challenges to detention orders during that period when the incidence of such orders were also much less than now explains the judicial reluctance to review such orders save in exceptional cases. In such a context, the Court was also naturally more inclined to liberally apply the presumption of good faith of the Secretary who was the sole authority under the Prime Minister competent to make a detention order. Having regard to his high position and the confidence reposed in him, it was unthinkable that he would not exercise his power in good faith. Even so this Court would consider the facts and satisfy its conscience before dismissing the claim of the aggrieved party.

The situation has since changed in other ways. No doubt the Secretary still holds the very responsible position assigned to him. However, due to the prevailing conditions and prolonged civil strife, his work is bound to increase and he would have to rely increasingly on the advice of his subordinates in exercising his powers for which he alone is responsible. He is no longer the sole authority under the Emergency Regulations for any Additional Secretary of the Ministry of Defence is also competent thereunder to exercise the same powers.

Any excesses committed by them are justiciable for violation of fundamental rights. It is true that such rights can be restricted by law in the public interest but powers conferred on him in terms of such restrictions must be lawfully exercised. All this would have to be kept in mind in the application of legal principles to the facts of the case before us.

I now refer to two recent decisions of this Court in which an order under Regulation 17(1) was challenged. In *Kumaranatunga v. Samarasinghe* (3) the challenge was based mainly on legal grounds all of which failed in particular the contention that Regulation 17(1) provides for preventive detention which is ultra vires Article 13 (4) of the Constitution. There was a feeble allegation of mala fides based on the wording between two detention orders issued on 19.11.82 and 20.11.82 respectively. This ground also failed. Soza J. observed that the only justiciable issue was mala fides and mala fides had not been established. The total period of Kumarantunga's detention amounted to two months.

In *Yapa v. Bandaranayake* (14) the detenu was Mahinda Wijesekera an influential politician and an Attorney-at-Law. Up to the date of hearing of the application, he had been detained for 109 days on two detention orders, one of them dated 31.07.87 under Regulation 19(2) and the other dated 03.08.87 under Regulation 17(1) of the Emergency Regulations. It was alleged that the detention was mala fide at the instance of Mr. Ronnie de Mel, the Minister of Finance.

The available material included the statements of two witnesses who stated that they saw Mahinda Wijesekera inciting a crowd on the morning of 29.07.87 (the day of the signing of the Peace Accord between Sri Lanka and India) to destroy the bungalow and the office of the Finance Minister, attack the C.W.E. building and set fire to the Public Library. The crowd attacked the C.W.E. building and the Public Library whilst a part of the crowd damaged the Minister's office and set fire to the bungalow.

It was held that the Secretary was justified on the available material in making the detention order, in good faith.

The Court also held overruling a submission on behalf of the petitioner that there is nothing to prevent a detention order under

Regulation 17(1) from being made while a detention order under Regulation 19(2) is in force, provided the circumstances justified it, as in the present case.

It appears that the instant case is unusual for the length of the period of detention. The Thero was in detention nearly 13 months whilst his driver and the lay aide were in detention nearly 12 months, under Regulation 17(1) (following a period of 73 days of detention under Regulations 19(2)). The Thero was released when the emergency was revoked on 09.01.89 whilst the other two were released in December, 1988 presumably because the Attorney-General was unable to support their continued detention any longer.

Another feature of this case is that the detenu had been 73 days in detention under Regulation 19(2) immediately preceding the order under Regulation 17(1) and the request for the second order was made on the ground that investigations were incomplete whereas in *Yapa v. Bandaranayake* the order under Regulation 17(1) was made on the 3rd day after the making of the orders under Regulation 19(2) on the basis of the evidence already available which indicated that the more appropriate order was under Regulation 17(1).

It is also relevant to note that at the time one order under Regulation 17(1) was made in this case the Police had no evidence to connect the detenu with the offence for which he had been arrested and detained under Regulation 19(2). This is confirmed by the Attorney-General's ruling dated 07.03.88 (p8). Consequently, the Secretary had to rely on other grounds for making the order under Regulation 17(1). However, in *Yapa v. Bandaranayake* the material on which the detenu was arrested and detained under Regulation 19(2) amply justified that order as well as the second order under Regulation 17(1). The position was confirmed by the statements recorded subsequent to the said second order.

The circumstances in which the detenu was arrested on 09.10.87 are also relevant to a decision of this case. The detenu may not be entitled to seek relief on account of the said arrest in view of the time bar under Article 126(2) of the Constitution. In any event, in the context of the bomb throwing incident which endangered the life of two Ministers and other similar incidents during this period this Court may not hold the said arrest to be violative of fundamental rights deserving the imposition of constitutional sanctions. However, the

reasonability of such arrest would be relevant in considering the bona fides of the detention under Regulation 17(1).

Thus, as far as the facts are concerned, the driver and the lay aide were arrested because they were at the scene in the Thero's van. The Thero was arrested because all the persons who were questioned suspected him. It is difficult to treat an arrest effected in these circumstances to be reasonable.

The 1st respondent states that he had reasonable suspicion against the Thero, especially as an attempt had been made on the life of two Ministers and public officers including Police Officers. The only link between the attempt on the life of two Ministers and the Thero is that the Thero is an influential political opponent of the 5th respondent and the government. The 5th respondent himself has no objection to mere political criticism. The allegation that he instigated the arrest has not been established. If so, the arrest was made because even unwittingly the Police appear to believe that if an attempt is made on the life of a Minister it would be reasonable to arrest his avowed political opponent. It would be in the interest of all concerned to discourage the Police against such a psychology for otherwise the possibility of such arrests would inhibit healthy criticism so vital to the advancement of fundamental rights and democracy.

The detainees were kept in custody for 73 days under Regulation 19(2) pending investigations. No material whatever was placed before us as to what those investigations were except perhaps the investigations which led to the arrest of Susil Karunanayake and four others on 15.04.88.

When the maximum period of detention under Regulation 19(2) was about to expire the 7th respondent recommended an order under Regulation 17(1) and the order made on 20.12.87 was kept continued indefinitely.

Learned Counsel for the 2nd and 7th respondents submitted that the 7th respondent cannot disclose all the grounds for his order due to considerations of national security. Of the decisions discussed above, it was only in the *Liversidge* and *Greene's* cases that there was a strict non-disclosure of reasons. In the other decisions regardless of the right of non-disclosure the respondents have volunteered as much information as possible.

In the instant case, the first affidavit of the 7th respondent, by implication, seeks privilege but the first affidavit of the 2nd respondent sets out elaborate grounds in justification of the impugned order presumably to negative malice. The most vital of these grounds being the allegation that the Thero discussed the elimination of Ministers and High Police Officials and the collection of arms and money by robbery to finance JVP activities which was vehemently denied in the further affidavit of the Thero which affidavit also identified Susil Karunanayake on whose statement the 2nd and 7th respondents relied as being a person who has reason to be ill disposed towards him.

This was the state of the case when it came up on 09.12.88. As I have already stated, on that day the Court indicated the need to file further affidavits. That was because the onus had shifted to the 7th respondent to negative mala fides. In the words of G.P.A. Silva J., in the *Hirdaramani* case the facts gave rise to substantial and disquieting doubts in the mind of the Court as to his bona fides or in the words of Samarawickrema J. at that stage the evidence was evenly balanced. In other words, a prima facie case of mala fides had been made out on the available evidence.

Thereafter, the 2nd and 7th respondents filed further affidavits when the 7th respondent repeated with greater emphasis the grounds which had previously been made by the 2nd respondent, in particular the two most serious allegations referred to above. However, as pointed elsewhere in this judgment there is no support for the said allegations in the statement of Susil Karunanayake 2RB.

Whatever pretence there may be in the affidavits of these respondents as to undisclosed sources of information, I am satisfied that the only source of their information on the basis of which they seek to negative mala fides is 1R2 which falls hopelessly short of their expectations. Consequently, these respondents must take full responsibility for the unfounded allegations made by them and for the incarceration of the petitioners referable to such allegations.

I hold that the 7th respondent (and his Additional Secretaries) signed orders mechanically on the request of their subordinates; that the 2nd and 7th respondents acted mala fide in making serious allegations not supported by any material worthy of credit; the 7th

respondent and his Additional Secretaries never held the opinion they claim to have entertained.

The 7th respondent also failed to consider relevant matters. Before the detainees were detained he ought to have considered the circumstances of their original arrest and detention and satisfied himself whether it was necessary in view of their past conduct to detain them in order to prevent them committing further such acts in the interest of national security or public order. Shukla in Constitution of India 7th Edition 134 states –

> "The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis for detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing so. The power of preventive detention is qualitatively different from that of punitive detention".

It is true that preventive detention is not ultra vires Article 13(4) of the Constitution. However, in the instant case, there is no conceivable past act by the petitioners which could have led to the impugned order. On the contrary they were cleared of the charge on which they were arrested; they were then detained in circumstances in which such detention by reason of its duration constitutes a punishment violative of Article 13(4). This would constitute an improper exercise of power.

I hold that on the available material no reasonable person can possibly have the opinion that these petitioners should be detained in the interest of national security or maintenance of public order; but for the bomb throwing incident they would not have been arrested or detained at all. Once they were cleared on that charge they were entitled to have been released. In the circumstances, the failure to so release them is evidence of malice in law. The detention order is therefore unlawful.

The 2nd respondent connived at the impugned detention order and is guilty of impropriety in that regard.

The infringement of Articles 12 and 14(1) is based on the ground of political victimisation which has not been established. The

infringement of Article 13(1) relates to the original arrest in respect of which we cannot grant relief. As such, the Petitioners have only established an infringement of Articles 13(2).

I must state that there is no case whatever as against the Petitioners in applications Nos. 14 and 15/88. They are mere victims of the circumstances which I have elsewhere discussed. The further affidavits of the 2nd and 7th respondents do not touch them.

In view of my findings in another part of this judgment. I dismiss the applications against the 1st, 3rd, 4th, 5th, 6th and 8th respondents without costs.

The Petitioners are entitled to a declaration that the impugned detention is unlawful and that their fundamental rights to freedom from arbitrary detention and deprivation of personal liberty have been violated by the 2nd and 7th respondents.

These respondents have, by their purported official acts violative of fundamental rights, made the State liable for such infraction. I determine that the 2nd and 7th respondents have infringed the fundamental rights of each of the petitioners guaranteed by Article 13(2) of the Constitution.

The petitioners are entitled to compensation for the distress and suffering caused by reason of their detention. Having regard to all the circumstances, I direct the State to pay the petitioner in application No. 13/88 Rs. 35,000/- as compensation and Rs. 1575/- as costs and each of the petitioners in applications Nos. 14/88 and 15/88 Rs. 12,000/- as compensation and Rs. 787.50/- as costs.

H.A.G. DE SILVA, J. – I agree
BANDARANAYAKE, J. – I agree

Application against 2 and 7 respondents upheld.

Application against 1,3,4,5,6 and 8 respondents dismissed