

**GALAPPATHTHI ARACHCHIGE NIHAL**  
**v.**  
**ARIYA BULEGODA AND OTHERS**

SUPREME COURT  
FERNANDO, J.,  
WADUGODAPITIYA, J. AND  
GUNAWARDANA, J.  
S.C. SPECIAL (E) NO. 2/98  
OCTOBER 28, 1998

*Expulsion of a member of a recognized political party – Article 99 (13) (a) of the Constitution – Failure to satisfy the essential pre-conditions for expulsion – Order to pay court costs.*

On 16. 08. 1998 the Sri Lanka Pragathisheeli Peramuna (SLPF) the 3rd respondent expelled from the Party the petitioner, a member of the party representing it in Parliament, consequent upon a vote of "no confidence" adopted by its National Council. The 3rd respondent sought to justify the expulsion on the basis of Article 12 (v) of the 1997 Constitution of the party which provides for the expulsion of a member who is under suspension, by adopting a vote of no confidence. The suspension relied upon by the 3rd respondent was imposed on the petitioner under the 1996 Constitution, pending disciplinary proceedings against him. That Constitution had no provision for expulsion of such member by adopting a vote of no confidence. The petitioner challenged the expulsion in the District Court. The matter was settled on terms, *inter alia*, that disciplinary proceedings will not be continued.

**Held:**

1. The petitioner's suspension necessarily came to an end in terms of the District Court settlement. As such an essential pre-condition for passing a vote of "no confidence", ie a valid suspension – was not satisfied. The purported expulsion of the petitioner is therefore invalid.
2. The 3rd respondent had caused an unnecessary waste of judicial time and was liable to pay court costs.

**Quaere**

Whether the petitioner's rights and liabilities consequent upon his suspension under the 1996 Constitution had to be determined under that Constitution; and in the

absence of express provision in the 1997 Constitution, a vote of "no confidence" under that Constitution could be founded upon a suspension under the 1996 Constitution.

**Cases referred to:**

1. *Galappaththi v. Bulegoda and others* (1997) 1 Sri LR 393.
2. *Galappaththi v. Bulegoda and others* SC Special (E) 1/98 SC Minutes 23 March 1998.

**APPLICATION** under and in terms of Article 99 (13)(a) of the Constitution challenging the expulsion of the petitioner from the SLPF.

*Manohara de Silva with Sunil Watagala* for the petitioner.

*Dr Jayampathy Wickremeratne with Sivaji Felix and Thilan Liyanage* for the 1st to 3rd respondents.

*Cur. adv. vult.*

October 30, 1998.

**FERNANDO, J.**

This is an application under Article 99 (13) (a) of the Constitution by the petitioner, a Member of Parliament representing the 3rd respondent, the Sri Lanka Pragathisheeli Peramuna (SLPF), challenging his expulsion from that Party on 16.8.98 by its Politburo consequent upon a vote of "No Confidence" adopted on 9.8.98 by its National Council of Representatives.

The petitioner had successfully challenged two previous expulsions, by applications filed on 30.12.96 (SC Special 248/96, SCM 19.2.97) and on 23.2.98 (SC Special (E) 1/98, SCM 23.3.98).

The 3rd respondent seeks to justify the expulsion on the basis of Article 12 (V) of its revised Constitution (adopted on 30.11.97) which empowers the Party's National Council to pass a vote of "No Confidence" in respect of a member who is under suspension, whereupon the Politburo can proceed to expel him. Learned counsel

for the 1st to 3rd respondents submitted that such a vote of "No Confidence" was duly passed on 9.8.98, and argued that the essential pre-condition as to suspension was satisfied because the petitioner's membership was at that time suspended by an order made on 8.4.97 (under the previous Constitution revised on 30.11.96) by the 1st respondent, the President of the Party. Although several other questions of fact and law arose in the course of the hearing, the only question which we need to decide is whether that suspension was in force at the relevant time.

That order of suspension was not indefinite, but was expressly stated to be operative until the conclusion of pending disciplinary proceedings. Soon after that order was made, the petitioner filed an action in the District Court of Mount Lavinia on 3.6.97, *inter alia*, challenging that order. The matter was settled on 8.6.98 on the terms, *inter alia*, that the present 1st and 3rd respondents recognised the petitioner as representing the 3rd respondent Party in Parliament and that disciplinary proceedings against him would not be proceeded with. Thereupon the petitioner withdrew his action.

Learned counsel for the petitioner submitted that the disciplinary proceedings were thereby abandoned, and that, as a necessary consequence, the suspension too came to an end.

Learned counsel for the 1st to 3rd respondents submitted that although the suspension had been imposed under the 1996 Constitution, it nevertheless continued to be operative under the next (1997) Constitution; that although the 1996 Constitution did not provide for expulsion of a suspended member by means of a vote of "No Confidence", yet the 1997 Constitution did make provision for such expulsion, which provision – he claimed – was applicable to a member, such as the petitioner, suspended under the 1996 Constitution; and that although the petitioner's suspension came to an end, insofar as further disciplinary proceedings were concerned, he was nevertheless liable to expulsion through a vote of "No Confidence".

It is arguable that the petitioner's rights and liabilities consequent upon his suspension under the 1996 Constitution had to be determined

under the provisions of that Constitution, and that, in the absence of express provision in the 1997 Constitution, a vote of "No Confidence" in terms of the 1997 Constitution could not be founded upon that suspension. But even assuming, for the sake of argument, that it could, yet it is quite clear that the petitioner's suspension was expressly limited to the duration of the then pending disciplinary proceedings, and necessarily came to an end, for all purposes, when those proceedings were abandoned in terms of the settlement reached in the District Court of Mount Lavinia.

It follows, therefore, that an essential pre-condition for passing a vote of "No Confidence" – ie a valid suspension – was not satisfied; that the National Council had no power to adopt such a vote; and that consequently the Politburo had no power to expel the petitioner. I therefore determine that the purported expulsion of the petitioner is null and void, and of no effect in law.

The petitioner has asked for "punitive or exemplary costs" in a sum of one million rupees. While it is not an unreasonable inference that the repeated attempts to expel the petitioner have not been made in good faith, and have seriously vexed him – for which he may have a legal remedy elsewhere – I do not think that the award of costs, in these proceedings, of anything more than what the petitioner has actually incurred is justified. However, insofar as this Court is concerned, the 3rd respondent (through its officers and organs) have caused a needless waste of judicial time, and it is fitting that the 3rd respondent be ordered to pay Court costs. I therefore order the 3rd respondent (a) to pay the petitioner, on or before 31.12.98, a sum of Rs. 25,000 as incurred costs, and (b) to deposit with the Registrar of this Court, on or before 31.12.98, a further sum of Rs. 25,000 as Court costs.

**WADUGODAPITIYA, J.** – I agree.

**GUNAWARDANA, J.** – I agree.

*Expulsion determined invalid.*