

BASHEER SEGU DAWOOD
v.
FERIAL ASHRAFF AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
WADUGODAPITIYA, J. AND
GUNASEKERA, J.
SC SPECIAL (E) NO. 2/2001
17, 18 AND 19 SEPTEMBER, 2001

Constitutional Law – Expulsion of a 'member' of recognized political party who is a Member of Parliament – Articles 99 (13) (a) and 99A of the Constitution – Who may expel the 'member' where the recognized political party is a political alliance – Validity of the expulsion.

The petitioner was, at the material time, a member of the Sri Lanka Muslim Congress (The SLMC) which party together with the Sri Lanka Progressive Front formed "a new political alliance" called the National Unity Alliance (NUA) by a Memorandum of Understanding (MoU) dated 10th June, 1999. The NUA contested Parliamentary elections in October, 2000.

The petitioner's name appeared on the nomination paper of the NUA at the aforesaid election for the Batticaloa District but he was presumably not eligible to be declared elected on the basis of preferences received by him at the poll. However, on a request dated 13th October, 2000, made by the 4th respondent (the Secretary-General of the SLMC) made in terms of the MoU between the SLMC and the NUA dated 13th August, 2000, the NUA nominated him as its Nationalist List member under Article 99A of the Constitution and the 9th respondent (the Commissioner of Elections) declared the petitioner as a Member of Parliament under that Article.

By her letter dated 3rd July, 2001, the 1st respondent (the Leader of the NUA) informed the petitioner that he was expelled from the membership of the NUA with immediate effect and that as the petitioner represented the NUA in Parliament his expulsion will be communicated to the 10th respondent (Secretary-General of Parliament) and the 9th respondent (the Commissioner of Elections).

Held:

The petitioner, not being a member of the NUA could not be expelled from it. Therefore, the purported expulsion of the petitioner was invalid in terms of Article 99 (13) (a) of the Constitution.

Per Amerasinghe, J.

" . . . as far as the petitioner is concerned he was and remains a member of the political party, namely the SLMC, and that party alone, although he was a candidate nominated by the NUA for election to Parliament in terms of Article 99A of the Constitution."

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

K. N. Choksy, PC with D. S. Wijesinghe, PC, Ronald Perera, A. M. Faaiz and U. Abdul Najeem for petitioner.

Nihal Jayamanne, PC with Arnold Nanayakkara and Uditha Collure for 1st respondent.

Sanjeewa Jayawardena with Sanjeewa Senasinghe, Mariam Mansoor and Shadiya Zanoon for the 8th respondent.

Romesh de Silva, PC with Harsha Amarasekera for 4th respondent.

Ikram Mohamed, PC with Ian Fernando, Shyama Fernando, Thissath Wijegunawardena, M. S. A. Wadood and Lal Munasinghe for 5th and 6th respondents.

Parakrama Karunaratne with Abdul Kalaam for 7th and 11th respondents.

Wijedasa Rajapakse, PC with Nizam Kariappar, and Kuwera de Soyza for 2nd and 8th respondents.

K. Sripavan, Deputy Solicitor-General with Rajiv Gunathilake, State Counsel for 9th and 10th respondents.

Cur. adv. vult.

September 28, 2001.

AMERASINGHE, J.

By notification published in *Government Gazette* No. 1154/7 dated 17th 1
October, 2000, the Commissioner of Elections, acting under Article
99 (A) of the Constitution, declared certain persons as 'elected'

Members of Parliament. The petitioner was one of the persons so declared 'elected' as a Member of Parliament.

By her letter dated the 3rd of July, 2001, (P19) the 1st respondent wrote to the petitioner stating, *inter alia*, that he had acted in a manner that brought disrespect and disrepute to the National Unity Alliance and its Leader. The 1st respondent further stated that "exercising the powers vested in me as the Leader of the NUA with the objective of safeguarding the best interests of the party, I hereby dismiss you from the Membership of the National Unity Alliance and expel you from the said Party with immediate effect and as such you have ceased to be a Member of the National Unity Alliance". The 1st respondent concludes the letter dated the 3rd of July, 2001, with the following words: "As you represent the National Unity Alliance in the Parliament, your dismissal from the Membership of the NUA and your expulsion from the Party will be communicated to the Secretary-General of Parliament and the Commissioner of Elections."

The petitioner, by his petition dated the 30th of July, 2001, prays that this Court, *inter alia*, (1) declare the purported expulsion of the petitioner from the National Unity Alliance by P19 to be invalid and of no legal force or effect; and (2) set aside the decision of the 1st respondent contained in P19; and (3) declare that the petitioner continues to be and remains a Member of Parliament.

The application of the petitioner for the aforementioned reliefs is made under and in terms of Article 99 (13) (a) states as follows:

"where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

Provided that, in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination".⁴⁰

The petitioner came to be a Member of Parliament in the following way:

The Secretary-General of the Sri Lanka Muslim Congress (SLMC), on the 13th of October, 2000, wrote to the Secretary-General of National Unity Alliance (NUA) stating as follows: (P25B).

"This is further to our discussion on the need to recommend a name to the Commissioner of Elections for the National List of the National Unity Alliance.⁵⁰

Please take action to recommend the name of Mr. Basheer Segu Dawood, the National Propaganda Secretary of the Party to the Commissioner of Elections to be appointed as a MP on the National List of the NUA.

This communication is sent to you in terms of the Memorandum of Understanding signed between the SLMC and the NUA dated 31. 08. 2000."

The Secretary-General of the NUA on the 13th of October, 2000, accordingly wrote to the Commissioner of Elections (P25C).⁶⁰

ආණ්ඩුකම ව්‍යවස්ථාව 99අ වන ව්‍යවස්ථාව යටතේ ආපසු පත්වීමේ විෂයේ ඇති එක් ආකාරයක් සඳහා 2000. 10. 10 වන දින පවත්වන ලද මහා මැතිවරණයේදී ආපසු පත්වීමේ මහලලුට

මැතිවරණ කොට්ඨාසය සඳහා ඉදිරිපත් කරන ලද නාම යෝජනා පත්‍රයෙහි ඇතුළත් එරාමුර, ආර් ඩී පාර අංක 164 හි පදිංචි බිමර සේතු ප්‍රමුද් මහතා පත්කරන ලෙස ඉල්ලා සිටීම.

The National Unity Alliance was, in the words of the Memorandum of Understanding dated the 10th of June, 1999 (P4), "a new political alliance", that brought together two recognized political parties for the purposes of elections, namely, the Sri Lanka Muslim Congress and the Sri Lanka Progressive Front. The National Unity Alliance itself became a recognized political party for the purposes of elections within ⁷⁰ the meaning of section 7 of the Parliamentary Elections Act, No. 1 of 1981.

The Constitution of the National Unity Alliance states (P5a) that the members of the National Unity Alliance are –

- (1) The Sri Lanka Muslim Congress, and
- (2) The Sri Lanka Progressive Front.

However, the Constitution of the NUA provides that the politburo of the NUA "by a unanimous decision may decide to admit any other political party into the alliance".

The structure known as the NUA had constituent parts consisting ⁸⁰ of political parties, but it did not accommodate individuals as members.

The petitioner contends that neither he, nor for that matter any other individual, was a member of the NUA, for the NUA Constitution did not provide for any members other than political parties. Individuals could not become members of the NUA. The petitioner contends that inasmuch as he was not a member of the NUA, the 1st respondent's purported expulsion of the petitioner from the NUA was a nullity. The petitioner further contends that in any event the purported expulsion was invalid in terms of the Constitution of the National Unity Alliance (P5a).

Mr. Jayamanne, PC and Mr. Rajapakse, PC contended that, if as the petitioner maintains, he was not a member of the NUA, then he is precluded from invoking the jurisdiction of this Court under and in terms of Article 99 (13) (a) of the Constitution, for a person invoking the jurisdiction of this Court under that Article should have ceased by resignation, expulsion or otherwise to be a *member* of a recognized political party . . . on whose nomination paper . . . his name appeared at the time of his becoming such Member of Parliament . . ." The submission of learned counsel, attractive though it appears at first sight, is in my view flawed, for it rests on the *erroneous assumption* 100 that a Member of Parliament must be a member of a recognized political party.

Where there is a purported expulsion of a Member of Parliament such Member is entitled, under Article 99 (13) (a) of the Constitution, to invoke the jurisdiction of this Court to determine whether such expulsion was valid. In order to invoke the jurisdiction of this Court, a petitioner is not required to establish that he was a member of a recognized political party on whose nomination paper his name appeared at the time of becoming such Member of Parliament. Members of Parliament who are 'elected' are *candidates* whose names appear on 110 the nomination papers of recognized political parties. There is no requirement that such candidates shall also be *members* of such parties. The petitioner, as we have seen was declared 'elected' under and in terms of Article 99A of the Constitution. There is no requirement in that Article for a *nominee* of a recognized political party, to fill a seat due to such political party under an apportionment, to be a *member* of that political party. Neither the provisions of the Constitution nor the provisions of the Parliamentary Elections Act require a person to be a *member* of a political party to be eligible to be nominated as a candidate for election to Parliament. Of course, political parties 120 and alliances of political parties may have members who can be expelled. In fact, the new Constitution of the NUA does provide for "Founder Members", namely, the SLMC and the SLPF *and* individuals. But, as far as the petitioner is concerned he was and remains a member of one political party, namely, the SLMC, and that party alone although he was a *candidate* nominated by the NUA for election to Parliament in terms of Article 99A of the Constitution.

As we have seen, the first respondent in her letter (P19) has stated that as the petitioner represents the NUA in Parliament his "dismissal from membership of the NUA" (*sic*) and his "expulsion from the Party" 130 will be communicated to the Secretary-General of Parliament and the Commissioner of Elections.

Whatever the petitioner or anyone else may have thought about the matter, the petitioner's seat in Parliament would have automatically fallen vacant upon expiration of one month from the purported expulsion from the party and the Secretary-General of Parliament would have informed the Commissioner of Elections who would then have taken steps to fill the vacancy. (See Article 99 (13) (a) of the Constitution and section 64 (1) of the Parliamentary Elections Act, No. 1 of 1981). However, the Constitution states that in the case 140 of expulsion of a Member of Parliament his seat would not become vacant if prior to the expiration of one month from the expulsion he applies to the Supreme Court and the Court upon such application determines that such expulsion was invalid.

The petitioner, not being a member of the NUA could not be expelled from it. I, therefore, hold that the purported expulsion of the petitioner, Mr. Basheer Segu Dawood, was invalid since it was null and void and of no force or avail in law; the purported expulsion by the first respondent is of no value or importance: It amounts to nothing and shall be treated as non-existent for the purposes of 150 Article 99 (13) (a) of the Constitution.

The 1st respondent shall pay the petitioner a sum of Rs. 25,000 as costs.

WADUGODAPITIYA, J. – I agree.

GUNASEKERA, J. – I agree.

Expulsion of the petitioner from the party determined invalid.