

**JANSZ**  
**V.**  
**AIR LANKA LIMITED AND OTHERS**

SUPREME COURT  
SAMARAKOON, Q.C., C.J., WANASUNDERA, J., RATWATTE, J.,  
RANASINGHE, J. AND ABDUL CADER, J.  
SUPREME COURT APPLICATION NO. 45/83  
AUGUST 29 AND 30, 1983

*Fundamental Rights — Application under Article 126 of the Constitution — Article 14(1) (d) and 14(1) (g) of the Constitution — Infringment by executive or administrative action.*

The Petitioner, the Chief Flight Engineer of Air Lanka was also the Secretary of the Flight Engineers' Union. It was alleged that the rights guaranteed to him by Article 14(1) (d) and 14(1) (g) of the Constitution of the Democratic Socialist Republic of Sri Lanka had been infringed by executive or administrative action. The Petitioner prayed for an order directing the Respondent not to proceed with the disciplinary inquiry against him and also to withdraw the order of interdiction.

**Held —**

The Petitioner has failed to establish that he has been victimized on account of trade union activities.

**APPLICATION** under Article 126 of the Constitution.

*S. Nadesan, Q.C.* with *S.H.M. Reeza* for Petitioner.

*E. S. Amerasinghe S.A.* with *L.C. Seneviratne* and *S.L. Gunasekera* for 1st Respondent.

*K. N. Choksy, S.A.* with *Mark Fernando* and *Miss I. R. Rajapakse* for 2nd Respondent.

*Cur.adv.vult*

August 30, 1983.

**RATWATTE, J.**

At the conclusion of the arguments of learned Counsel for the Petitioner in this case on 30.08.1983 we made order dismissing the Petitioner's application with costs and indicated that we would deliver our reasons later. We now give our reasons.

The Petitioner filed this Application on 13.07.1983 invoking the jurisdiction of this Court under Article 126 of the

Constitution. The Petitioner is the Chief Flight Engineer in Air Lanka, and is presently under interdiction. He is also the Secretary of the Flight Engineers' Union of Sri Lanka (referred to hereinafter as the Union), the Trade Union of the Flight Engineers of Sri Lanka formed in the year 1978. The Petitioner complains that the fundamental rights guaranteed to him by Article 14(1)(d) and Article 14(1)(g) have been infringed by executive or administrative action. The fundamental rights guaranteed by these Articles respectively are : The freedom of association, the freedom to form and join a trade union and the freedom to engage by oneself or in association with others in any lawful occupation, profession, trade, business or enterprise.

The 1st Respondent is Air Lanka Ltd., a public company incorporated under the provisions of the Companies Ordinance. The 2nd Respondent is the Chairman and Managing Director of the 1st Respondent Company and the 3rd Respondent is the Attorney General. The averments in paragraphs 6 and 7 of the petition show that the Government of Sri Lanka holds more than 90% of the shares in the 1st Respondent Company. The balance shares are held by three State Corporations. In terms of the Articles of Association of the Company the Government appointed the first Board of Directors and as long as the Government holds, whether directly or through any Government Institution or Corporation, not less than 60% of the issued capital, the Government shall be entitled to nominate the majority of the Board. These averments have been admitted by the 2nd Respondent in his affidavit.

The Petitioner's case briefly is as follows: On 16.09.1982 the Petitioner was a member of the crew flying the aircraft Tristar 4R — A1M. The Captain of the aircraft was Captain Sumerol and the other members of the operating crew were the Petitioner, Flight Officer Vajirapani, and Cadet Pilot Senanayake. While the aircraft was cruising on the Hongkong/Bangkok sector Captain Sumerol attempted to assault the Petitioner in the cockpit. The details of the incident are set out in the letter P4 dated 15.10.1982 sent by the Petitioner to the 2nd Respondent requesting that an inquiry be

held. It appears from P4 that the incident arose as a result of certain questions put by Captain Sumerol to Cadet Pilot Senanayake who was undergoing training. The Petitioner is stated to have interceded on behalf of Senanayake as he felt that certain unfair questions were being put to Senanayake. The Petitioner's union had also sent the letter P5 dated 25.10.1982 to the General Manager (Technical) Captain Carroll (hereinafter referred to as Captain Carroll) also complaining about the same incident and asking for an immediate inquiry. Captain Carroll sent the letter P6 dated 09.11.1982 to the Petitioner informing him that he held an inquiry into the Petitioner's complaint P4 and had interviewed Captain Sumerol, Vajirapani and Senanayake. Captain Carroll states in P6 that "all agreed that there was some argument and discussion in the cockpit but that there was no loss of control by Captain Sumerol" and that the Petitioner was not in danger of physical violence at any time. Captain Carroll suggests that there may have been a lack of understanding by both parties due to language difficulties. He stated that "no evidence exists on which any action can be taken and we must consider this matter closed". He also stated that the Captain in command had the legal right to query anyone on board and was responsible for the safety of the aircraft. The union reiterated its request for an impartial inquiry by its letter of 30.12.1982 addressed to Captain Carroll (a copy of this letter has not been marked). Along with that letter the union had forwarded two affidavits from Cadet Pilot Senanayake and Flight Officer Vajirapani marked P7 and P8 respectively. On 03.01.1983 Captain Carroll is said to have met the Petitioner and given the Petitioner an "ultimatum" to resign from his union. The Petitioner refused to do so saying that it was his fundamental right to join a trade union of his choice. The Petitioner states that this "verbal ultimatum" was followed by the circular P9 dated 10.01.1983 which according to the Petitioner required the Petitioner's resignation from the union. Sometime later when the Petitioner had arrived from a flight, he had been informed by the Assistant Manager Flight Operations Captain Baladharan (hereinafter referred to as Captain Baladharan) that he had been directed by Captain Carroll to suspend the Petitioner from all duties until Captain Carroll's return. This was confirmed by the letter P10

dated 27.01.1983 addressed to the Petitioner by Captain Baladharan. By the letter P11 dated 01.02.1983, the Manager Flight Operations Captain Pink (referred to hereinafter as Captain Pink) informed the Petitioner that the suspension referred to in P10 "ceased" from 10.30 p.m. on 29.01.1983 on Captain Carroll's return to Colombo. Thereafter when the Petitioner met Captain Carroll and Captain Pink regarding the suspension, Captain Pink had informed the Petitioner that the suspension was not made in pursuance of any disciplinary action against the Petitioner, but that it was only a method of ensuring that the Petitioner stayed in Colombo until Captain Carroll's return to Colombo. That this was the reason for the Petitioner's suspension was confirmed by the letter P12 dated 10.02.1983 from Captain Pink to the Manager Personnel. P12 further stated that the "use of the word suspended was perhaps unwise". The Manager Personnel was requested to ensure that all reference to "suspension" be removed from Petitioner's personal file.

On 07.02.1983 the Petitioner wrote the letter P13 to Captain Carroll in reply to the latter's letter P6, controverting the substance of the letter P6. In regard to the inquiry referred to in P6 the Petitioner expressed surprise that he had not been given any notice of such an inquiry and had therefore been prevented from placing his side of the story. The Petitioner again requested that an impartial inquiry be held summoning all parties. The Union too also by its letter P14 dated 10.02.1983 raised this question again. On 22.02.1983 the Petitioner was informed by Captain Ratnayake by the Notice P15 that an inquiry will be held at 12.30 p.m. on the same day regarding the incident that took place on 16.09.1982. The Petitioner received P15 at 12.40 p.m. and therefore was unable to attend the inquiry because the notice was received late. The Petitioner so informed Captain Pink by his letter P16 of the same date.

The Circular P17 dated 04.03.1983 from Captain Pink addressed to the Manager Personnel set out a new scheme of "Re-organisation in the Flight Operations Department". Copies of P17 had been sent to the Petitioner, Deputy Chief Flight Engineer, the 2nd Respondent and Captain Carroll. In consequence of the new scheme set out in P17 all Flight

Engineers were to be given training to enable them to obtain Pilot's Licences, so that they could be appointed as Second Officers with prospects of promotions as First Officers. As and when the new programme is implemented the posts of Chief Flight Engineer and his deputy would be discontinued.

By P18 of 10.03.1983 the Manager Personnel informed the Petitioner that an inquiry would be held on 24.03.1983 into the Petitioner's complaint against Captain Sumerol. The Petitioner was requested to be present. P18 further states that the inquiry panel will also look into the following aspects of the Petitioner's conduct on 16.09.1982 "which transpired at the preliminary investigations": (1) For having authorized Cadet Pilot Senanayake to occupy the seat which he was not qualified to occupy and further allowing him to do ramp checks which he was not competent to do; and (2) for having left the cockpit without the permission of the Captain. The Petitioner states that he was not aware of any preliminary investigations and that no copy of any complaints made against him was given to him. The inquiry was held on 25.03.1983 and in paragraph 24 of the petition the petitioner complains about the manner in which the inquiry was held and the procedure that was followed. Further inquiry was fixed for 05.04.1983. The Petitioner by his letter P19 dated 07.04.1983 addressed to the Manager Personnel complained about the manner in which the inquiry was conducted.

In paragraph 25 of the petition the Petitioner states that on 04.04.1983 the 2nd Respondent summoned the Petitioner to the office. When the Petitioner met the 2nd Respondent the latter tried to persuade the Petitioner to withdraw his complaint against Captain Sumerol. The Petitioner was prepared to do so provided Captain Sumerol apologized to him and the inquiry against the Petitioner was withdrawn. The 2nd Respondent informed the Petitioner that he would be out of the Island for 3 or 4 weeks and that he would consider the matter on his return. In the meanwhile the 2nd Respondent gave instructions to the Manager Personnel to postpone the inquiry fixed for the following day.

The union sent the letter P20 dated 06.06.1983 addressed to the 2nd Respondent regarding "Excess Expatriate Flight Engineers". In this letter the Union alleged that the management of Air Lanka was keeping on its payroll several redundant expatriate Captains and Flight Engineers wasting several lakhs of Sri Lankan funds. The Manager Personnel by letter P21 dated 12.06.1983 replied to P20. What P21 in effect stated was that the union had no right to interfere in the administration of the Company.

In paragraph 28 the Petitioner states that on 12.06.1983 Captain Pink informed him on the telephone that the 2nd Respondent wanted the Petitioner to be interdicted because he was a member of the Union. On the following day when the Petitioner met Captain Pink in the latter's office, the Petitioner was informed that the 2nd Respondent was adamant that the Petitioner should be dismissed. On the same day by letter P22 Captain Pink informed the Petitioner as follows: "Dependent on a decision on your future by the Board of Management of Air Lanka, will you please cancel the trip you were to do on Tuesday 14th June 1983." By P23 of 14.06.1983 addressed to Captain Pink, the Petitioner lodged his strong protest. In P23 the Petitioner also states that on the previous day at the discussion Captain Pink had agreed that "that reason the Chairman had in mind did not warrant interdiction". By the letter P24 dated 14.06.1983 the Manager Personnel informed the Petitioner that he had been interdicted with effect from 14.06.1983 without pay. By the letter P25 dated 15.06.1983 addressed to the Petitioner, Captain Pink confirmed P24. In the said letter Captain Pink denied the statement made by the Petitioner in P23 that Captain Pink had agreed that the reason urged by the Chairman did not warrant the Petitioner's interdiction. By the letter P26 dated 19.06.1983 the Manager Personnel informed the Petitioner that he will be entitled to receive his pay pending the outcome of the Disciplinary Inquiry. The Petitioner was further informed that a Charge Sheet would be sent. By the letter P27 dated 23.06.1983 addressed to Captain Pink the Petitioner set out the sequence of events which culminated in his interdiction. Captain replied to this letter by P28 of 28.06.1983 in which he

denied certain statement made by Petitioner in P27. The Petitioner thereafter received the Charge Sheet P29 dated 29.06.1983 setting out five charges against the Petitioner. The Petitioner was requested to show cause within two weeks. On 10.07.1983 the Petitioner sent the show cause letter P30. Three days later the Petitioner filed this application.

The Petitioner states that the acts of the Respondents enumerated in his petition are in violation of his fundamental rights guaranteed to him by the Constitution and that he fears that the Respondents will terminate his services because of his membership in the Union. The Petitioner prays for a declaration that the steps taken by the Respondents in taking disciplinary action are in violation of his fundamental rights, particularly the rights set out in Articles 14(1)(c), (d) and (g); for an order directing the Respondents not to proceed with the disciplinary inquiry against the Petitioner and also to withdraw the order of interdiction; for compensation at Rs.15,000/- per month; and for costs.

The Petitioner filed a further affidavit on 18.07.1983. In this affidavit the Petitioner states that he received the letter P33 dated 21.01.1983 from Captain Carroll offering to send the Petitioner abroad for Pilot training. The letter further informed the Petitioner that if he obtained the training he could move up to the post of 1st Officer, Captain and even a higher position. If he accepted this offer he would have been detached from flight operations from 01.02.1983. Petitioner did not accept this offer. By letter P34 dated 22.04.1983 from Captain Carroll a similar offer was made to Petitioner. By P35 dated 03.05.1983 addressed to Captain Carroll, the Union set out the conditions on which the Flight Engineers were prepared to accept the offer made by P34. Captain Carroll sent the reply P36 dated 05.05.1983 that the terms offered by the Company were exceedingly generous and that the Company was not prepared to negotiate on them. The 2nd Respondent too wrote to the union in similar terms; vide P37 dated 06.05.1983.

The 2nd Respondent filed his affidavit on behalf of himself and on behalf of the 1st Respondent, to which was attached a

number of documents including affidavits by the following persons; Captain Carroll-R11; Captain Pink-R12; Flight Engineer Kumar Singh-R13; Captain Baladharan-R14; Assistant Manager Flight Operations Ratnayake R15; Deputy Chief Flight Engineer Jayasuriya-R16; and First Officer Bibile-R17.

At the hearing before us learned Counsel for the Petitioner Mr. Nadesan after setting out the sequence of events which culminated in the interdiction of the Petitioner and the serving of the Charge Sheet, contended that everything flowed from the fact that the Petitioner refused to resign from the Union. The question that therefore arose for our consideration was whether the Petitioner was victimized on account of his union activities. It is accordingly necessary to examine the material directly relevant to this issue. According to the Petitioner the first time that the question of his membership of the union was raised was on 03.01.1983, when Captain Carroll gave the Petitioner an "ultimatum" to resign from the union. Captain Carroll in paragraph 10 of his affidavit R11 gives his reply to this allegation of the Petitioner. According to Captain "it was normal Airline practice to consider it unhealthy for those holding managerial posts to be active members of their unions since there was always the possibility that in a dispute between a Trade Union and the Management a conflict of interests could arise between such persons holding managerial appointments and the Company". Captain Carroll explained this position to the Petitioner and told him that it was his view that it would be desirable for Air Lanka also to adopt a similar practice and that there would not be any objection to such an officer being an associate member of a Trade Union. Captain Carroll denied that he gave an ultimatum to the Petitioner to resign from the union and further denied that the Petitioner refused to do so saying that it was his fundamental right to be a member of a trade union. Captain Carroll states that the Petitioner did tell him that at the time of the Petitioner's appointment as Chief Flight Engineer he was not told that he could not be a full member or an official of his Union. Captain Carroll then replied that the Petitioner "was



not in anyway being compelled to resign either the office held in the Union or his membership”, but that it was desirable for persons holding managerial posts to cease to be active members.

The next step according to the Petitioner was the sending of the Circular P9 dated 10.01.1983. This Circular which is signed by Captain Carroll is addressed to Captain Pink. The contents of P9 are as follows:

“To avoid any conflict of interest, Air Lanka, in line with normal airline practice, expects all management staff to cease all union activities during the period of the Management appointment. This will necessitate their resignation from all Union positions and cessation of full membership of their Union. Would you please inform the following personnel, and obtain agreement from them on this issue preferably in writing;

Assistant Manager Flight Operations — Captain L. Ratnayake  
Assistant Manager Flight Operations — Captain Baladharan  
Chief Flight Engineer — G.A.L.B. Jansz (The Petitioner)  
Deputy Chief Flight Engineer — S. J. S. Jayasuriya.”

Copies of P9 have been sent to the 2nd Respondent the Manager Personnel. As regards this Circular the 2nd Respondent states in his affidavit that it was not issued as a result of a decision taken by the Board or by the 2nd Respondent, but was issued by Captain Carroll. He further states that the circular was consistent with normal airline practice but that compliance with it was not insisted upon. Captain Carroll in his affidavit states that it was he who circulated P9. There are three other officers mentioned in P9. Two of them viz. Captain Baladharan and Captain Ratnayake in their affidavits R14 and R15 respectively, state that they are members of the Airline Pilots Guild of Sri Lanka, which is the registered Trade Union for pilots. The fact that they were members of the Trade Union had been disclosed by them to Air Lanka when they joined its service. They both state that in spite of their membership of the Union they received their respective

promotions in due time. Though they received the Circular P9 they did not resign from their Union. They both affirm that they have not been discriminated against in any manner whatsoever. The 4th officer referred to in P9 Jayasuriya states in his affidavit R16 that at the time he joined Air Lanka he was the Assistant Secretary of the same Union of which the Petitioner was Secretary. Though he continued to be a member of the Union he received all his due promotions. At no time was any ultimatum given to him, nor was he discriminated against at anytime. Though he received P9 he did not resign from the Union. He continued to be a member till 06.07.1983 when he resigned from the union as he was dissatisfied with certain actions taken by the Union. First Officer Bibile in his affidavit R17 states that when he joined Air Lanka in April 1979 as a First Officer he was a member of the Airline Pilots Guild. He was confirmed as First Officer in Air Lanka in April 1980. He is at present the Secretary of his Union, but he has never been victimized in any manner whatsoever.

As regards the Petitioner's allegation that on 12.06.1983 Captain Pink informed him on the telephone that the 2nd Respondent wanted the Petitioner to be interdicted because of his membership of the Union, there is the affidavit of Captain Pink — R12. Captain Pink confirmed that the 2nd Respondent instructed him to interdict the Petitioner but specifically denies that the 2nd Respondent instructed him to do so because the Petitioner was a member of the Union. He further denies that he conveyed to the Petitioner any such statement as having been made by the 2nd Respondent.

As regards the letter P27 sent by the Petitioner to Captain Pink on 23.06.1983 in which the Petitioner refers to the statement alleged to have been made by Captain Pink that the 2nd Respondent wanted the Petitioner to be interdicted because of his Union membership there is the denial by Captain Pink both in his reply P28 and in his affidavit. Captain Pink only expressed the view to the Petitioner that being an active official of the Trade

Union was not compatible with the Petitioner holding a managerial position in the Company.

The Petitioner also replied on the letter P20 dated 20.06.1983 sent by the Union to the 2nd Respondent regarding Excess Expatriate Flight Engineers. But by the date P20 was sent an inquiry against the Petitioner had already commenced, i.e. on 25.03.1983. During the course of his argument learned Counsel for the Petitioner Mr. Nadesan stated that he was unable to say whether P20 was the cause for the Charge Sheet P29.

Apart from these items, Mr. Nadesan also relied strongly on what he referred to as certain irregularities in the procedure adopted by the Management to initiate disciplinary proceedings against the Petitioner and manner in which the inquiry was conducted. The Petitioner had referred to these matters in his letter P19 to the Manager Personnel. Mr. Nadesan referred to P31 a copy of the Disciplinary Rules of Air Lanka and argued that the rules had been flouted. Even assuming that the rules have been flouted, we are not concerned in the instant proceedings under Article 126 of the Constitution, with the propriety of the steps taken and irregularities if any, in the conduct of the inquiry. The Petitioner may have other remedies.

It was Captain Carroll and Captain Pink who took up with the Petitioner the question of his membership of the Union and not the 2nd Respondent. It is quite clear that neither Captain Carroll nor Captain Pink took seriously the allegations that were made against the Petitioner in consequence of the incident that took place between the Petitioner and Captain Sumerol on 16.09.1982. These allegations were conveyed to the Petitioner for the first time by letter P18 dated 10.03.1983 which I have already referred to above. Even the Manager Personnel did not seem to have considered the conduct of the Petitioner reprehensible. It was the 2nd Respondent who has taken the allegations seriously. The 2nd Respondent in his affidavit denies that he summoned the Petitioner on 04.04.1983. He states that it was the Petitioner who came to his office and sought an interview and though he had a very busy schedule he granted the

Petitioner an interview. The 2nd Respondent further states that he told the Petitioner that as he and Captain Sumerol have to fly together they should resolve their dispute. The Petitioner agreed to do so. The 2nd Respondent denies that the Petitioner indicated that Captain Sumerol should apologise to him. The 2nd Respondent informed the Petitioner that he was aware that an inquiry was being held into the conduct of Captain Sumerol on the Petitioner's complaint, but that he was unaware of an inquiry being held against the Petitioner. The 2nd Respondent further states that on his return from America at a discussion with the Manager Personnel he was informed that the differences between the Petitioner and Captain Sumerol had not been resolved. It was only on that occasion that the 2nd Respondent learnt about the two allegations made against the Petitioner. These are the two allegations referred to in P18. The 2nd Respondent states that after consideration he decided that a Charge Sheet ought to be served on the Petitioner and that the Petitioner be interdicted pending inquiry. He accordingly issued instructions to the Manager Personnel. He had also directed Manager Personnel that the Petitioner's allegation against Captain Sumerol should be further inquired into. The 2nd Respondent denied that the decision to interdict the Petitioner was taken by him because the Petitioner was a member of the Union or that he told anyone that that was the reason for the Petitioner's interdiction. Mr. Nadesan in the course of his argument stated over and over again that he was not alleging any malice against the 2nd Respondent or attributing any motives to him.

In view of the denial of the Petitioner's allegations by the 2nd Respondent and the others, there remains only the Petitioner's affidavit. On the material available before us we were of the view that the Petitioner has failed to establish that he was being victimized on account of his trade Union activities. For these reasons we dismiss the Application with costs.

**SAMARAKOON, C. J.** — I agree

**WANASUNDARA, J.** — I agree

**RANASINGHE, J.** — I agree

**ABDUL CADER, J.** — I agree

*Application dismissed*