

BANDARANAIKE

v.

WEERARATNE AND OTHERS

(S. C. Special 4/80)

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(S. C. Special 5/80)

SUPREME COURT.**SAMERAWICKRAME, J., ISMAIL, J. AND WANASUNDERA, J.****S. C. SPECIAL 4/80—C. A. No. 2114/80.****S. C. SPECIAL 5/80—C. A. No. 2115/80.****NOVEMBER 10, 11, 12, 13, 1980.**

Writ of certiorari—Application under article 140 of the Constitution—Special Presidential Commission established under Law No. 7 of 1978 as amended by Act No. 4 of 1978—Recommendations under section 9 of the said Law—Imposition of civic disabilities—Preclusive nature of Article 81 (3) of the Constitution—Conclusive nature of Speaker's Certificate.

The respondents to these two applications, members of the Special Presidential Commission established under Law No. 7 of 1978, as amended by Act. No. 4 of 1978, made findings against the petitioners which they held constituted the misuse or abuse of power by them and made recommendations under section 9 of the said Law that each of the petitioners be made subject to civic disability. Paragraphs (1), (2) and (3) of Article 81 of the Constitution provide for the mode and conditions of taking such action. The imposition of civic disabilities and/or the expulsion of any person from Parliament, if he is a Member of Parliament, is to be effected by resolution introduced by the Prime Minister with the approval of the Cabinet and passed by Parliament with a 2/3 majority after the Special Presidential Commission of Inquiry makes a recommendation to that effect. By the time the matter was argued the resolutions of Parliament had been passed and it was contended on behalf of the petitioners that if the findings and recommendations of the Special Presidential Commission were void on the grounds set out by the petitioners the resolutions passed by Parliament were also invalid. Objection was taken *in limine* on behalf of the respondents that the Court was precluded from going into or entertaining these applications for writs of certiorari *inter alia* by reason of the provisions of Article 81 (3) of the Constitution.

Held

The words "...no Court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever", in the latter part of Article 81 (3) of the Constitution precluded the Court from entertaining and going into the application for writ and accordingly the preliminary objection of the respondents must be upheld and the applications for writ dismissed.

H. L. de Silva, with E. D. Wikremanayake, K. Shanmugalingam, S. Dassanayake, Gornin Dayasri and V. W. Kularatne, for the petitioner in S. C. Special 4/80.

Shiva Pasupati, Attorney-General, with K. M. M. B. Kulatunga, Additional Solicitor-General and A. S. Ratnapala, State Counsel, for the respondents.

H. L. de Silva, with E. D. Wikremanayake, K. C. F. Wijewickrema and P. Samararatne, for the petitioner in S. C. Special 5/80.

K. N. Choksy, with D. C. Jayasuriya, Senior State Counsel, for the respondents.

Cur. adv. vult.

January 15, 1981.

SAMERAWICKRAME, J.

The respondents to each of the two applications hold office as members of the Special Presidential Commission established under Law No. 7 of 1978 as amended by Act No. 4 of 1978. The respondents held inquiries into the conduct of each of the two petitioners in the above applications in terms of the Warrant issued under section 2 of the said Law No. 7 of 1978. The respondents have made findings against the petitioners on allegations which they held constitute the misuse or abuse of power by them and have made in each case their recommendation under section 9 of the said Law No. 7 of 1978 that the petitioner be made subject to civic disability.

Section 9(1) of Law No. 7 of 1978 reads:

“Where a commission finds at the inquiry and reports to the President that any person has been guilty of any act of political victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court or tribunal or any public body, or in relation to the administration of any law or the administration of justice, the commission shall recommend whether such person should be made subject to civic disability, and the President shall cause such finding to be published in the Gazette as soon as possible, and direct that such report be published.”

Though Law No. 7 of 1978 was enacted before the promulgation of the Constitution of the Democratic Socialist Republic of Sri Lanka, provision was made in the constitution providing for action to be taken against any person in respect of whom the Special Presidential Commission set up by the said Law, recommended should be made subject to civic disability by reason of any act

done or omitted to be done by such person before or after the commencement of the Constitution. Sub-section (1) (2) and (3) of Article 81 of the Constitution provide for the mode of taking such action and read as follows:

“(1) Where a Special Presidential Commission of inquiry established under the Special Presidential Commissions of Inquiry Law No. 7 of 1978, and consisting of a member or members each of whom is a Judge of the Supreme Court, Court of Appeal, High Court or the District Court, recommends that any person should be made subject to civic disability by reason of any act done or omitted to be done by such person before or after the commencement of the Constitution, Parliament may by resolution passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour:

- (a) impose civic disability on such person for a period not exceeding seven years, and
- (b) expel such person from Parliament, if he is a Member of Parliament.

Where a Special Presidential Commission of Inquiry consists of more than one member, a recommendation made by the majority of such members, in case of any difference of opinion, shall be, and shall be deemed for all purposes to be, the recommendation of such Commission of Inquiry.

(2) No such resolution shall be entertained by the speaker or placed on the Order Paper of Parliament unless introduced by the Prime Minister with the approval of the Cabinet of Ministers.

(3) The Speaker shall endorse on every resolution passed in accordance with the preceding provisions of this Article a certificate in the following form:

“This resolution has been duly passed by Parliament in accordance with the provisions of Article 81 of the Constitution.”

Every such certificate shall be conclusive for all purposes and shall not be questioned in any court, and no court or tribunal

shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever."

It is to be noted that the imposition of civic disabilities and/or the expulsion of such person from Parliament, if he is a Member of Parliament, is to be effected by resolution passed by Parliament. The conditions for passing such resolution are:

- (1) The Special Presidential Commission of Inquiry recommends that the person should be made subject to civic disability by reason of acts done or omitted to be done before or after the commencement of the Constitution.
- (2) The resolution is passed by not less than 2/3 of the whole number of Members of Parliament (including those not present) voting in its favour.
- (3) Such resolution has been introduced by the Prime Minister with the approval of the Cabinet of Ministers.

These conditions are found in sub-paragraphs 1 and 2 of Article 81 and sub-paragraph 3 requires the Speaker to endorse on every resolution passed in accordance with the preceding provisions of the Article, a certificate that it has been duly passed by Parliament in accordance with the provisions of Article 81 of the Constitution.

Mr. H. L. de Silva submitted on behalf of the petitioners, emphasising the word "passed", that the certificate merely testifies to the fact that it has been passed by not less than 2/3 of the whole number of members and perhaps also that it has been introduced by the Prime Minister with the approval of the Cabinet of Ministers. We are unable to accept this submission and are of the view that the Speaker's certificate is broader in scope and relates to all the conditions of the passing of the resolution in terms of article 81 referred to above by us. For example, we note that the certificate of the Speaker marked R18 in application No. 4 of 1980 does refer to the findings and recommendation of the Special Presidential Commission. It also states that the resolution which was in fact moved by the Prime Minister had received the approval of the Board of Ministers and had been duly passed in Parliament in accordance with the provisions of Article 81. The latter part of sub-paragraph (3) of Article 81 states that such certificate of the Speaker shall be conclusive for all purposes

and shall not be questioned in any court and that no Court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever.

Learned Counsel appearing for the respondents submitted in reliance on the last part of Article 81 (3) that this Court was precluded from entertaining the application for Writ and going into it. They also raised objection in limine in respect of the applications on certain other grounds. We heard arguments in respect of these objections in respect of both applications together and this order is made in respect of that matter.

In their original applications, which were filed before the resolutions were passed, the petitioners stated that notice of a motion has been given in Parliament for a resolution to be moved by the Prime Minister with the approval of the Cabinet of Ministers in terms of Article 81(2) of the Constitution to impose civic disabilities and in the case of the petitioner in No. 4 of 1980, to expel her from Parliament. They further stated that by reason of the facts thereafter set out in the petition, such a resolution by Parliament would constitute a grave violation of their legal and constitutional rights and freedoms and would cause irreparable harm and injury. Their position was that the findings against them were null and void and the recommendations based on such findings were equally null and void on the grounds set out in the petitions. The petitioners have thus indicated that the findings, recommendations and the resolutions were inextricably connected with each other. By the time the matter was argued, the resolutions had been passed and Mr. H. L. de Silva appearing for the petitioners submitted that if the findings and recommendations of the Special Presidential Commission were void on the grounds set out by him, the resolutions passed by Parliament were also invalid. He submitted that if a finding is made by this Court that the findings and resolutions of the Special Presidential Commission were void, then Parliament, the members of which had taken an oath to uphold the Constitution, would have an imperative duty to rescind the resolutions. He further submitted that even if this Parliament did not do so, a future Parliament might well do so.

It is necessary to examine the objection in limine based on Article 81 (3) to this Court entertaining and going into the

application of the petitioners to have the findings and recommendations of the respondents quashed as being null and void. A valid finding and a valid recommendation by the Special Presidential Commission of Inquiry is no doubt a necessary condition to the passing of a resolution by Parliament for imposing civic disabilities and/or expelling a person from Parliament. As set out earlier in this judgment, a certificate of the Speaker that the resolution had been duly passed in accordance with the provisions of Article 81 constitutes *inter alia* a statement that there has been a finding and recommendation by the Special Presidential Commission. Once a resolution has been passed and the certificate by the Speaker endorsed on it, there is a preclusive clause in sub-paragraph (3) of Article 81 which comes into force. It is the contention of the respondents that thereafter it is not open to any Court, tribunal or person to seek to impeach the subsistence of any of the necessary conditions for passing the resolution. There are two aspects of the preclusive clause that requires consideration. The first part of such clause states:

“Every such certificate shall be conclusive for all purposes and shall not be questioned in any Court.”

Since the certificate contains in effect the statement that there has been a finding and recommendation by a Special Presidential Commission, does this provision in the preclusive clause preclude the Court from entertaining an application to declare that the finding and recommendation were void as such a declaration is tantamount to holding that there had been no finding or recommendation that would constitute the necessary condition for passing the resolution? Where by certification procedures certain evidentiary material is stated to be conclusive, it means that it is to some extent to be regarded as absolute evidence of the facts so stated. In this case, the certificate is to be “conclusive for all purposes.” In the face of such a strong and absolute provision, it is a matter of doubt, to put it at its lowest, whether it is open to this Court to permit matters to be gone into for the purpose of showing that the recommendations and findings were void and did not in fact exist as a necessary condition for the passing of the resolution.

The second part of the preclusive clause is in a sense wider and more sweeping. It states:

“...and no Court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever.”

The issue of a writ quashing the findings and recommendation of the Special Presidential Commission would amount to a decision that one of the necessary conditions for passing a resolution did not in fact exist. If the validity of the resolution was capable of being called in question, one way of doing it is to show that a necessary condition for passing the resolution did not in fact exist. It is true that in this application what the petitioners seek to quash are the findings and recommendations of the Special Presidential Commission but the granting of a writ would necessarily imply that the resolution was invalid. There is a general rule in the construction of Statutes that what a Court or person is prohibited from doing directly, it may not do indirectly or in a circuituous manner. But quite apart from such general rule of construction, there is in this preclusive clause itself express words to indicate this. It states, *inter-alia* :

“No Court or tribunal shall...in any manner call in question the validity of such resolution on any ground whatsoever.”

It is the position of the petitioners themselves that they are seeking to show that the resolutions passed by Parliament are not valid and that they expect that Parliament will in due course rescind the resolutions. Having regard to the necessary effect of granting a writ and the expressed purpose of the petitioners in seeking it, I cannot resist the conclusion that if this Court were to entertain the Application and go into it, it would be acting in violation of the second part of the preclusive clause. In my view, the effect of the issue of a writ quashing the recommendations and findings of the Special Presidential Commission would be in some manner to call in question the validity of the resolutions.

We were referred to decisions of the English Court which showed that schemes prepared under Statute for approval by one or both houses of Parliament or statutory orders that had been approved by one or more houses of Parliament had been struck down by the issue of a writ. These cases deal essentially with the subordinate functions of Parliament and in no such case was there a preclusive clause in such extensive terms and in the fundamental law itself as is found in clause 81 of the Constitution. These cases are, therefore, of no real assistance.

In view of the findings I have arrived at on this objection, it is unnecessary to consider the other objections in limine raised by the respondents. They require careful consideration of the matters for and against raised by counsel on either side.

I am conscious of the fact that this decision means that without going into the factual aspects of the petitioners' complaints, because of a preliminary legal objection the petitioners are declared disentitled to a remedy in a matter in which each of them rightly or wrongly feels that he or she has a serious grievance to place before Court. We are faced, however, with a provision of the fundamental law, the Constitution. This Court has been given the sole jurisdiction to interpret the Constitution. This Court is also vested with jurisdiction in respect of fundamental rights granted by the Constitution and certain other matters arising under the Constitution. There is, therefore, a peculiar duty resting on this Court to uphold and give effect to a provision of the Constitution and we have no alternative but to give proper effect to the preclusive clause in Article 81 (3). In fairness to the respondents, we must say that we have not gone into the facts and we have formed no view whether or not the allegations made by the petitioners are well founded.

In the result, we make order dismissing both applications and we direct the petitioner in each application to pay to the respondents jointly Rs. 1,500 as costs.

ISMAIL, J.—I agree.

WANASUNDERA, J.—I agree.

Applications dismissed.