

GOONERATNE AND OTHERS
v.
PREMACHANDRA AND OTHERS

COURT OF APPEAL.

S. N. SILVA, J. (P. C/A),
R. B. RANARAJA, J. AND
HECTOR YAPA, J.

C.A. APPLICATIONS NOS. 513-516, 520-523/94
SEPTEMBER 15, 20, 21 AND 22, 1994.

Provincial Council – Expulsion from political party (Democratic United National Front – DUNF) – Provincial Councils Elections Act, No. 2 of 1988 s.63(1) proviso – Jurisdiction of the Court of Appeal – Jurisdictional ultra vires of the deciding body – Procedural ultra vires – Legitimate expectation principle – Breach of natural justice.

The 1st to 3rd respondents were the acting leader, acting general secretary and treasurer respectively of the Democratic United National Front (DUNF) a recognised political party. The 4th to 8th respondents were members of the working committee who constituted the disciplinary committee that inquired into the conduct of the petitioners. The eight petitioners were members (councillors) of the Provincial Council of the Western Province. (W.P.C.)

One Premaratne Gunasekera who was one of seventeen members of the WPC elected on the DUNF ticket held the post of Minister of Health and Fisheries of the Provincial Council of the Western Province (WPC). On or about 22 May 1994 he was removed from that office by the Governor of the Western Province.

On 7.6.94 the DUNF group of the WPC held a meeting and decided that none of them would accept the vacated post. Any member of the DUNF who acted against this decision was to face disciplinary action. A further meeting of the group was fixed for 11.6.94. On that day a meeting of the working committee of the DUNF was held first and it was unanimously resolved to make a written request to the Chairman of the WPC for a debate on the conduct of the Chief Minister in dismissing Premaratne Gunasekera and that at such debate all members of the group should speak and vote condemning the conduct of the Chief Minister. Any members failing to sign the resolution and speak and vote was to be considered as acting contrary to the party constitution and conventions and liable to be expelled from the party. At the meeting of the group that followed only 8 of the 17 members was present. The petitioners were absent. The members present ratified the decisions of the working committee and decided to send a copy of the resolution prepared on the basis of the proposals of the working committee to all members of the group for signature and return to the acting general secretary on or before 19.6.1994.

The text of the resolution forwarded to the councillors for signature was not the same as that which was adopted by the working committee. The petitioners did not sign the resolution and return it as requested. On 26.6.1994 at a meeting held at 10.00 a.m. the disciplinary committee comprising the 4th to 8th defendants unanimously decided that the petitioners had deliberately acted contrary to the decisions taken by the DUNF group on 11.6.1994 and concluded that the petitioners by their conduct were guilty of a grave breach of discipline and recommended that severe action be taken against them and in addition recommended that disciplinary action be taken for requesting the Chief Minister, as reported in the Lankadipa Newspaper of 11.6.94, to remove Premaratne Gunasekera from his ministerial post. A meeting of the working committee was held on the same day (26.6.1994) at 3.00 p.m. It was disclosed at this meeting that 7 members of the group (including Premaratne Gunasekera) had signed the resolution which the 8 petitioners had not. There was no record of what the other two had done. The report of the disciplinary committee was tabled at this meeting. The committee unanimously decided to expel the petitioners from the DUNF. The National Executive Committee of the DUNF met the same day. The acting secretary presented the report of the disciplinary committee at this meeting. It was reported that the petitioners had been found guilty on two counts (which was clearly erroneous). It was recorded that after lengthy discussions the executive committee unanimously decided to expel the petitioners from the DUNF. On the same day the acting secretary informed the petitioners that:

- (1) by failing to sign the text of the resolution forwarded with the covering letter dated 11.6.94 before 19th June '94.

(2) by requesting the Chief Minister of the WPC, as disclosed by her in a press release to the Lankadipa to remove Premaratne Gunasekera from the post of Minister.

without prior discussions with party leaders or the DUNF group of the WPC the disciplinary committee had decided that each of the petitioners had contravened the provisions of the several articles in the party constitution and therefore, recommended to the Working Committee to take disciplinary action against them and the working committee had decided to expel each of the petitioners from party membership and office held in the party and this decision was rectified by the executive committee.

The petitioners sought to have the expulsion declared invalid under the provisions of section 63(1) of the Provincial Councils Election Act, No. 2 of 1988.

Held:

(1) This Court in exercising the jurisdiction conferred on it by section 63 of the Provincial Councils Elections Act should inquire whether the expelling body had –

- (i) acted within its jurisdiction
- (ii) followed the procedure laid down in the Constitution of the party
- (iii) acted in compliance with the principles of natural justice before taking the decision to expel the petitioners,
- (iv) and the grounds adduced for expelling the petitioners could be sustained, and
- (v) their alleged misconduct if proved, merited the extreme punishment meted out to them.

2. There was jurisdictional *ultra vires* in that,

- (a) the disciplinary committee which recommended that action be taken against the petitioners had no power to do so as it was not appointed according to the party Constitution.
- (b) the working committee had no power under the Constitution to decide to expel the petitioners. Besides, the item of expulsion of the petitioners was taken up as a matter arising from the minutes of the last meeting of the working committee. Notice of such an important meeting should have been given to all members prior to the meeting. Further the telegram notifying at least one of the petitioners of the meeting scheduled for 26.6.94 had been handed in at 1.25 p.m. on 25.6.94 which was a Saturday and was delivered on Monday 27.6.94. Notice of the meeting had been sent in such a way that it would be received after the meeting was held.

- (c) The National Executive Committee which has the power under Article 7, 4, 3 (f) to expel a member on a report by the disciplinary committee comprises the persons mentioned in Article 7, 4. It is of utmost importance that when a serious decision is taken affecting the status of members of the party who were councillors of the WPC that all formalities necessary to ensure their presence at its meeting on 26.6.94 were followed. Some ex-officio members had received no notice. The agenda for the meeting was not set out in the notice. There are II categories of members of the National Executive Committees. The membership in all parts of the island would run to several hundreds. The time at which this large group met after the working committee met at 3 p.m. is not given. Everything pointed to one conclusion namely an unseemly hurry to expel the petitioners from the party. The National Executive Committee meeting held on 26.6.94 was not duly convened. The National Executive Committee acted without jurisdiction and therefore the expulsions were invalid.
3. There was procedural *ultra vires* as there was no compliance with Article 7:4:3 (f) of the Party Constitution. This Article provides that where the party secretary is satisfied that a member has acted in breach of party policy or discipline he shall serve a copy of the charge sheet on the accused member who shall be given an opportunity of showing cause against the accusation. Thereupon a report shall be forwarded to the disciplinary committee for inquiry. The disciplinary committee shall after inquiry, convey its decision to the working committee, while the party secretary is required to forward the report (of the working committee) to the National Executive Committee. After consideration of the report, the National Executive Committee has the power either to expel a member or take any appropriate disciplinary action. A member aggrieved with the decision of the National Executive Committee has the right to appeal to the party convention.

Procedural rules govern the conduct of bodies exercising authority in how they exercise their powers. Where rules governing expulsion have been laid down, the accused members have a right to demand that those rules be followed. Failure to follow rules laid down will render the expulsions invalid. It is not open for the respondents to say that the petitioners were aware of the consequences of non-compliance with the directions given in the covering letter accompanying the resolution which was intended to be presented to the Chairman of the WPC and that therefore petitioners had no legitimate expectation of a hearing. The legitimate expectation principle has no application where the petitioners already enjoy the protection provided in the Constitution to a due inquiry. That principle has relevance only if the petitioners had no right of hearing. The same condition applies to the contention that an inquiry would have been a useless formality. Besides, membership of a political party cannot be equated to an office held at pleasure, in which event there would not have been a right of hearing before dismissal. The "no injustice or no real prejudice" justification arises in a case where the offenders are dealt with summarily but afforded a right of appeal and

in fact that right was availed of. The hearing before court is not an adequate antecedent hearing.

4. There was a breach of natural justice in denying the right to be heard in answer to the charges of alleged misconduct. The duty to give a fair hearing is as much a canon of good administration as of good legal or judicial procedure. It makes no difference that the duty to comply with natural justice arises from contract, and not from statute. The power of expulsion is subject to the principles of natural justice.

5. The material before court was insufficient to conclude that the petitioners had acted contrary to any provision of the Constitution which warranted their expulsion.

6. The burden of satisfying the court that the expulsion of the petitioners was valid lay on the respondents. They sought to discharge the burden, mainly by harping on the conduct of the petitioners after their expulsions. This court is concerned only with the validity of the expulsion as it stood on that date. This necessarily means that the reasons that have to be considered by the court are those that have been adduced prior to the expulsion only.

7. The respondents failed to satisfy the court that they had the necessary jurisdiction, followed the proper procedure, observed the principles of natural justice or had a plausible case for expelling the petitioners.

Cases referred to:

1. *Dissanayake and Others v. Kaleel and Others* S.C. (Special) Nos 4-11/91 S.C. Minutes of 3.12.91.
2. *Tilak Karunaratne v. Mrs. Bandaranaike and Others* S.C. (Special) No. 3/93.
3. *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147, 195.

APPLICATION under and in terms of section 63 of the Provincial Councils Elections Act No. 2 of 1988.

R. K. W. Goonesekera with J. M. S. Nanayakkara for petitioners in C.A. 513-516/94).

Ranjan Gooneratne for petitioners in C.A. 520-523/94.

Nigel Hatch for 1 to 9 respondents in C.A. 513/94

Chula de Silva P.C. with Nigel Hatch and M. Mahroof for 1 to 9 respondents in C.A. 513-516, 520-523/94.

October 7, 1994.

THE FOLLOWING ORDER OF COURT WAS READ BY S. N. SILVA, J. (P/CA)

ORDER OF COURT

The eight petitioners who are members (councillors), of the Provincial Council of the Western Province, (WPC) applied to this Court in terms of section 63 of the Provincial Councils Elections Act No. 2 of 1988, challenging their expulsion from the 9th respondent Democratic United National Front, (DUNF) which is a recognized political party. Since the petitions are based on identical facts and law, the parties agreed that all eight applications be argued and decided together.

The Facts

At the times material to these applications, the 1st to 3rd respondents were the acting leader, acting general secretary and the treasurer respectively, of the DUNF. The 4th to 8th respondents were members of the working committee, who constituted the disciplinary committee that inquired into the conduct of the petitioners.

One Premaratne Gunasekera, who was one of seventeen members of the WPC elected on the DUNF ticket, held the post of Minister of Health and Fisheries of the Provincial Administration. On or about the 22nd May 1994, he was removed from that office by the Governor of the Western Province. A meeting of the members of the WPC belonging to the DUNF, (group) was held on 7.6.1994, at which the removal of the said Premaratne Gunasekera from office was discussed. It was decided at that meeting, that no member of the DUNF group should accept the post vacated by Premaratne Gunasekera. Any member of the DUNF group acting against this decision was to face disciplinary action. A further meeting of the group was fixed for 11.6.94. On that day, a meeting of the working committee of the DUNF preceded the meeting of the group. At the meeting of the working committee, it was unanimously resolved to request the chairman of the WPC in writing, signed by all members of the group, for a debate on the conduct of the Chief Minister in dismissing Premaratne Gunasekera from his office. It was also

resolved that all members of the group should speak and vote in favour of the resolution condemning the conduct of the Chief Minister. Any member failing to sign the resolution, speak and vote in favour or abstaining from voting, was to be considered as acting contrary to the party Constitution and conventions and liable to be expelled from the party.

At the DUNF group meeting that followed soon after, only eight of the seventeen members were present. That number did not include any of the petitioners. The members present ratified the decisions of the working committee. The group decided to send a copy of the resolution prepared on the basis of the proposals of the working committee to all members of the group for their signature. The members were required to return the signed text of the resolution to the acting general secretary on or before 19.6.1994. An English translation of the resolution (P5), addressed to the Secretary of the WPC is as follows:

DEMOCRATIC UNITED NATIONAL FRONT

Colombo 3.
1994.06.11.

Secretary,
Western Provincial Council,
Kachcheri Complex,
Colombo 12.

**Resolution condemning the removal of Premaratne
Gunasekera from the Office of Minister.**

Sir,

I, a member of the working committee and the DUNF group of the Western Provincial Council, propose that the Western Provincial Council do strongly condemn the authoritarian and unconventional conduct of Mrs. Chandrika Kumaranatunga, the Chief Minister of the Western Provincial Council, who motivated by personal animosity, without prior intimation to either the People's Alliance or the Democratic United National Front, and

in the absence of any request by a councillor of the DUNF, decided to remove Mr. Premaratne Gunasekera of the DUNF from the ministerial post in the administration of the Western Provincial Council, established after the Provincial Councils Election, consequent to an agreement amongst the leaders of the People's Alliance and the DUNF, following discussions initiated by Mrs. Sirima Bandaranaike.

Thanking You,

Yours faithfully,

.....
Name of Member
Western Provincial Council.

A covering letter was sent along with the above text to each member of the DUNF group by the acting secretary, a translation of which read:

DEMOCRATIC NATIONAL UNITED FRONT

No. 10, 28th Lane,
Colombo 12.
1994.6.17.

Registered post.

Name of Councillor.

Enclosed is a resolution unanimously adopted by the working committee of the DUNF, at a meeting held on 1.6.1994 at 10.30 a.m. at the party headquarters.

I kindly request you to sign on the dotted line above your name and arrange for me to receive the same by registered post before 1994.6.19.

I also inform you that the above decision of the working committee was unanimously approved by the DUNF councillors of the WPC at the group meeting held the same day at 11.00 a.m.

Thanking you,

Yours faithfully,

Chandra Gankanda
Acting Secretary.

(The resolution is forwarded herewith for your signature)

It is to be noted at this stage, that the text of the resolution forwarded to the councillors for signature is not the same as that which was adopted by the working committee. The resolution which was sent to the councillors for signature was adopted by the eight councillors who were present at the group meeting on 11.6.1994. Hence, what was stated in the covering letter is factually incorrect. (c.f. x 4 and p4). It is also important to note, that the petitioners were not present at that meeting.

* It is conceded that the petitioners did not carry out the instructions given in the covering letter above.

On 26.6.1994, a meeting of the disciplinary committee comprising the 4th to 8th defendants, was held at the party headquarters at 10.00 a.m. (x5A). The committee unanimously decided that the petitioners had deliberately acted contrary to the decisions taken by the DUNF group on 11.6.1994, in not carrying out the instructions in the letter addressed to them by the acting secretary. The committee unanimously concluded that the petitioners by their conduct were guilty of a grave breach of discipline and recommended that severe action be taken against them. The disciplinary committee without naming any persons, also recommended that disciplinary action be taken for requesting the Chief Minister, Chandrika Kumaranatunga, to remove Premaratne Gunasekera from the ministerial post, as reported in the "Lankadeepa" newspaper of 11.6.94.

At a meeting of the working committee, held on the same day at 3.00 p.m. (X5B), it was disclosed that seven members of the group including Premaratne Gunasekera had signed the resolution and the 8 petitioners had failed to do so. There is no record as to what the other two members of the group had done. The report of the disciplinary committee was tabled at this meeting. After discussing its contents at length, the working committee decided unanimously to expel the petitioners from the DUNF.

The National Executive Committee of the DUNF met the same day (X5C). The time of the meeting is not recorded in the minutes. The acting secretary had presented the report of the disciplinary committee at this meeting. It is reported that the petitioners had been found guilty on two counts by the disciplinary committee. For the reason stated earlier, this is clearly erroneous. (c/f X5A). It is recorded that after lengthy discussions the executive committee decided unanimously to expel the petitioners from the DUNF, and a declaration to that effect was made by the acting secretary.

The acting secretary, the same day, informed the petitioners by letter (P6) that:

(1) by failing to sign the text of the resolution forwarded with the covering letter dated 11.6.94 before the 19th June '94,

(2) by requesting the Chief Minister of the WPC, as disclosed by her in a press release to the "Lankadeepa", to remove Premaratne Gunasekera from the post of Minister, without prior discussions with party leaders or the DUNF group of the WPC,

the disciplinary committee had decided that each of the petitioners had contravened the provisions of the several articles in the party Constitution and therefore, recommended to the working committee to take disciplinary action against them. The acting secretary's letter stated further, that the working committee had decided to expel each of the petitioners from party membership and office held in the party and that this decision was ratified by the executive committee.

The petitioners filed these applications *inter alia*, to have the expulsion from membership of the DUNF declared invalid under the provisions of section 63(1) of the Provincial Councils Elections Act No. 2 of 1988.

Jurisdiction of the Court of Appeal

The proviso to section 63(1) of the Provincial Councils Elections Act, confers on the Court of Appeal, a similar jurisdiction as that conferred on the Supreme Court by the proviso to Article 99(13) (a) of the Constitution in relation to members of Parliament. This court is called upon to determine whether the expulsion of a member of a Provincial Council from membership of a recognized political party is valid or not. If the expulsion is declared valid, such member will lose his right to continue as a member of the Provincial Council and his seat will become vacant from the date of the determination. The section is therefore clearly intended to protect a member of the council, duly elected by the people or upon nomination by a political party, from being denied the right to continue as a member except on valid grounds. Fernando J. in *Dissanayake & Others v. Kaleel and Others*⁽¹⁾ expressed his view on the extent of the Supreme Court's jurisdiction under Article 99(13) (a) thus:

"Our jurisdiction under Article 99 (13) (a) is not a form of judicial review or even of appeal, but rather an original jurisdiction analogous to an action for a declaration, though it is clearly not a rehearing. Are we concerned only with the decision making process or must we look at the decision itself. Article 99 (13) (a) requires us to decide whether the expulsion was valid or invalid. Some consideration of the merits is obviously required ... The burden, if any must be on the respondents, for it is the denial of natural justice by them which has resulted in these proceedings. I have therefore to consider whether on the merits the respondents have shown that the decision was a good one, thereby disentitling the petitioners to relief."

Dheeraratne J. in *Tilak Karunaratne v. Mrs. Bandaranaike and Others*⁽²⁾ was more specific in describing the scope of the court's jurisdiction.

"It is not disputed that court's jurisdiction includes an investigation into the requisite competence of the expelling authority; an investigation as to whether the expelling authority followed the procedure if any which was mandatory in nature, an investigation as to whether there was a breach of principles of natural justice in the determining process; and an investigation as to whether in the event of the grounds of expulsion being specified by way of charges at a domestic inquiry, the member was expelled on some other grounds which were not so specified."

It is clear from what has been stated in the judgments cited, that this court in exercising the jurisdiction conferred on it by section 63 of the Provincial Councils Elections Act, should inquire whether the expelling body had (I) acted within its jurisdiction, (II) followed the procedure laid down in the Constitution of the party, (III) acted in compliance with the principles of natural justice before taking the decision to expel the petitioners and (IV) whether the grounds adduced for expelling the petitioners could be sustained and (V) whether their alleged misconduct if proved, merited the extreme punishment meted out to them.

Jurisdictional ultra vires

The test of jurisdictional vires namely, to find out whether the decision taken by anybody is lawful or unlawful is to secure legality – in other words to preserve the rule of law, of which the court is the proper guardian – (Wade-Administrative Law, 5th Ed P249). Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. Per Lord Pearce – *Anisminic Ltd. v. Foreign Compensation Commission* ⁽³⁾.

It is submitted by the petitioners that the disciplinary committee that purportedly inquired into their conduct was not constituted according to the party Constitution, in that article 7:6: provides for a five member disciplinary committee to be appointed by the working committee with the sanction of the National Executive Committee. Or, in the alternative, the working committee may appoint an *ad-hoc* disciplinary committee under article 7:5:2 (d).

The respondents concede that there was no disciplinary committee appointed under article 7:6 at the relevant time. However, they submit that a reconstituted disciplinary committee was appointed by the working committee in May 1994, but the appointment had not received the approval of the national executive committee. The respondents have not sought to argue that the disciplinary committee which inquired into the conduct of the petitioners was an *ad-hoc* committee, for the very good reason that no working committee meeting was held between 12.6.94 and 25.6.94. Thus it is clear, that the disciplinary committee which recommended that action be taken against the petitioners had no power to do so, as it was not appointed according to the party Constitution.

Article 7:4:3: empowers the National Executive Committee alone to take disciplinary action against a member of the party. At the meeting of the working committee on 26.6.1994 (X5B), the report of the disciplinary committee was tabled by its chairman. The working committee had thereafter unanimously decided to expel the petitioners from the party, which it had no power under the Constitution to do. Besides, the item of the expulsion of the petitioners has been taken up as a matter arising from the minutes of the last meeting of the working committee. This is not permitted, since notice of such an important matter had to be given to all its members prior to the meeting. The petitioner in CA 513/94, who is also a member of the working committee, has produced marked XI, along with the papers filed with his application, the telegram received notifying him of the meeting scheduled for 26.6.94 at 3.00 p.m. According to letter dated 27.6.94, issued by the Chief Telegraph Master, C.T.O. (X2), the telegram was handed over by the sender at 1.25 p.m. on 25.6.94 being a Saturday, and was delivered on 27.6.94 being the next Monday. It should be obvious to any sensible person

that when a telegram is dispatched on a Saturday afternoon, it would not be received before Sunday to enable the recipient to attend the scheduled meeting on Sunday. It is thus seen that the acting secretary sent the notice to the petitioner (by telegram), informing him of the meeting, at which a decision as to disciplinary action against him was taken, in such a way that it would be received by him after the meeting is held.

The National Executive Committee which has power under article 7:4:3:(f) to expel a member on a report by the disciplinary committee comprises the persons mentioned in article 7:4. It is of utmost importance that when a serious decision affecting the status of members of the party who were councillors of the WPC is taken, that all formalities necessary to ensure their presence at its meeting on 26.6.94 were followed. The petitioners submit that this has not been done. In support they have filed the affidavits of persons, who as ex-officio members, should have been given notice of the meeting, stating that they had received no notice. The petitioners being members of a Provincial Council are ex-officio members of the committee in terms of Article 7:4:111. Their claim that they did not receive notice of this meeting is not disputed. The minutes of the meeting (X5C), do not state at what time the meeting commenced or at what time it was adjourned. Nor does it say what the agenda for the day was. No reference is made to the number of members present or those who had sent letters of excuse. Although the minutes state that there was a lengthy discussion on the report of the disciplinary committee no mention is made of the speakers for or against the adoption of the report. In terms of Article 7:4 of the Constitution there are 11 categories of members of the national executive committee including all organisers and secretaries of party organisations in each A.G.A.'s division. Membership should run to several hundreds. The question looms large as to the time at which this extensive group of persons met. According to the time frame given by the respondents, it should have been after the meeting of the working committee which met at 3 p.m. was concluded. It is in this context that learned counsel for the petitioners speculated the meeting was held late at night !

As noted above, no evidence was adduced by the respondents, (which is necessary considering the specific challenge made by the

petitioners), as to the fact of issuing notices on the members of the National Executive Committee and the agenda of the meeting said to have been held on 26.6.94. It appears from the minutes produced that the main subject for discussion at the meeting was the matter of disciplinary action against the petitioners. According to the minutes (paragraph 4 of X5C), item 2 of the agenda dealt with this matter. The disciplinary committee which met to consider the matter of disciplinary action in the first instance, met on the same day at 10.00 a.m. Therefore, item 2 of the agenda, under which the report of the disciplinary committee was discussed, could only have been included after the proceedings before the disciplinary committee were concluded. The irresistible inference is that members of the National Executive Committee, numbering several hundreds and spread throughout the country, did not have notice of the agenda. Probably, they did not have notice of the meeting said to have been convened. These matters lend strong support to the submission of counsel for the petitioners that the minutes (X5C), are a sham and that the meeting of the National Executive Committee said to have been held on 26.6.94 is fictitious.

The respondents in their objections have glossed over these serious defects in the manner in which the meeting was conducted. The 8th respondent who presided at the meeting, was a member of the disciplinary committee. He has filed an affidavit with the objections. But he has not refuted the allegations of the deponents whose affidavits have been filed to the effect that those entitled to be present at the National Executive Committee meeting had not been duly notified of it. The respondents could at the least have produced the attendance register to rebut the deponents, which they have failed to do. These matters and the fact that all three bodies responsible for the expulsion of the petitioners met on one day and the fact that the letters of expulsion were sent out the same day, point to one conclusion, namely, that they were in an unseemly hurry to expel the petitioners from the party.

It is evident from the affidavit filed by the 8th respondent that there was a fear, the petitioners and others who filed affidavits would oppose the expulsion of the petitioners from the party. For instance, paragraph 37 of the affidavit after referring to several cases filed in

the District Court of Colombo, states: "I submit that the aforesaid cases were instituted maliciously and fraudulently without just cause to *inter alia* destabilise the DUNF and cause chaos and confusion in the said party, and emasculate and/or render the party impotent." At paragraph 38(b) he continues, "at all material times material to this petition the petitioner and a minority group of the DUNF which includes the other petitioners and Ediriweera Premaratne, Monty Gopallawa and P. B. G. Kalugalla, who are now members of Parliament representing the PA, were planning to form a rival political party and/or supported and joined a rival political party, namely the PA, contrary to the decision of the DUNF." These statements reflect an interest in the 8th respondent in keeping the petitioners and like-minded persons out of party meetings.

From what the 8th respondent has disclosed, it is clear the petitioners have been expelled, not on the charges framed against them, but for other extraneous reasons which neither the disciplinary committee nor the National Executive Committee had the jurisdiction to do. The petitioners have filed their applications *inter alia*, on the specific basis that the meeting of the National Executive Committee said to have been held on 26.6.94 was not duly convened. They have adduced facts and circumstances that support this complaint. The respondents have failed to adduce any cogent evidence to support their claim that the meeting was duly convened. As noted above, the minutes of the meeting produced by the respondents raises more questions than what it seeks to answer. In the circumstances, we are compelled to conclude that the National Executive Committee acted without jurisdiction and therefore the expulsions of the petitioners were invalid.

Procedural *ultra vires*

Procedural rules govern the conduct of bodies exercising authority in how they exercise their powers. A democratic form of government presupposes that electors are free to form political parties. They are therefore by nature, voluntary organisations. Membership will be dependent on a set of rules or constitution. In other words, a person joining a political party will be entering into a contract with the party to be governed by the party rules on constitution. He will continue to be a member so long as he adheres to the rules or constitution. Thus,

where rules are laid down governing their expulsion, they have a right to demand that those rules be followed. Failure to follow rules laid down, will render the expulsion invalid.

Membership of the DUNF is open to those over 16 years of age, upon the payment of an annual subscription. Article 6:2 sets out the rights and obligations of a member. Article 7:4:3:(c) enjoins all officials and members of the national executive committee to follow the party constitution and the standing orders.

Article 7:4:3:(f) provides that where the party secretary is satisfied that a member has acted in breach of party policy or discipline, he shall serve a copy of the charge sheet on the accused member, who shall be given an opportunity of showing cause against the accusation. Thereupon a report shall be forwarded to the disciplinary committee for inquiry. The disciplinary committee shall after inquiry, convey its decision to the working committee, while the party secretary is required to forward the report (of the working committee) to the National Executive Committee. After consideration of the report, the National Executive Committee has the power either to expel a member or take any appropriate disciplinary action. A member aggrieved with the decision of the national executive committee has the right to appeal to the party convention.

The respondents assert that the procedure set out in article 7:4:3:(f) of the Constitution need not have been followed. They claim that the provisions of that article do not apply to the petitioners as they were aware of the consequences of non-compliance with the directions given in the covering letter accompanying the resolution which was intended to be presented to the chairman of the WPC. In the circumstances, the respondents submit that the petitioners had no legitimate expectation of a hearing; a hearing was a useless formality and no real prejudice was caused to the petitioners by the lack of a hearing. They plead further that in any event, the petitioners have not defended their conduct and they are now afforded a subsequent hearing, and that their prompt expulsion is justified. Implicit in the objections of the respondents is that no charge sheet was served on the petitioners by the party secretary and no explanation called for. The secretary has not forwarded the relevant

report, as required by the Constitution to the disciplinary committee, for it to commence an inquiry against the petitioners.

Fernando, J. in *Dissanayake (supra)* has lucidly dealt with all the grounds adduced by the respondents for not holding an inquiry as required, prior to the expulsion of the petitioners. At the outset, it must be noted that the facts in *Dissanayake (supra)*, were significantly different from the facts of the present case. The Constitution of the UNP unlike that of the DUNF has no specific procedure laid down to deal with disciplinary matters and the expulsion of members. Therefore, the defences adduced by the respondents do not apply to a situation where express provision is made to the contrary. However, for the sake of completeness, each of the defences is dealt with, though not in detail. The "legitimate expectation" principle has no application where the petitioners already enjoy the protection provided in the Constitution to a due inquiry. That principle has relevance only if the petitioners had no right of hearing. The same condition applies to the contention that an inquiry would have been a useless formality. Besides, membership of a political party cannot be equated to an office held at pleasure, in which event there would not have been a right of hearing before dismissal. The "no injustice or no real prejudice" justification arose in a case where the offenders were dealt with summarily but afforded a right of appeal and in fact that right was availed of. The respondents contend that the present hearing before this court is an adequate "antecedent hearing". Fernando, J. has emphatically rejected such a claim in *Dissanayake (supra)*, in these terms. "It is vital that the procedure as a whole must give the individual an opportunity for a fair hearing. What has been said above about "hearing" and "appeals" does not apply at all to applications for judicial review or proceedings under article 99(13)(a). . . Further, the proceedings before us cannot in any way be considered a "rehearing let alone a "full rehearing". Procedural and time constraints prevented a full investigation by this court. . . Therefore, I hold that the constitutional remedy under Article 99(13)(a), does not relieve the party of the duty to afford an antecedent hearing in disciplinary matters, and does not cure the lack of a hearing. "As for the claim of "no evidence" or "open and shut case" principle which the respondents plead, it is clear, given the opportunity, the petitioners would not have had much difficulty in

advancing a credible explanation for not signing the resolution. Therefore, the respondents by not following the provisions of the party constitution in not holding a proper inquiry prior to the expulsion of the petitioners, have themselves acted in breach of it, thereby rendering the expulsions invalid.

Breach of Natural Justice

The petitioners have pleaded that there was a breach of the principles of natural justice in denying them the right to notice of the charges of alleged misconduct against them, and the right to be heard in answer to those charges by an unbiased tribunal. The respondents reply that non-compliance of the directive of the Acting General Secretary to sign the resolution was a contumacious, flagrant and manifest violation of the petitioners' obligation to the DUNF.

Justice Kulatunga, in *Dissanayake (supra)*, observed that "the right of a M.P. to relief under Article 99(13)(a) is a legal right and forms part of his constitutional right as a M.P. If his complaint is that he has been expelled from membership of his party in breach of the rules of natural justice, he will ordinarily be entitled to relief; and this court may not determine such expulsion to be valid unless there are overwhelming reasons warranting such decision. Such decision would be competent only in the most exceptional circumstances permitted by law and in furtherance of the public good the need for which should be beyond doubt."

The respondents then need to satisfy this court that their failure to follow rules of natural justice could be justified. In other words, show that the non-compliance of the Acting General Secretary's directive constituted an exceptional circumstance warranting the expulsion without a hearing or that the expulsion of the petitioners was for the public good. The test that has to be applied is an objective test and not a subjective test. The respondents have not placed any material before this court to satisfy this objective test that an overwhelming reason or exceptional circumstances existed which merited the expulsion of the petitioners or that it was done for the public good.

"Expulsion from an organisation inevitably creates suspicion of serious misbehaviour of some kind, according to the rules, beliefs or customs of the group concerned. An individual should have a hearing before his reputation is so damaged. Moreover, because expulsion is usually on the ground of a specific misdemeanour, a right to a hearing is important because it may enable the charge to be rebutted . . . There are at least three justifications for requiring a hearing even where there appears to be no answer to a charge. First, experience shows that unanswerable charges may, if the opportunity be given answered; inexplicable conduct be explained. Secondly, the party condemned unheard will feel a sense of injustice. Thirdly, suspicion is inevitable that a body which refuses a hearing before acting does so because of lack of evidence not because of its strength." (Natural Justice-Paul Jackson Pp 211&137).

Here, the gravity of the consequences is the test for the applicability of natural justice as opposed to the test of "a duty to act judicially" or the test of "fairness".

"Two principles which pre-eminently, are generally thought to be necessary to guarantee that the law, or any body of rules is applied impartially and objectively – and hence justly – are that no man should be judged without a hearing and that every judge must be free from bias, or as they are often cited in the form of latin tags, *audi alteram partem* and *nemo iudex in re sua*. It is not possible to produce an exhaustive list of the rules of natural justice in the formal sense, or the requirements of the rules because the rules of natural justice are a means to an end and not an end in themselves." (Jackson supra-P6).

It is implicit in the objections of the respondents that they had no intention of hearing the petitioners as the threat of expulsion was clearly held out in the covering letter accompanying the resolution. Such an attitude on the part of the respondents, who as members of the DUNF, formed to fight authoritarianism, (vide: preamble to the Constitution), smacks of bad faith, and does no credit to themselves or the party.

As Fernando, J. observed in *Dissanayake (supra)* "a decision made by an unbiased tribunal, after duly considering the views of

those likely to be affected by it, is not only more likely to be correct, but will be more acceptable and of better quality. Fairness to the individual facilitates a better decision by the tribunal. The duty to give a fair hearing is as much a canon of good administration as of good legal or judicial procedure . . . These applications are not for *certiorari*, and hence it makes no difference that the duty to comply with natural justice arises from contract, and not from statute. I hold that the power of expulsion contained in rule 8(3)(a) is subject to the principles of natural justice."

Applying the ratio of *Dissanayake (supra)*, to the facts of these applications, it is obvious that the respondents have failed to observe the principles of natural justice, as such the expulsions cannot be supported.

Merits of the Case

The reasons given for the expulsion of the petitioners were, (1) failure to sign the resolution, and (2) requesting the Chief Minister as reported in the "Lankadeepa" to remove Premaratne Gunasekera from his ministerial post. On these two charges, the disciplinary committee had found the petitioners having deliberately acted in breach of articles 6:5:1, 6:5:2, 6:5:3 and 6:5:5 of the party Constitution. Article 6:5 deals with the duties and obligations of the members. Article 6:5:1 binds a member to popularise the party amongst the public, work towards propagating the party aims and aspirations, defend party policy and decisions. Article 6:5:2 enjoins a member to observe the party rules and conventions and conduct himself in a disciplined manner. Article 6:5:3 requires a member to act according to the constitution and standing orders. Article 6:5:5 restrains a member from bringing the party to disrepute or acting in a manner which brings it disrepute or engaging in political or other activity which is in conflict with the undertakings stipulated.

The report of the disciplinary committee makes no reference to any article in the party constitution. The respondents have not been able to enlighten this court as to what article of the Constitution the petitioners have contravened, in failing to place their signature on a document containing serious allegations against the Chief Minister,

who is supported by the "Government Group" consisting of DUNF members as well, under threat of expulsion. However, article 13:2:IV permits a member to express his views at a group meeting on any matter which may come up at a council meeting, but he is bound to vote in the council and act according to a decision taken by the group. But this stage had not been reached. It was conceded that even up to the time of this hearing, the resolution had not been presented for debate. In the circumstances, there is insufficient material before this court to conclude that the petitioners had acted contrary to any provision of the constitution which warranted their expulsion.

The letter of expulsion states that the working committee acting under article 7:5:2(g), 13:2:IV and 20:1, decided to expel the petitioners. Article 7:5:2:(g) requires the working committee to exercise powers and perform duties conferred on it by the Constitution. Article 13:2:IV requires a member to vote as stated earlier. Article 20:1 deals with *casus omissus* situations. None of these articles gives the working committee the right to expel a member from the party.

The resolution which the petitioners did not sign, contains unverified and obnoxious references to the Chief Minister. No responsible individual could have expected the petitioners, as councillors, to sign such a document and forward it to the secretary of the party, who himself was not a member of the WPC. The resolution itself was addressed to the chairman of the WPC.

The second ground on which the petitioners were expelled was based on an unverified newspaper report. It is significant that the respondents have not produced a copy of it in these proceedings. There is no reference in the report to any of the petitioners. The respondents argue that if the petitioners were in fact innocent of what was reported, they should have taken steps to deny it. What the respondents fail to explain is, why anyone should contradict a report which gives no names. On the other hand, none of the respondents has contradicted the report either. To expel a member from a party on such a newspaper report is most reprehensible. Furthermore, the report of the disciplinary committee nowhere states that it found the

petitioners guilty of this charge. It appears from the manner in which the report (X5A), has been prepared, that this charge has been added as an afterthought.

The basis of the expulsions is the failure on the part of the petitioners to carry out the instructions of the acting general secretary. It is submitted that every member of the DUNF is bound to adhere to any decision taken by, or carry out, any directive given by the working committee or the group. This argument is based on the "cog in the wheel theory" expounded by Sharvananda, C.J. in *Abeywardene v. Abeywardene* (3). According to this theory, a party member's right to freedom of thought, conscience, speech and expression, guaranteed by the Constitution is surrendered to the party caucus. And once the party line is decided, the member becomes a rubber stamp for its decisions. This theory has not found favour in subsequent judgments of the Supreme Court. As Fernando, J. in *Dissanayake (supra)* stated, "I take the view that a member has not been reduced to the position of a mere cog in the party machine bereft of any independence of action." Kulatunga, J. in the same case observed, "(a member) is not a lifeless cog liable to be subject to unlawful or capricious orders or directions without remedy." Dheeraratne , J. In *Tilak Karunaratne (supra)* went further when he remarked, "I am unable to agree with the proposition. (cog in the wheel theory). If for instance, the party gives a direction to a member in direct violation of fundamental policy of the party, is that member meekly bound to obey such a direction? Or if the party gives a direction to a member in flagrant violation of a term of his contract with the party, is such a member expected to tamely submit to the directions? I am unable to subscribe to a proposition which tends to devalue the nature of the contractual bond of a political party *vis-a-vis* member (and particularly a member of Parliament), to a relationship perhaps that of a master and servant."

The *raison d'etre* of a democratic party is the open discussion and exchange of views, functioning on the principle of each will have his say and the majority will have its way. (vide: DUNF Constitution, Basic Principles (3)). Loyalty to and internal unity of a political party, cannot be equated to a state of serfdom for its members. The petitioners have refused to bow down to the tyranny of the party caucus. Their

conduct should have won the approbation of the leaders of the DUNF which professes to be democratic party, (vide: DUNF Constitution-Preamble), than be a cause for their being hounded out of it.

The facts point to the inescapable conclusion that the respondents were predisposed to getting rid of the petitioners from the DUNF for good reason or bad. Expulsion of the petitioners in such circumstances is unfounded and invalid.

Conclusion

As observed earlier, the burden of satisfying this court that the expulsion of the petitioners was valid lay on the respondents. They sought to discharge this burden, mainly by harping on the conduct of the petitioners after their expulsions. This court is concerned only with the validity of the expulsion as it stood on that date. This necessarily means that the reasons that have to be considered by this court are those that have been adduced prior to the expulsion only. It is argued, that since an expelled member continues, *de jure*, to be a councillor until the determination of this court, if he acts contrary to party policy during the interim period, such conduct is a relevant consideration to be taken into account in the final determination. This submission cannot be supported on a reading of section 63 of the Provincial Councils Elections Act. The action gives the right to an expelled member to make an application to this court by way of petition, within one month, challenging the validity of the expulsion. By necessary implication, this court has to inquire into the charges that prompted the expulsion only. If not, what has been said on the jurisdictional, procedural vires, natural justice and merits, will have no application. If there is subsequent conduct on the part of a member which merits expulsion, there is no impediment against holding a fresh disciplinary inquiry on those charges and dealing with the recalcitrant member according to the provisions of the party constitution. Such a burden cannot be passed on to this court. Nor has this court the jurisdiction to take on such a task.

The respondents have failed to satisfy this court that they had the necessary jurisdiction, followed the proper procedure, observed the

principles of natural justice or had a plausible case for expelling the petitioners. We therefore declare the expulsions of the petitioners to be invalid. The applications of the petitioners are allowed with costs.

S. N. SILVA, J. President of the Court of Appeal.

R. B. RANARAJA, J.

HECTOR YAPA, J.

Applications of the petitioners allowed.
