

**GUNASIRI**

v.

**SRI LANKA MAHAJANA PAKSHAYA AND OTHERS**

COURT OF APPEAL

J.A.N. DE SILVA, J. (P/CA)

C.A. 617/2000

SEPTEMBER 27<sup>TH</sup>, 2000

DECEMBER 4<sup>TH</sup>, 2000

*Expulsion from constituent party - Notice under S.10A (2) of the Local Authorities Elections Ordinance - Validity - Is expulsion from the peoples Alliance automatic.*

The Petitioner, Chairman of the Biyagama Pradeshiya Saba complained that, the Central Committee of the 1<sup>st</sup> Respondent constituent Party has made a decision to expel him from the party. Thereafter the 4<sup>th</sup> Respondent the General Secretary of the Peoples Alliance had informed the Commissioner of Elections about the expulsion and requested to take necessary steps, the Commissioner of Elections thereafter had given notice under S.10A (2) of the Local Authorities Elections Ordinance.

It was contended that the said Notice is ultra vires and S.10A (2) is not applicable as there was no material to show that the Petitioner ceased to be a member of the Peoples Alliance.

**Held :**

- (i) when a Member loses his Membership in one of the constituent parties in terms of the Peoples Alliance Constitution, expulsion from the Peoples Alliance is automatic under its constitution.

**APPLICATION** for a Writ of Certiorari.

*Wijedasa Rajapakse with Kapila Liyanagamage* for the Petitioner.

*J. C. Weltamuna with Janaka Samarakoon* for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

*S. Gnanathansan, D. S. G.,* for 4 - 7<sup>th</sup> Respondents.

*Cur. adv. vult.*

May 30, 2001.

**J. A. N. DE SILVA, J. (P/CA)**

The petitioner who is the Chairman of the Biyagama Pradeshiya Sabha by this application complained to Court that,

- (a) The Central Committee of the 1<sup>st</sup> respondent party Sri Lanka Mahajana Pakshaya has made a decision to expel him from the party in violation of the principles of Natural Justice.
- (b) On the request of the 3<sup>rd</sup> respondent who is the General Secretary of the 1<sup>st</sup> respondent party, the 4<sup>th</sup> respondent who is the General Secretary of the People's Alliance has informed the 5<sup>th</sup> respondent Commissioner of Elections about the said purported expulsion and requested to take necessary steps.
- (c) Accordingly the 6<sup>th</sup> respondent has given notice under Section 10A (2) of the Local Authorities Elections Ordinance to the petitioner that he will publish a Gazette notice declaring that the petitioner has vacated his office.
- (d) The said notice of the 6<sup>th</sup> respondent is ultra vires and contains an error on the face of it in view of the non-applicability of Section 10A (1) (a) of the said Ordinance to the circumstances of the present case.

At the time of hearing the arguments the petitioner's Counsel confined himself to one issue viz whether the expulsion as shown in (P4) is valid inasmuch as the expulsion is from the Sri Lanka Mahajana Party the 1<sup>st</sup> respondent and not from the People's Alliance.

The attention of Court was drawn to Section 10A(1)(a) of the Local Authorities Election's Ordinance which reads thus.

"If the elections officer of the district in which a local authority area is situated is satisfied that any person whose name has been included as a candidate for election as a member of that local authority, in the nomination paper of a recognized

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party has ceased to be a member of that party, the elections officer shall subject to the provisions of subsection (2) by notice published in the gazette declare that such person.

- (a) has vacated his office of a member, if he has been elected as a member of that local authority."

Learned Counsel for the petitioner contended that in terms of the said provisions an election officer should be first satisfied that an elected member of a local authority has ceased to be a member of a recognized political party and that the said elected member's name was included in the nomination paper of that recognized political party at the relevant election before taking steps in terms of the said provisions.

Admittedly the petitioner's name was included in the nomination paper of the People's Alliance at the last local authorities election. He was elected and subsequently appointed as the Chairman of the Biyagama Pradeshiya Sabha from the People's Alliance.

In the circumstances the 5<sup>th</sup> and 6<sup>th</sup> respondents, the Election Commissioner and the Returning Officer respectively have to be satisfied themselves that the petitioner has ceased to be a member of the People's Alliance.

Learned Counsel for the petitioner submitted that the undated letter written by the General Secretary of the People's Alliance to the 5<sup>th</sup> and 6<sup>th</sup> respondents which is marked P4 does not state that the petitioner has ceased to be a member of the People's Alliance. Counsel submitted that all what document marked "P4" says is that the General Secretary of the Sri Lanka Mahajana Pakshaya has informed the 4<sup>th</sup> respondent that the Central Committee of the Sri Lanka Mahajana Pakshaya has decided to expel the petitioner from the said party and in these circumstances there was no material for the Returning Officer to be satisfied that the Petitioner has ceased to be a member of the People's Alliance. It was further contended that in the absence of such material, the 6<sup>th</sup> respondent cannot act under the provisions of Section 10A of the Local Authorities Elections Ordinance.

Learned Counsel for the respondent submitted that expulsion in the instant case cannot be judged only with reference to P4. In the objections of the respondents they have taken up the position that petitioner's expulsion from the Sri Lanka Mahajana Party would result in automatic expulsion from the People's Alliance under the People's Alliance Constitution. Sri Lanka Mahajana Pakshaya is a constituent party of the People's Alliance. By virtue of being a member of the Sri Lanka Mahajana Pakshaya the petitioner becomes a member of the People's Alliance. There is no independent membership and or a contractual relationship between the petitioner and the People's Alliance. In the context of the issues that are relevant for this case the Constitution of both People's Alliance and Sri Lanka Mahajana Pakshaya have to be examined. Deputy Solicitor General submitted that all Constitutions of the parties are registered with the Commissioner of Elections and the Commissioner is aware as to what action he should take in the event a member is expelled from the party.

The petitioner has not produced the essential document namely the Constitution of the People's Alliance to this Court. This application could be dismissed in limine on that ground alone for suppression of material facts. However this Court had the occasion to deal with a similar problem in case No. 1571/2000 where People's Alliance Constitution and the Constitution of the constituent parties were examined. I am satisfied that when a member loses his membership in one of the constituent parties in terms of the People's Alliance Constitution, expulsion from the People's Alliance is automatic under its Constitution. The secretary of the People's Alliance has communicated with the Commissioner of Elections of the said expulsion. When one looks at P4 the caption of that letter seems to be misleading however the contents adequately informs the Commissioner of an expulsion that results in the petitioner ceasing to be a member of the People's Alliance. The application of the petitioner is refused and the petition is dismissed with costs.

*Application dismissed.*