GAMINI DISSANAYAKE
(PETITIONER IN SC 4/91)
v.
M. C. M. KALEEL AND OTHERS

(Note : Similar applications in Cases Bearing No. 5/91, No. 6/91, No. 7/91, No. 8/91 and 9/91, No. 10/91, No. 11/91 were heard together and disposed of in one judgment).

SUPREME COURT.
FERNANDO, J.
KULATUNGA, J. AND
WADUGODAPITIYA, J.
S.C. (Special).
No. 4 – 11/91.
OCTOBER 31 AND NOVEMBER 1, 4, 6, 7, 8, 11, 12 AND 13, 1991.

Article 99 (13) (a) of the Constitution – Notice of resolution to impeach the President – Speaker's notification to President of entertaining resolution [Article 38 (2) (a) and (b)] – Vote of confidence in President by Cabinet Members – Inconsistency of expulsion with the provisions of the Constitution and Statute Law – Jurisdiction of Working Committee of U.N.P. – Position of an MP vis-a-vis his Party – Signing notice of resolution to remove the President and agitation for constitutional changes – Failure to initiate prior internal discussion – Causing insult and injury to the President – Deceiving the Cabinet – Breach of rules of natural justice – Audi alteram partem – Bias – Mala fides.

Eight Members of the United National Party who were also members of Parliament singly filed eight petitions bearing numbers SC 4 – 11/91 challenging their expulsion from the Party. The respective petitioners in applications No. SC 5/91 and No. SC 8/91 were Ministers of Cabinet rank in the UNP government shortly before their expulsion.

The petitioner in application No. SC 9/91 and the petitioner in application No. SC 10/91 were a State Minister and Project Minister respectively in the UNP government shortly before their expulsion. The petitioners have filed their respective applications under and in terms of Article 99 (13) (a) of the Constitution. The expulsion of these eight members of the United National Party if held to be valid will result in their being deprived of their seats in Parliament.

The eight applications were heard together. The eight petitioners were alleged to have participated in steps being taken in late August 1991 under Article 38 (1) (e) read with Article 38 (2) for the removal of the President who was also the leader of the United National Party. Notice of a resolution in terms of Article 38 (2) (a) signed by more than the half the whole number of members of Parliament was stated to have been handed in to the Speaker who on 28

August 1991 informed the President in writing declaring that he had entertained the said resolution in terms of Article 38 (2) (b) and drawing attention to proviso (c) to Article 70 (1). On 08 October 1991 however the Speaker announced in Parliament that having inquired into the matter he was of the view that the notice of resolution did not have the required number of valid signatures and accordingly could not be proceeded with.

The Speaker's letter of 28 August 1991 was received by the President when a Cabinet Meeting at which the petitioners in SC 5/91 and SC 8/91 were present, was in progress. A vote of confidence in the President was called for and those present including the petitioners in SC 5/91 and SC 8/91 unanimously expressed their support for the President by a show of hands. However, it later became known that they supported the notice and they resigned from the Cabinet on 30 August 1991.

On 30 August 1991 the President prorogued Parliament until 24 September 1991.

The resolution in question alleged that the President was guilty of intentional violation of the Constitution, treason, bribery, misconduct or corruption including the abuse of the powers of his office, offences involving moral turpitude, permanent incapacity to discharge the functions of his office by reason of mental or physicial infirmity, undermining the powers of Parliament and of Cabinet Ministers, giving direct orders to Secretaries by-passing their Ministers, engaging Secretaries to obtain confidential reports on their Ministers, endangering the security of the State by arming the Liberation Tigers of Tamil Eelam (LTTE), sending off the Indian Peace Keeping Force (IPKF) without considering military aspects, resorting to unlawful telephone tapping (including telephones of Ministers), engaging in wasteful expenditure, including Gam Udawa Celebrations and establishing a one man dictatorship.

Between 30 August 1991 and 06 September 1991 the petitioners launched a public campaign reiterating the principal allegations contained in the notice of resolution as well as other criticisms of the President and appealing for the abolition of the Executive Presidential system and the restoration of Parliamentary Democracy making the Executive directly responsible to Parliament. This campaign also revealed that opposition members had been associated with the petitioner in regard to the notice of resolution and that the petitioners desired the widest possible publicity for their views. it was claimed that 47 members of the UNP had signed the notice of resolution.

On 03 September 1991, 116 members of the Government Parliamentary Group presented to the Speaker a writing dated 30 August 1991 stating that they do not support the resolution and those of them who had signed it were withdrawing their signatures and consent and they claimed that they had signed through mistake or because of misrepresentation.

On 05 September 1991 the petitioners anticipating disciplinary action by the Party for expulsion instituted actions in the District Court of Colombo for declarations and injunctions against steps being taken for their expulsion. On 06 September 1991 they were refused relief. Before they could go to the Court of appeal, the Disciplinary Committee of the Party met the same evening and recommended expulsion. A meeting of the working Committee followed immediately thereafter, and a resolution for the expulsion of all eight petitioners was passed. On 07 September 1991 the 2500 strong National Executive Committee (NEC) unanimously endorsed that decision. By letters dated 09 September 1991 the petitioners were informed that they were expelled from the party with effect from 06 September 1991 by a decision of the Working Committee. No reference was made to NEC's endorsement.

The petitioners continued their public campaign through meetings and rallies countrywide, press conferences and publicity in the media.

The petitioners filed the present applications and their principal challenge was on the following grounds :

(a) Absence of jurisdiction in the Working Committee.
(b) Inconsistency with the provisions of the Constitution and Statute Law.
(c) Breach of the rules of natural justice particularly the audi alteram partem rule.
(d) Bias and mala fides.

Held :

The resolution of the NEC (passed on 19 April 1991) by using the phrase " full powers to carry out the responsibilities and functions of the National Executive Council " manifests an intention to delegate all powers, duties and functions including the responsibility and the function in relation to disciplinary matters.

The Party Constitution does not treat the Working Committee as a subordinate body to be entrusted only with routine matters of daily administration. Rule 8 (3) (m) of the U.N.P. Constitution expressly empowered the National Executive Committee (NEC) to vest all or any of its powers and duties whether expressly enumerated or not on the Working Committee. The delegation in question does not purport to be permanent or irrevocable, and thus there is no denudation of its powers by the Executive Committee. Its size the difficulty of having frequent meetings, and the complexity of the decision – making process in a large body are matters which the Executive Committee could legitimately have taken into account in delegating its powers to a smaller Working Committee selected from among its own members. The Executive Committee was authorised to and did validly vest in or delegate to the Working Committee its disciplinary powers under Rule 8 (3) (m). The Working Committee had jurisdiction to take disciplinary action against the petitioners.

Our Constitution confers primacy to the political party as against the individual M.P. The party carries the mandate of the electors and in turn gives a mandate to the M.P. The exercise of the rights of the petitioners *qua* MP's is subordinate to the requirements of party discipline and their freedom to agitate matters in public is constrained by reason of their obligations to the party which they have freely undertaken to honour. Issues in regard to leadership and the system of government are matters of prime importance to the party and dissenting views should have been the subject of internal discussion before being ventilated outside party circles. The internal discussion procedure was mandatory even if the internal decision might not be binding. A member is not reduced to the position of a mere cog in the party machine. Some of his constitutional functions are essentially discretionary and quasi – judicial, some even judicial. Thus article 4 (c) enables Parliament to exercise the judicial power of the people in regard to parliamentary privilege.

Any member of Parliament was entitled to sign the notice of resolution in the exercise of his independent judgment and discretion. Signing a notice intended to be presented, and in fact presented to Parliament in respect of a matter within its province is a proceeding in Parliament. Freedom of speech (and thought, conscience and expression) clearly embraces the people's right to know, the wide dissemination of information and opinions, the public discussion of all matters of public concern and criticism, however strongly worded, and even if foolish and without moderation, of public measures and government action, all this, of course, by peaceful means and without incitement to violence. However this does not entitle the petitioners to relief because they are also charged with the failure to raise these matters internally.

Per Fernando, J.

" The rules of a Political Party are not a mere matter of contract but the basis of the exercise of the freedom of association recognised by Article 14 (1) (c).

One of the conditions on which party members agreed to exercise this fundamental right was by mutually accepting reciprocal obligations placing limitations on the exercise of the freedom of speech by each other, in the interests of their association ".

The ground of expulsion is the signing of the resolution without first raising it within the party organisation or the government Parliamentary Group.

As the petitioner in S.C. (Special) 5/91 and the petitioner in S.C. (Special) 8/91 lied and deceived the cabinet and have offered no explanation in their affidavit and none is found in the documents their misconduct was grave and expulsion was intrinsically a proper penalty. Expulsion of these two petitioners was valid.

The allegations against the District Judge of Colombo should be expunged.

Held further (Fernando, J. dissenting).

The conduct of the petitioners including senior Parliamentarians in disclosing in public the serious allegations contained in the resolution cannot be construed as bona fide, and gives credence to the allegation that they used the resolution as a cover to cause insult and injury to the character, integrity and ability of the leader of the party in his capacity as President of the country. Such contumacious conduct constitutes indiscipline in the party unrelated to the exercise of constitutional rights.

The petitioner's rights were not materially affected by the order of expulsion. All the issues here relate to legal matters arising upon admitted facts. The subsequent hearing in the Supreme Court is in substance the right to an antecedent hearing. No injustice was caused to the petitioners by their being deprived of an opportunity to give an explanation before the Working Committee. The expulsions had not yet taken effect and their validity is to be decided by the Court. There has been no violation of the rules of natural justice.

The allegations of bias and mala fides have not been substantiated.

The expulsions of the petitioners in cases S.C. (Special) 4/91, 6/91, 7/91, 9/91, 10/91 and 11/91 were also valid and justified.

Cases referred to :

1. *Wickremabahu v. Herath* SC 27/1988 – SC Minutes of 6.4.1990.
2. *Shanmugam v. Commissioner* for Registration of I and P Residents (1962) 64 NLR 29, 33.
3. *Young v. Fife* Regional Council (1986) Scots LT 331.
4. *General Medical Council v. U. K. Dental Board* [1936] Ch 41.
5. *Bromley London Borough Council v. Greater London Council* [1982] 1 All ER 129, 131–2, 165, 166, 182.
6. *Secretary of State for Education and Science v. Tameside Metropolitan Borough* [1976] 3 All ER 66.
7. *R v. Waltham Forest LBC ex parte Bashen* (1987) 3 ALL ER 671, 674, 676, 677.
8. *R v. Greenwich LBC ex P. Lovelace & Fay* [1991] 3 All ER 511, 515, 517, 523, 525.
9. *Joseph Perera v. A. G.* SC 107-109/86, SC Minutes of 25.5.87.
10. *New York Times v. US* (1971) 403 US 713.
11. *Dissanayake v. Sri Jayawardenepura University* [1986] 2 Sri LR 254.
12. *Shaughnessy v. US* (1953) 345, US 206, 224.
13. *McNabb v. US* (1943) 318 US 332, 347.
14. *Cooper v. Wandsworth Board of Works* (1863) 14 CB (N.S. 180, 194).
15. *Mersey Docks (etc) Trustees v. Gibbs* (1866) LR 1 HL 93, 110.
16. *Wood v. Woad* (1874) LR 9 Ex. 190, 196.
17. *Byrne v. Kinematograph Renters Society Ltd.* [1958] 1 WLR 762, 784.
18. *Franklin v. Minister of Town and Country Planning* [1948] AC 87.
19. *Nakkuda Ali v. Jayaratne* (1950) 51 NLR 457.
20. R v. Metropolitan Police Commissioner ex parte Parker [1953] 1 WLR 1150.

21. *Ridge v. Baldwin* [1964] AC 40, 130.
22. *Hall v. Manchester Corp.* (1915) 84 LJ Ch 732.
23. *Hopkins v. Smethwick Local Board of Health* (1890) 24 Q.B.D. 712, 714–715.
24. *Urban Housing Co. Ltd. v. Oxford City Council* [1940] Ch 70, 85.
25. *Board of Education v. Rice* [1911] AC 179, 182.
26. *R v. Gaming Board for G. B.* [1970] 2 QB 417, 430.
27. *Schmidt v. Home Secretary* [1969] 1 All ER 904, 909.
28. *A. G. v. Ryan* [1980] AC 718, 727.
29. *Cooper v. Wilson* [1937] 2 KB 309, 344.
30. *Kanda v. Federation of Malaya* [1962] AC 322, 337.
31. *Chief Constable (North Wales) v. Evans* [1982] 3 All ER 141, 143, 146, 147, 154, 155.
32. *Vidyodaya University v. Silva* (1964) 66 NLR 505.
33. *Durayappah v. Fernando* (1966) 69 NLR 265.
34. *Jeffs v. N. Z. Dairy Products* (etc) Board [1966] 3 All ER 863, 870.
35. *Barnard v. National Dock Labour Board* [1953] 2 QB 18. 23, [1953] 1 All ER 1113, 1118.
36. *Vine v. National Dock Labour Board* (1956) 3 All ER 939, 943.
37. *Lawlor v. Union of Post Office Workers* [1965] 1 All ER 353, 362.
38. *Burn v. National Amalgamated Labourers Union* [1920] 2 Ch 364.
39. *Abbott v. Sullivan* [1952] 1 KB 189, 198.
40. *Lee v. Showmen's Guild* [1952] 2 QB 329, 342.
41. Taylor v. National Union of Seamen [1967] 1 WLR 532.
42. Annamunthodo v. Oilfield Workers Trade Union (1961) 3 All ER 621, 624 – 625.
43. *Stevenson v. United Road Transport Union* [1976] 3 All ER 29, 38.
44. *Innes v. Wylie* (1844) 1 Car & Kir. 257, 263.
45. *Andrews v. Mitchell* [1905] AC 78, 81.
46. *Fisher v. Keane* (1878) 11 Ch. D 353, 362.
47. *Labouchere v. Earl of Wharancliffe* (1879) 13 Ch. D. 346, 352.
48. *Dawkins v. Antrobus* (1881) 17 Ch. D. 615, 631.
49. *Gray v. Allison* (1909) 25 TLR 531, 533.
50. *R v. Saddler's Company ex parte Dinsdale* (1863) 10 HLC 404, 423, 439, 456, 461.
51. *Johnson v. Jockey Club of South Africa* (1910) WLD 136.
52. *D' Arcy v. Adamson* (1913) 29 TLR 367, 368.
53. *Graham v. Sinclair* (1918) 25 CLR 102, 107.
54. *Dawkins v. Antrobus* (1881) 17 Ch. D. 615, 630 (also No. 48)
55. *Abbott v. Sullivan* [1952] 1 KB 189, 198.
56. *Edward v. Sogat* [1971] Ch 591, 606.
57. *R v. Archbishop of Canterbury* (1859) 1 E. & E. 545.
58. *Capel v. Child* (1832) 2 C & J 558.
59. *Bonaker v. Evans* (1850) 16 QB 162.
60. *R v. North Ex p. Oakey* [1927] 1 KB 491.
61. *Bentley's Case R v. University of Cambridge* (1723) 1 Str. 557.
62. *Re Pergamon Press Ltd.* [1971] Ch 388, 399.
63. *University of Ceylon v. Fernando* (1960) 61 NLR 505.

64. *R v. Aston University Senate ex p. Roffey* [1969] 2 QB 538.
65. *Glynn v. Keele University* [1971] 1 WLR 487, [1971] 2 All ER 89.
66. *Herring v. Templeman* [1973] 3 All ER 569, 587.
67. *Selvarajan v. Race Relations Board* [1976] All ER 12, 19.
68. *McInnes v. Onslow – Fane* [1978] 1 WLR 1520, 1528.
69. *Bates v Lord Hailsham* [1972] 1 WLR 1373, 1378.
70. *Pearlberg v. Varty* [1972] 1 WLR 534, 547.
71. *Ex p. Parker* [1953] 1 WLR 1150.
72. *Buckoke v. Greater London Council* [1971] Ch 655.
73. *R v. Hull Prison Visitors ex p. St. Germain* [1979] QB 425.
74. *General Medical Council v. Spackman* [1943] AC 627, 644.
75. *White v. Redfern* [1879] 5 QBD 15.
76. *R v. Davey* [1899] 2 QB 301.
77. *John v. Rees* [1970] Ch. 345, 402; [1969] 2 WLR 1294, 1332, 1333, 1335.
78. *Heatley v. Tasmanian Racing (etc) Commission* (1977) 137 CLR 487.
79. *R v. Secretary of State for the Environment ex p. Brent LBC* [1983] 3 All ER 321, 354.
80. *A. G. of Hong Kong v Ng Yuen Shiu* [1983] 2 All ER 346, 350.
81. *O' Reilly v. Mackman* [1982] 3 All ER 1124, 1126, 1127.
82. *Civil Service Unions Case* [1985] AC 374.
83. *Cinnamond v. British Airports Authority* [1980] 2 All ER 368, 374.
84. *Malloch v. Aberdeen corporation* [1971] 2 All ER 1278, 1283, 1294, 1297, 1298.
85. *Maradana Mosque v. Mahmud* (1966) 68 NLR 217, 224.
86. *Gaiman v. National Association for Mental Health* [1970] 2 All ER 362, 374, 376, 381.
87. *Secretary of State for Trade v. Hoffman – La Roche* [1973] 3 All ER 945.
88. *Ward v. Bradford Corporation* [1971] 115 SJ 606; [1971] 70 L.G.R 27.
89. *Dimes v. Grand Junction Canal* (1852) 3 HLC 759.
90. *R v. Sussex Justices* [1924] 1 KB 256.
91. *Hannam v. Bradford City Council* [1970] 2 All ER 690, 694, 700.
92. *Eckersley v. Mersey Docks and Harbour Board* [1894] 2 QB 667.
93. *R v. Essex Justices* [1927] 2 KB 475.
94. *R v. Camborne Justices* [1954] 2 All ER 850.
95. *R v. Nailsworth Justices* [1953] 1 WLR 1046.
96. *R v. Barnsley (etc) Justices* [1960] 2 All ER 703, 714 – 715.
97. *Simon v. Commissioner of National Housing* (1972) 75 NLR 471.
98. *Law v. Chartered Institute of Patent Agents* [1919] 2 Ch. 276, 290.
99. *Metropolitan Properties v. Lannon* [1968] 3 All ER 304, 310, 314.
100. *R v. Leicestershire Fire Authority Ex. p. Thompson* (1978) 77 LGR 373, 379.
101. *R v. Bodmin Justices* [1947] 1 KB 321.
102. *R v. Surrey Assessment Committee* [1933] 1 KB 776.
103. *Queen v. L. C. C. Ex p. Akkersdyk* (1892) 1 QB 190.
104. *Frome United Breweries v. Bath Justices* [1926] AC 586.

105. *R v. Hendon Rural District Council* [1933] 2 KB 696.
106. *R v. Altrincham Justices Ex p. Pennington* [1975] 2 All ER 78, 82.
107. *Roebuck v. National Union of Mineworkers* [1973] 1 LGR 676.
108. *Young v. Fife Regional Council* (1986) S.L.T. 331, 334. (same as No. 3)
109. *Blackpool Corporation v. Locker* [1948] 1 All ER 85.
110. *Ruth v. Clerk* (1890) 25 QBD 391.
111. *Yapa Abeywardena v. Harsha Abeywardena* SC 51/87 (SPL) SC Minutes of 18.01.1988.
112. *Rati Lal v. State of Bombay* AIR 1954 SC 388.
113. *Calder v. Bull* (1798) 3 US 386, 399.

APPLICATION under and in terms of Article 99 (13) (a) of the Constitution challenging expulsion from the United National Party.

H. L. De Silva, PC, M. L. M. Ameen, PC, Neville De J. Seneviratne, R. K. W. Goonesekera, E. D. Wickramanayake, Ranjan Gooneratne, S. L. Gunesekera, Gomin Dayasiri, Neil Dias, Ranjith Fernando, Mahendra Amarasekera, Dhamsiri Fonseka, T. M. S. Nanayakkara, S. T. Jayanaga, Nigel Hatch, Upul Jayasooriya, Mangala Ranaraja, Nalin Dissanayake, Ian Fernando and H. B. Maddumabanda for Petitioners in all eight applications.

K. N. Choksy, P.C., S.C. Crosette – Thambiah, Daya Pelpola, S. J. Mohideen, D. H. N. Jayamaha, Lalith W. Jayawickrema, A. L. Brito – Mutunayagam, Ronald Perera and Lakshman Ranasinghe for 1 to 4 respondents in all eight applications.

No appearance for the 5th respondent.

Cur. adv. vult.

December 03, 1991.

FERNANDO, J.

Eight Members of Parliament applied to this Court, by petitions in terms of Article 99 (13) (a) of the Constitution, challenging their expulsion from the United National Party (" the Party "), a recognized political party. The questions of fact and law involved are, except in one respect, identical, and the parties agreed that all eight petitions be heard and determined together. It was further agreed that the facts were not seriously in dispute, and that any contested question of fact should be determined on the basis of the several affidavits filed, without the need for oral evidence or cross examination of deponents.

1. THE FACTS

In late August 1991 a sudden crisis occurred in the Party, when it became known that notice had been given of a resolution in terms of Article 38 (2) (a) of the Constitution by more than one-half of the whole number of Members of Parliament. The petitioners have produced a copy of this notice ; it is undated, does not contain the names, signatures or initials of the signatories, and is not authenticated in any way ; the Respondents have not denied that it is indeed a copy of the notice, and so I accept it as a correct copy. The requisite number of signatures could not have been obtained unless Party Members also were included. The eight Petitioners admittedly signed this notice ; when, we have not been told. It is said that forty Party Members signed, but subsequently (after 28.8.91) some claimed that they had not signed, or had signed through mistake or misrepresentation, and others withdrew or revoked their signatures. However, it is unnecessary for me to decide any of these intriguing questions as to the number of signatories, the validity of the signatures and of the notice itself, and the entertainment of the notice by the Speaker. It is clear that this notice was the rsult of a secret campaign for some time prior to August 1991 by Opposition Members of Parliament, the Petitioners, and some other Government Members. It is also admitted that although the notice refers to serious criticisms of the President's conduct from the inception of his period of office, at no stage had the Petitioners expressed any criticism or dissent whatsoever, either publicly or within the inner councils of the Party. Likewise, they had expressed no criticism or reservation regarding the Executive Presidential system embodied in the 1978 Constitution, with a view to its abolition or reform or otherwise, except that, according to a newspaper report produced by the Respondents, Mr. Gamini Dissanayake (the Petitioner in S.C. 4/91) stated (in September 1991) that in 1989, at a joint meeting of trade unions, he had advocated the abolition of the Executive Presidential system for the solution of the problems of the country, and that the President was aware of this. The notice was delivered to the Speaker on 27.8.91, or perhaps shortly before. By a letter dated 28.8.91 the Speaker informed the President that he had entertained a resolution complying with Article 38 (2) (a) and (b). Neither this letter nor a copy has been produced, but another document reproduces its contents, as to which there is thus now no dispute. It would seem that this letter was originally dated 27.8.91, and then altered to 28.8.91. A copy of the

notice itself was not sent to the President. The Speaker's letter was received by the President whilst a Cabinet meeting was in progress; two Petitioners (Messrs G. M. Premachandra and Lalith Athulathmudali) being then Cabinet Ministers, were present. A vote of confidence in the President was called for, and those present, including those two Petitioners, unanimously expressed their support for the President by a show of hands. However, it later became known that they supported the notice, and they resigned from the Cabinet on 30.8.91.

According to a newspaper report on 31.8.91 of a Press Conference held on 30.8.91, at which Messrs Premachandra and Athulathmudali were present,

> " Asked how it was possible for Messrs Athulathmudali and Premachandra to subscribe to the unanimous expressing of confidence in President Premadasa at last Wednesday's cabinet meeting, Mr. Athulathmudali said the motion had been signed after the cabinet meeting. "

Another newspaper account of a farewell speech by Mr. Athulathmudali to his Ministry staff a day or two later, quotes him as having said that he did not sign the notice while he was in the Cabinet, but only after resigning. According to yet another report,

> " Mr. Athulathmudali said that at the Cabinet meeting there was a show of hands. This happened subsequently, he said and added 'there is no inconsistency between raising your hand and then offering to resign'."

These reports have not been contradicted. On being asked whether Mr. Athulathmudali signed the notice before or after the vote of confidence, learned President's Counsel, after speaking to him, stated to us that he had no clear instructions on this point.

On 30.8.91 the President (who was precluded by Article 70 (1) (c) from dissolving Parliament " after the Speaker has entertained a resolution complying with " Article 38 (2) (a) and (b)) prorogued Parliament until 24.9.91.

Between 30.8.91 and 6.9.91 the Petitioners commenced a public campaign, reiterating the principal allegations contained in the notice of resolution, as well as other criticisms of the President and appealing for the abolition (and not merely the reform) of the Executive Presidential system and the restoration of Parliamentary Democracy making the Executive directly responsible to Parliament. This campaign also revealed that Opposition Members had been associated with the Petitioners in regard to the notice of resolution, and that the Petitioners desired the widest possible publicity for their views.

On 5.9.91, the Petitioners, anticipating disciplinary action by the Party for expulsion, instituted actions in the District Court of Colombo for declarations and injunctions ; on 6.9.91 they were refused relief. Before they could go to the Court of Appeal, the Disciplinary Committee of the Party met the same evening, and recommended expulsion ; a meeting of the Working Committee followed immediately thereafter, and a resolution for the expulsion of all eight Petitioners was passed. That resolution recited that the President is *ex officio* the Leader of the Party ; that the eight Petitioners were bound by the Party Constitution and had been elected to Parliament on the Party list ; that in the District Court proceedings they had admitted signing the notice of resolution for the removal of the President ; and then set out the grounds of expulsion thus :

> AND WHEREAS the signing of the aforesaid Resolution, together with several Members of the Opposition in Parliament, is an act of betrayal of the Party membership and the confidence placed by the people in the Party and its leadership at successive elections,
>
> AND WHEREAS after the Hon. Speaker had informed the President he had entertained the said Notice of Resolution under Article 38(2), Messrs G. M. Premachandra and Lalith Athulathmudali had in addition deliberately misled and deceived the Cabinet of Ministers on the 28th of August, 1991, into believing that they were ignorant of and were not associated with the notice of the Resolution, by joining the rest of the Members of the Cabinet in passing an unanimous Vote of Confidence in the President by a show of hands individually,

AND WHEREAS the aforesaid eight members have signed the said Notice of Resolution without any prior intimation to the Party or raising or discussing the same within the Party organization or the Government Parliamentary Group,

AND WHEREAS the said eight members had at the General Election of February 1989 sought and obtained nomination on the Lists of the United National Party and the voters had elected them to Parliament on the basis and understanding that they are members and candidates of the United National Party who accept the Leadership of the Party and the Executive Presidential system of Government, and are therefore bound to adhere to the Party Manifesto and Party Constitution and policies whilst being representatives of the Party in Parliament,

AND WHEREAS it has been and continues to be the principle and policy of the United National Party that the Government of the country should consist of an Executive President elected by the people and an elected Parliament,

AND WHEREAS the aforesaid members have since the giving of the said Notice of Resolution to the Speaker repeatedly announced in public that they are against the elected Executive Presidential system, and have also used this as a cover to cause insult and injury to the character, integrity and ability of the Leader of the Party in his capacity as President of the country,

AND WHEREAS the aforesaid acts have all been done by the said eight members without first raising the said issues within the Party organization or the Government Parliamentary Group as is required by the Party Constitution and conventions,

AND WHEREAS the Disciplinary Committee has on the basis of the aforesaid recommended to the Working Committee of the Party that disciplinary action be taken against the said eight members for their flagrant conduct in violating the Constitution, conventions, policies and procedures of the Party,

AND WHEREAS the Working Committee having considered the aforesaid conduct and actions of the said eight members and the recommendation of the Disciplinary Committee has come to the

conclusion that these members have manifestly and flagrantly and in disregard of Party discipline, duties and responsibilities, breached the conditions of membership of the Party, acted contrary to the principles and policies of the Party, repudiated and violated the Constitution and conventions of the Party, and brought the Party and its leadership into disrepute and held it up to public ridicule.

The Working Committee accordingly resolves that the aforesaid eight members be expelled from the membership of the United National Party with effect from 6th September, 1991.

The Working Committee further resolves that the General Secretary of the Party notifies the Secretary General of Parliament and the Commissioner of Elections of the expulsion of the aforesaid eight members.

On 7.9.91, the National Executive Committee unanimously " endorsed " that decision. All this was without any notice whatever to the Petitioners. By letters dated 9.9.91 each of the Petitioners was informed that he had been expelled from membership of the Party, with effect from 6.9.91, by a decision of the Working Committee ; no reference was made to the National Executive Committee's " endorsement " of that decision ; a copy of the expulsion resolution was also sent.

Thereafter the Petitioners continued their public campaign. Although it has been submitted that the Petitioners were only seeking the reform of certain anomalies in the Executive Presidential system, the material before us establishes that, throughout, the issue presented to the public was " Executive Presidency versus Parliamentary Democracy." Parliament met on 24.9.91 ; on 8.10.91 the Speaker announced to Parliament that, having inquired into the matter, he was of the view that the notice of resolution did not have the required number of valid signatures and hence could not be proceeded with. On 4.10.91 these petitions were filed.

2. ALLEGATION OF BIAS AGAINST DISTRICT JUDGE

The petition in each case, makes reference to the unsuccessful actions filed in the District Court of Colombo on 5.9.91. Paragraph 21 of the petition, and paragraph 22 of the affidavit (in S.C. (Special) No. 4/91), filed in this Court, refer to a speech made by the District Judge of Colombo, as President of the Judicial Service Association, at the Annual Conference of the Association, welcoming the President. In the course of that speech, the District Judge conveyed the appreciation of the members of the minor judiciary of the practice of promoting senior judges of the minor judiciary to the High Court, and of steps taken in relation to the welfare and conditions of service of the members of the minor judiciary, making special mention of housing schemes and cars. Such action, he said, was in recognition of the fact that the judiciary is a vital and integral part of the state, especially in maintaining peace and order. These issues were in no sense personal to the District Judge himself, but related to matters of legitimate interest and concern to all members of the Association. It was a formal and open expression of gratitude for the provision of facilities which did not unduly favour the minor judiciary, but which enabled at least the majority of them to enjoy facilities comparable to public officers. He assumed that judicial officers may, like Oliver Twist, ask for more and may give thanks for what they get.

However each Petitioner proceeded to allege that he " has reason to believe in all the circumstances that justice was not seen to be done in his case "; this was re-iterated in counter-affidavits dated 26.10.91. Learned President's Counsel concluded his submissions on behalf of the Petitioner on 4.11.91 without in any way relying on this allegation to support the prayer for relief under Article 99 (13) (a).

These applications are not by way of appeal from, or review or re-consideration of, the proceedings or order in the District Court. The insinuation of partiality is in no way relevant to the issues of fact and law arising in these applications. We are therefore not called upon in any way to determine whether that allegation was justified, or even whether there was a reasonable suspicion of bias requiring the District Judge to disqualify himself. Indeed, if we were to consider whether there was substance in that allegation, we would be doing so in proceedings to which the District Judge is not, and could not have been, a respondent, and we would thereby be denying to him

what the Petitioners claim for themselves, namely the protection of the *audi alteram partem* rule.

In these circumstances we indicated to learned President's Counsel on 4.11.91 that the pleadings filed in this Court should not have contained such an obviously irrelevant allegation of bias, and one based on such tenuous grounds ; that this Court could not ignore the aspersions cast on a judicial officer, of an inferior court but nevertheless an integral part of the judiciary of Sri Lanka ; and that in the circumstances it seemed right that allegation should no longer be permitted to remain on the record. Learned President's Counsel wished to have time for consideration. On 13.11.91, at the conclusion of his submissions in reply, he informed us that the Petitioners, while re-affirming that they suffer a deep sense of grievance that they were denied justice when they sought relief in the District Court, nevertheless recognised the force of our observations that no finding was possible on that allegation, and while reserving their right to take up the matter elsewhere, desired to withdraw the offending averments.

These proceedings involve important questions of law as to the status, rights and powers of the Executive President, vis-a-vis Parliament and Members of Parliament, and the Petitioners seek to vindicate the rights and privileges of Parliament and its Members. When the jurisdiction of this Court is invoked for such purposes, it is more than ordinarily important that nothing should be done unfairly to impair the independence, and the reputation, of the judiciary or any section of it. Unsuccessful litigants may labour under a sense of grievance, in respect of orders which are either wrong or believed to be wrong ; they have the right to avail themselves of all such remedies as the law allows, but they are not at liberty to use judicial proceedings recklessly to scatter allegations of partiality. Neither the Petitioners nor their legal advisers should have permitted this base allegation to be made, and persisted in. It does not redound to the credit of those professing to enhance democratic institutions and practices in Sri Lanka, that there was not even a perfunctory expression of regret for the injury to the judiciary and the officer concerned. However, as the allegation was made in restrained terms, in this instance we merely direct the Registrar, to expunge the offending passages from the record, namely :

(a) the entirety of paragraph 21 of the petition dated 4.10.91, and paragraph 22 of the supporting affidavit, in S.C. (Special) No 4/91 ; and

(b) the last sentence of paragraph 9 of the counter-affidavit dated 26.10.91,

as well as the corresponding passages in the other seven cases.

3. THE ALLEGATIONS AGAINST THE PETITIONERS

Learned President's Counsel for the 1st to 4th Respondents submitted that the Petitioners were expelled not for *signing* the notice of resolution, or for advocating the abolition of the Executive Presidential system, but for their *failure to give prior intimation to* the proper Party organisations (such as the Executive Committee, the Working Committee and the Government Parliamentary Group). Further, after signing that notice, they had used their campaign against the Executive Presidential system as a cover to cause insult and injury to the character, integrity and ability of the Leader of the Party in his capacity as President. In addition, Messrs Premachandra and Athulathmudali had deceived the Cabinet on 28.8.91.

The Petitioners, however, construe the expulsion resolution differently, and say it contains five distinct charges:

1. In regard to the notice of resolution :

   (a) That the act of signing, together with Opposition Members, constituted a bertrayal of the Party ; both the membership and the leadership ;

   (b) That Messrs Premachandra and Athulathmudali had deceived the Cabinet into believing that they were not associated with the resolution ; and

   (c) That the notice had been signed without prior intimation or discussion within the Party organisations.

2. In regard to the Executive Presidential system :

(a) That having obtained Party nomination, and having been elected on the basis of their acceptance of the Party Leadership and the Executive Presidential system, and being bound by the Party Constitution, manifesto, principles and policies (one principle and policy being that government should be by an Executive President elected by the people and an elected Parliament), they had repeatedly announced in public their opposition to this Executive Presidential system, without first raising the said issues within the Party organisations or the Government Parliamentary Group ; and

(b) That they had used this as a cover to cause insult and injury to the character, integrity and ability of the leader of the Party in his capacity as President.

Learned President's Counsel for the Respondents sought to persuade us that the gravamen of the charge was the lack of prior intimation and internal discussion – which might have transformed the winter of their discontent into glorious summer of Party unity. This was principally on the basis that the eighth and ninth recitals in the expulsion resolution set out the recommendation of the Disciplinary Committee and the decision of the Working Committee ; that the seventh recital contains the operative charge ; namely the failure to raise those issues internally ; and that the first six recitals merely state other ingredients (alternative or cumulative) relevent to that charge. Since the seventh recital refers to " *all* " the aforesaid acts there is some justification for regarding it as referring to all the preceding recitals ; not being a charge in a criminal proceeding, a high degree of precision is not expected. However such a construction results in some anomalies. That recital is not relevant at all to the second recital ; it is unnecessarily repetitive of the third recital ; it is quite inappropriate to the allegation of causing insult and injury. Further, the first recital is an independent charge, complete in itself: that signing the notice, together with Opposition Members, was an act of betrayal. The seventh recital could therefore be more appropriately read as applicable only to the sixth, though not to the allegation of causing insult and injury ; or perhaps even as only an aggravating element. Before deciding which of these competing

interpretations is correct, it is relevant to see how the parties understood that resolution. The Petitioners averred in their petitions that they could not legally be expelled on the ground that they signed the notice of resolution, setting out several independent contentions; that the act of signing was not a violation of the Party Constitution, conventions, policies, principles or discipline ; that Party rules cannot override the Constitution ; that they had a Constitutional right and power to sign the notice ; that the act of signing was not liable to be questioned by virtue of Parliamentary privilege ; and that the act of signing was in the exercise of the fundamental rights of freedom of thought, conscience and speech. They said nothing about their failure to raise the matter internally ; perhaps they had nothing to say in exculpation, but possibly they did not consider that to be the essence of the charges. It is of some relevance that when these petitions were called on 24.10.91 to determine certain procedural questions, one of the matters in issue was formulated as " whether the signing of the [notice of] resolution under Article 38 (2) constitutes a ground for expulsion ", and the lack of prior internal discussion was not mentioned.

The Respondents replied thus in each case :

"31. .....if the Petitioner had any complaint or allegations against the Leader of the Party or desired to advocate any change in the policy of the Party regarding the Executive Presidential system, he was obliged and bound to first raise the same within the Organisation of the Party and abide by the decision of the Party in regard thereto. The Petitioner at no stage raised within the Party or at any meeting of the Government Parliamentary Group..... any complaint against the Leader of the Party or against the Party's policy of an Executive Presidential System."

"32. (a) The Petitioner nevertheless was a signatory to a Notice of Resolution under Article 38 (2) ..... for the removal of the Party Leader from the Office of President of Sri Lanka. The said Notice of Resolution contained serious allegations of a grave nature ..... It also alleged mental infirmity against the Leader of the Party.

(b) Subscription to the said Notice of Resolution containing the said allegations by a member of the Party and of the Government Party Group carries with it by necessary implication that the President is a person unfit to be the Leader of the United National Party."

"33. The Petitioner had signed the said Notice of Resolution together with *inter alia* several Members of the Opposition in Parliament."

"34.(a) .....the admitted signing of the said Notice of Resolution by the Petitioner was an act of betrayal of the Party Leadership and membership and was a violation of the Party Constitution and Party responsibility and discipline, justifying the expulsion of the Petitioner from the Party.

(b) ..... the Petitioner had no right to subscribe to such a Notice of Resolution independently of his obligations as a Member of the Party and of the Government Parliamentary Group.

(c) In any event, the Petitioner was in violation of the Party Constitution, discipline and responsibility in doing so without first raising the matter within the Party or the Government Parliamentary Group."

These averments appear to place the act of signing the notice in the forefront of the case against the Petitioners ; the failure to raise the matter internally was – as indicated by the words " in any event " – an additional, and subsidiary, charge. This impression is reinforced by the Respondents' explanation for not taking similar action against other Party Members who signed the notice:

"24. (a) ..... all remaining 116 members of the Government Parliamentary Group signed documents dated 30th August 1991 and 2nd September 1991 disassociating themselves with the Notice of Resolution under Article 38 (2) of the Constitution and expressing their opposition to such Resolution. These documents were presented in person by the said 116 members to the Honourable

Speaker on 3rd September 1991. Accordingly no disciplinary action was taken against any other member *who may have signed* the said Notice of Resolution. At the meeting of the Working Committee held on 15th October 1991 the Committee required the Disciplinary Committee to consider and make recommendations in regard to disciplinary action if any against three members of the Government Parliamentary Group who have recently associated themselves in the political activities of the Petitioner and the other seven members."

The stress is on disciplinary action for " signing "; not on the absence of prior internal discussion. These objections were filed on 23.10.91. The Petitioners were required to file their counter-affidavits by 28.10.91, after giving notice to the Respondents by 27.10.91. While denying paragraphs 24 (a), and 31 to 34, they averred that the Party was not irrevocably committed to the Executive Presidential system, and that " this question was not raised [internally] for the reason that there did not exist a degree of freedom necessary to raise questions which would involve a curtailment of Presidential power "; this they did not elaborate.

It is thus likely that there was some confusion in the minds of members of the Working Committee. The minutes of the Working Committee show that the 2nd Respondent, as General Secretary, made a fair and comprehensive report in respect of the proceedings and recommendations of the Disciplinary Committee ; with, however, that same element of uncertainty. He referred succinctly to the District Court proceedings and order, the Petitioners' admissions in regard to signing, and the very serious nature of the accusations in the notice ; to the Petitioners' lawyers' assertion that Members of Parliament had a Constitutional right to sign such a resolution ; to two Petitioners having misled the Cabinet ; and to the public campaign against the Presidential system. The minutes record that " he *further* stated " that the Petitioners had not previously raised these matters internally ; he then stressed that this was a breach of discipline. It was not indicated that signing the notice was not a distinct charge. The findings or views of the Disciplinary Committee are also not specific on this point ; but it " was of the view that no inquiry was necessary because the fact of signing of the impeachment Resolution was admitted." The President " stated that inasmuch as the Notice

of Resolution..... was directed against him, he did not wish to participate in this discussion " ; earlier he had not taken part in the discussion and recommendations of the Disciplinary Committee " in view of the Impeachment Resolution."

Learned President's Counsel for the Respondents was himself a member of the Working Committee and participated in the proceedings of 6.9.91. On that day too his view must have been that the gravamen of the charge was the lack of prior internal discussions. That opinion may have been shared by others. But that position did not clearly emerge in the Respondents' objections and the 2nd Respondent's supporting counter-affidavit.

It is therefore reasonable to infer that the 2nd respondent as well as other members of both Committees did think that one of the main charges was the act of signing the notice. Had attention being focussed on this matter, it might have been determined, after discussion, that the issue was not the fact of signing. But that did not happen. It appears to me that the better view of the expulsion resolution is that one of the grounds for expulsion was the fact of signing. That gives rise to serious questions. Could some members have taken the view that the resolution contained very serious accusations, and that a Party member who signed it was guilty of serious misconduct, warranting expulsion ? If so, could they have properly formed such a view where the text of the notice was not available ? Had those members been told that was not the charge, and that the real allegation was the failure to resort to internal procedures, would they have considered it appropriate to impose a lesser punishment – such as a brief suspension to be reviewed after the resolution was taken up in Parliament ? This means however that one does not really know whether the Petitioners were expelled for signing the resolution, or for the procedural lapse. Upon consideration of the resolution and the pleadings, however, I am compelled to treat the expulsion as involving five distinct charges.

4. CAN THE WORKING COMMITTEE EXPEL A MEMBER ?

Rule 8 of the Party Constitution establishes a National Executive Committee consisting of *ex officio* members (such as Members of Parliament) and members elected by the (annual) Party Convention ; It presently has over 2,500 members. It is required to

meet at least once in every six months. It is " the administrative authority of the Party, subject to the directions and control of the Party Convention, and its decisions shall be final, subject to review by the Party Convention." Rule 8 (3) provides that " its *duties* shall *include* the following." Having enumerated various duties, such as conferring with the Parliamentary Party, convening Party conventions, proposing amendments to the Party Constitution, organising election funds, adjudicating on disputes between Party organisations, appointing Nomination Boards and sub-Committees for elections, and appointing an auditor and certain officers, Rule 8 (3) sets out three matters relevant for present purposes –

(a) To enforce the Constitution, Standing Orders and Rules, and the Code of Conduct of the Party, and to take any action it deems necessary for purpose, whether by way of disaffiliation or cancellation of an organisation or expulsion or suspension of any individual member or office bearer from office or otherwise. The National Executive Committee shall have power to take disciplinary action against any member, Balamandalaya, Organisation or Association in a manner suitable in the circumstances of each case and mete out any punishment thereof [sic]. Any such action shall be reported to the next Annual Convention of the Party.

(b) To see that all its officers and members conform to the Constitution and Standing Orders of the Party.

(c) Leader of the Party shall appoint a Working Committee from the National Executive Committee consisting of himself, Deputy Leader and all other office bearers and any other members not exceeding fifty (50). The Working Committee shall have the authority to exercise the powers and functions vested in it by the National Executive Committee. "

The last of these is in no sense a "duty" of the Executive Committee, but is an independent provision.

There can be no dispute that the Executive Committee has the "duty" to enforce the Party Constitution and relevant rules, and the "duty" as well as the "power" to take disciplinary action against members, including expulsion, suspension and other punishments.

Learned President's Counsel for the Petitioner contends that the disciplinary jurisdiction of the Executive Committee cannot be exercised by the Working Committee, for several reasons :

1. The Executive Committee is a large, elected body, representative of various sections of the Party ; the Working Committee is a small body, appointed by the Leader of the Party from among the members of the Executive Committee, and therefore not truly representative of the Party. The plenary power of Administration was vested in the Executive Committee, including punitive powers of expulsion. The Rules as a whole do not manifest an intention that these powers may be transferred or delegated to any other body.

2. Rule 8 (3) (m) appears to authorise the Executive Committee to " vest " powers and functions in the Working Committee. It makes no mention of the procedure to be followed in regard to such " vesting." However, " vesting " more than " delegation ", and amounts to an abdication, renunciation divesting of a power by the Executive Committee ; if such a " vesting " does occur there will be a Constitutional change in that a power previously vested in the Executive Committee will thereafter be vested in the Working Committee. Accordingly, such a " vesting " can only be effected by means of a Constitutional amendment ; not by a mere resolution of the Executive Committee.

3. In any event, even if Rule 8 (3) (m) permits some " vesting " of powers by resolution, this would not extend to any of the powers and duties expressly enumerated in Rule 8 (3), but only to incidental matters and routine matters of day-to-day administration.

4. Even if expressly enumerated powers and duties can be " vested ", yet they cannot be transferred *in toto*, so as to denude the Executive Committee of all its powers.

5. In any event the resolution proposed at a meeting of the Executive Committee held on 19.4.91 –

" It is hereby proposed that the Working Committee of the Party be vested with full powers to carry out the responsibilities and functions of the National Executive Committee of the Party " –

is vague, and is ineffective to clothe the Working Committee with disciplinary powers. Further, the minutes of the meeting do not record that the resolution was passed.

6. The Court should adopt a strict construction, presuming, firstly, that the Party Constitution does not, in general, allow " vesting " or delegation, in the absence of clear and express provision ; and, secondly, that, even if there was such provision, disciplinary powers of this nature were not intended to be transferred.

The minutes of the Executive Committee meeting of 19.4.91 are undoubtedly defective. Two resolutions are mentioned, but it is not stated that they were adopted. Had there been no other material, I would have held that the Executive Committee had not vested its disciplinary powers in the Working Committee. However, the Petitioners were *ex officio* members of the Executive Committee; they would have had notice of that meeting, and may have been present ; they could certainly have ascertained what transpired. It was averred in the petitions that only the Executive Committee has disciplinary powers ; the Respondents replied annexing the minutes of the meeting of 19.4.91 whereby, they said, " the powers and functions of the National Executive Committee were by resolution vested in the Working Committee under [Rule 8 (3) (m)] ". The Petitioners obtained leave to reply ; however, even in their counter-affidavits they did not claim that the resolution had not been passed ; instead they merely questioned the effect of that resolution, by asserting that it did not enable the Working Committee to exercise the disciplinary powers vested in the Executive Committee, for the reason that it purported to effect a Constitutional amendment. If the Petitioners were seriously contending that the resolution had only been proposed, but not passed, that allegation should have been made clearly, specifically and directly. I am satisfied that the resolution had been passed at the meeting, although the minutes are defective. I also hold that the resolution is not vague. Although the opening words of Rule 8 (3) refer to " duties ", it proceeds to enumerate a host of powers, duties and functions. The resolution, by using the phrase " full powers to carry out the responsibilities and functions ", manifests an intention to delegate all powers, duties and functions, including the " responsibility " and the " function " referred to in Rule 8 (3) (a) in relation to disciplinary matters.

It is clear that discretionary powers, whether conferred by statute or by agreement, must in general be exercised by the designated repositary of those powers.

> " An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable.....
> The maxim *delegatus non potest delegare* is sometimes invoked as if it embodied some general principle that made it legally impossible for statutory authority to be delegated. In reality there is no such principle ; and the maxim plays no real part in the decision of cases, though it is sometimes used as a convenient label. Its proper home is in the law of agency, where it expresses the point that a principal who must accept liability for the acts of his agent need not accept it for the acts of his agent's agent ; but even here there are wide exceptions. In the case of statutory powers the important question is whether, on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim merely indicates that this is not normally allowable. For this purpose no distinction need be drawn between delegation and agency. Whichever term is employed, the question of the true intent of the Act remains ". (Wade, Administrative Law, 5th Edition pp 319-320)

This is not an instance where from its very nature, the power to delegate can be inferred. However, Rule 8 (3) (m) appears to permit the Executive Committee to authorise the Working Committee to exercise powers conferred on the former. Learned President's Counsel's contentions depend almost entirely on the meaning of the word " vest ": which he seeks to equate to " abdicate ", " renounce " or " alienate ", permanently and irrevocably. On being asked the ordinary meaning of the word, in the context of power and authority, his reply was that it meant " clothe ". In law, where a grantor " clothes " another with power or authority, there is no implication of a denudation of the grantor's powers, nor of irrevocability or permanency. That is also the plain meaning of the word, in every day usage and in literature, as evidenced in

Shakespeare's immortal lines : " Man, proud man, dressed in a little brief authority ". To dress a grantee with authority, or to clothe, or vest, him with power, does not imply an irrevocable and permanent renunciation of his powers by the grantor, " Vest " is thus akin to " delegate ", rather than to " abdicate ", " Vest " is used in that sense in the Constitution (e.g. in Articles 118 (g) and 138 (2)). Parliament is authorised by Article 4 (c) directly to exercise the judicial power of the people in regard to matters relating to the privileges, immunities and powers of Parliament and its Members. If Parliament were, by law passed in terms of Article 138 (2), to " vest " in the Court of Appeal power and jurisdiction in respect of the immunities of Members of Parliament, this would be an exercise of legislative power permitted by, and consistent with, the Constitution. Neither such exercise, nor the result of such exercise, would be inconsistent with the Constitution. Therefore no question of amending the Constitution can arise, and an ordinary law would suffice. In particular, such vesting would not involve an abdication or alienation of legislative power in violation of Article 76. In the same way, the Executive Committee is authorised directly to exercise disciplinary powers ; if by resolution the Executive Committee " vests " such powers in the Working Committee, that is permitted by, and consistent with Rule 8 (3) (m). Neither the act, nor the result, of such vesting is inconsistent with the Party Constitution ; hence no question of amending the Party Constitution arises, and a resolution is sufficient. A somewhat similar problem arose in *Wickramabahu v. Herath,* [1] where it was held that :

> " If in respect of a fundamental right recognised by Article 13 (1) and (2), an Emergency regulation imposes a restriction which is permitted by Article 15 (7), such regulation does not over-ride, suspend or amend any provision of the Constitution ; it is a restriction permitted by the Constitution, and is both *intra vires* and consonant with the Constitution, and therefore does not 'over-ride' the Constitution."

I hold that the exercise of a power to " vest " permitted by Rule 8 (3) (m) does not over-ride or conflict with the Rules, but is consistent with the Rules, and requires no amendment of the Rules.

The Petitioners further contend that Rule 8 (3) (m) does not expressly permit the transfer of disciplinary powers, and that, even

if it did, both the nature of those powers and the nature of the two Committees justify a presumption that the Rules did not contemplate any delegation. Undoubtedly, that Rule does not specifically authorise delegation of disciplinary powers : it might have said " *all or any of* the powers and functions ", or " including those specified in paragraph (a) ", and the matter would then have been unarguable. But in my view such a provision was unnecessary. Rule 8 (3) (m) as it stands makes express provision covering the vesting of disciplinary powers :

> ".....express provision is provision the applicability of which does not arise by inference..... The fact that the language used is wide and comprehensive and covers many points other than the one immediately under discussion does not make it possible to say that its application can arise by inference only. To be 'express provision' with regard to something it is not necessary that thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom." *Shanmugam v. Commissioner for Registration of I. and P. Residents* [(2)].

There is neither a prohibition on vesting any of the enumerated powers and functions, nor any restriction permitting delegation only in respect of minor or routine matters. Although Rule 8 (2) refers to the Executive Committee as " *the* administrative authority ", there are numerous other Rules directly conferring important administrative powers and functions on the Working Committee, such as :

(a) Notwithstanding any other provision, the Working Committee has the power to dissolve any District Balamandalaya, Polling Division Organisation, or Main Association (Rule 2A(4)).

(b) The Nomination Board appointed by the Working Committee, in consultation with the Working Committee, shall nominate a candidate for the Presidency (Rule 9 (a)), as well as candidates for other elections (Rule 9(b)).

(c) When a vacancy occurs in the office of President, the Parliamentary Party in a joint session with the Working Committee shall select the Party candidate (Rule 9 (c)).

(d) It has the power to approve the constitution and the recognition of local and affiliated organisations (Rules 2A(1), 2A(2), 2A(6) and 3(1)(e)).

(e) It may issue directives to members as to their attitude at elections where there is no Party candidate (Rule 3 (1)(c)).

(f) It has power to correct any mistake or omission in, and to give necessary directions in the interpretation and implementation of, the Party Constitution (Rule 21).

The Party Constitution thus does not treat the Working Committee as a subordinate body to be entrusted only with routine matters of daily administration. I hold that Rule 8 (3) (m) expressly empowered the Executive Committee to vest all or any of its powers and duties whether expressly enumerated or not. The delegation in question does not purport to be permanent or irrevocable, and thus there has been in fact no " denudation " of its powers by the Executive Committee; it is unnecessary to consider whether any such " denudation " would be of no effect. Its size, the difficulty of having frequent meetings, and the complexity of the decision-making process in a large body, are matters which the Executive Committee could legitimately have taken into account in delegating its powers to a smaller Working Committee selected from among its own members ; the Executive Committee remained free at any subsequent meeting to revoke or vary such delegation. In particular, it could justifiably have taken the view that the advantage of itself conducting disciplinary inquiries was far outweighed by the disadvantages.

It remains to consider the final submission that it is easier to delegate an administrative function than a judicial function : *Young v. Fife Regional Council,* [3] ; and that even if all other powers and duties may be delegated very different considerations apply to the delegation of disciplinary powers:

> " A statutory power to delegate functions, even if expressed in wide general terms, will not necessarily extend to everything. Thus it has been held that the General Medical Council must itself exercise its disciplinary powers over dentists and cannot delegate them to its executive committee, even though it has express statutory power to act through such a committee for the purpose

of its functions under the Dentists Acts. In the case of Important judicial and disciplinary functions the court may be disposed to construe general powers of delegation restrictively." (Wade, Administrative Law, 5th Edition p. 325)

General Medical Council v. U. K. Dental Board [4] is cited. Under the Act of 1878, the Council had no power to delegate its disciplinary powers ; it could ascertain the facts through a Committee. In 1921, the law was amended, by establishing the Dental Board. The Council continued to have disciplinary powers, but the Dental Board was in effect substituted for the Committee. The 1921 Act further provided that the Council, for the purpose of its functions, had power to act by an executive committee of the Council. It was held that the Council could not delegate its disciplinary powers to such executive committee. The apparently wide terms of the latter provision were on examination found to be inconsistent with the detailed scheme, existing from 1878, under which the Council exercised disciplinary powers, after obtaining a report from the Committee (and later the Dental Board). It was held that the wide terms of that provision were necessarily restricted by the other, and inconsistent, provisions of the statute. In the Party Constitution, there is no such inconsistency. Further the Working Committee possesses as already noted, power analogous to the disciplinary power, namely to dissolve member organisations.

Learned President's Counsel was able to point only to two features of the Party Constitution as militating against delegation of disciplinary powers. Rule 8 (2) makes the decisions of the Executive Committee final, subject to review by the Party Convention. If disciplinary powers are delegated to the Working Committee, this right of review will be lost. It is not clear whether " review " includes the right to reverse or vary a disciplinary order, but assuming that it does, it appears to me that a decision of the Working Committee, in the exercise of delegated authority, will, for the purpose of Rule 8 (2), be deemed to be the decision of the Executive Committee, i.e. a decision made vicariously by the Executive Committee and therefore subject to review just as a decision made directly : *quio facit per alium facit per se.* The second matter urged by him was that the allegations against the Petitioners related to questions of policy, and policy was a matter for definition by the Executive Committee (Rule) 9 (f)) ; hence the Executive Committee was best qualified to

determine what policy was, and whether it had been violated. That is not a consideration applicable to the delegation of disciplinary powers in general, but only against delegation in matters involving policy. In any event, it is not necessary, and may not even be desirable, that the body which lays down policy should determine whether there has been an infraction : just as legislatures are generally not considered best suited to determine whether the laws enacted by them have been infringed. On the other hand, it is perfectly reasonable to infer that a body with 2500 members was never intended to exercise powers of a quasi-judicial nature, especially where facts had to be inquired into.

I therefore hold that the Executive Committee was authorised to, and did validly, vest in or delegate to the Working Committee its disciplinary powers under Rule 8 (3) (m). Although argued at length, it is unnecessary to decide the further question whether the " endorsement " by the Executive Committee of the decision of the Working Committee constituted a valid ratification thereof.

5. THE GROUNDS FOR EXPULSION

(a) Position of Member of Parliament vis-a-vis his Party

Learned President's Counsel for the Petitioners submitted that the position of a member of Parliament *vis-a-vis* the political party to which he belonged at the time of election, and his rights, powers and privileges to speak and act according to his own conscience and independent judgement, was governed by the following principles :

(i) Prior to 1978, a Member was not a mere delegate of his Party, and enjoyed complete freedom of action and decision making ; there was no legal fetter on his conduct in Parliament.

(ii) This position was not changed by the 1978 Constitution, and the 14th Amendment, which did not reduce a Member to a mere cog in the Party machine. Despite the introduction of Proportional representation, other " pivotal " provisions (especially Article 4 (a)) in regard to the position of Members remained unchanged. The 14th Amendment could not be regarded as having altered those provisions by implication, in view of Article 82 (1) and (6).

(iii) A Member of Parliament is " immune from the dictatorship of the political party to which he belongs " because under Article 4 (a), read with Article 3, he is an elected " representative " of the people, and not a mere "delegate ". Parliament execises the sovereignty of the people, and the essence of sovereignty is that the body declared sovereign is free of any external restraints and is not subordinate to any other body.

(iv) Article 3 provides that sovereignty includes fundamental rights (cf. Article 4 (d)) among which are freedom of thought, conscience, speech and expression.

(v) Article 67 preserves the privileges, immunities and powers of Parliament and its Members ; these include freedom of speech and proceedings in Parliament. If a Member cannot be sued in the Courts in respect of such matters, his conduct cannot be impeached before the Party Working Committee, nor can he be asked why he did not first resort to internal procedures.

(vi) Constitutional provisions in regard to the President (Article 42) and the Cabinet (Article 43) establish that both are answerable to Parliament. It makes no difference that Article 42 makes the President only " responsible ", while Article 43 makes the Cabinet " collectively responsible and answerable ", for " responsible " includes " answerable ". This demonstrates that on occasion Members of Parliament sit in judgement over President and Cabinet, and in that sphere they must necessarily be completely independent.

Learned President's Counsel referred us to Edmund Burke's famous speech to the electors of Bristol in 1774:

> " Parliament is not a *congress* of ambassadors from different and hostile interests ; which interests each must maintain, as an agent and advocate, against other agents and advocates ; but parliament *is a deliberative* assembly of one nation, with one interest, that of the whole ; where not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."

In 1888, John Bright proclaimed :

" I must follow my own judgement and conscience and not the voice of my Party leaders."

That may have been true of the sovereign Parliament of the United Kingdom, in the 18th and 19th centuries ; without a written Constitution ; and with the type of constituency and the limited franchise of that era. Whether that is applicable to a non-sovereign legislature, governed by a written Constitution, which recognises the sovereignty of the people and provides for a separation of functions, in the context of the development of the Party system, I doubt. The theory that a Member enjoys absolute and unfettered freedom of judgement and action does not seem to be accepted even in the U.K.. Thus Laski observes :

" It is sometimes suggested that a member of the legislative assembly must be either a delegate or a representative, must either vote as he is instructed, or use his best judgement upon the issues he is called upon to decide. That is, in fact, a wholly false antithesis. For no member can state his total views ; partly because there is not the time to do so, partly because new issues are bound to arise. And upon those new issues he cannot, item by item, consult his constituents in such a fashion as to elicit from them their considered judgement. Any constituency is entitled to the fullest expression it can get of a member's general attitude. It is entitled to know his views upon the questions of the day. Any elector may reasonably ask for an explanation of his political actions. But a member is not the servant of a party in the majority in his constituency. He is elected to do the best he can in the light of his intelligence and his conscience. Were he merely a delegate, instructed by a local caucus, he would cease to have either morals or personality. Clearly, he is not entitled to get elected as a free trader and to vote at once for a protective tariff. He is not entitled to get elected and then to decide on a year's voyage around the world. He must be decently consistent in opinion, and reasonably diligent in the performance of his duty." (Grammar of Politics, p. 319)

It is recognised that the Party is entitled to exert pressure on a Member :

" Threats of disciplinary action against Members by Party Whips have been ruled not to constitute infringements of the privilege of freedom of speech because they are part of the conventionally established machinery of political organisation within the House. Nevertheless, pressure exerted on a member by the Whips may influence his conduct far more significantly than any connection he may have with any outside interest group." (S. A. de Smith, Constitutional & Administrative Law, p. 323)

Similar principles have been laid down in regard to members of elected councils, in terms suggesting that they are the principles applicable to Parliament. A council member ought to give considerable weight to the policies announced in the election manifesto of his party (*Bromley L.B.C. v. Greater London Council* [5], *Secretary of State for Education & Science v. Tameside Metropolitan Borough* [6] ; and to party policy and the views of party colleagues[7] ; *R. v. Greenwich L.B.C.* [8]. It is implicit that a member must therefore take steps to consult his colleagues. He ought not to treat himself as irrevocably bound to carry out policies, set out in the party manifesto, if subsequently there have been unforeseen and significant changes of circumstances (*Bromley,* at pp 165-166, 182) ; or to " vote blindly in support of party policy " *(Waltham Forest,* at pp 676-677). He must exercise his own judgment upon every question which, the Council has to decide (Greenwich L.B.C. at p 525) ; he must make up his own mind without abdicating personal responsibility (*Waltham Forest*, at p 676). It would therefore be a breach of his fiduciary duty to fetter his own discretion by a pre-determined acceptance, to the exclusion of all other considerations, of a decision made by a political party, or a caucus of that party, as, for example, to vote against his own assessment of the merits solely to conform to a party manifesto issued prior to his election, or to pre-determined party policy (*Waltham Forest,* at p 677). However, the adoption of a " whip " system whereby members are required to refrain from speaking or voting against the group decision (subject to recognised exceptions) is not objectionable (*Waltham Forest,* at p 674) ; but " it is not possible to have a party policy as to the existence of facts and they have to be determined by each member on the evidence." There is nothing morally or legally culpable in voting in support of a majority which has considered, and rejected, a member's arguments, provided he considers all the

options and decides that the maintenance of party loyalty, party unanimity and party policy is of greater importance than his personal views and inclinations (*Waltham Forest,* at p 677). The law does not forbid pressure being exerted on him by his colleagues and the party whip (*Greenwich L.B.C.*, at p 525). In that case eight Labour members of the Council's housing committee voted against, and thereby prevented, a proposed increase in rents. The majority Labour Group then decided that the committee should be re-constituted, and that new members be appointed in order to have the rent increase approved. At its next meeting the Council so decided, and the new committee thereafter approved the increase. Having expressed some doubt as to whether Burke's pronouncement was wholly in accord with current political wisdom, the court held that the Council was entitled to expect its Committees to promote its policy, and therefore also to remove members who obstruct such policy. This was not a punishment of the dissident members. The law does not forbid sanctions for voting contrary to the wishes of those who have power to impose them : the party whip may be withdrawn, constituents may decline to re-elect, or the local party may deselect ; these are not unlawful or an improper fetter on the members.

> " At the present day when local government is organised on party lines, some additional constraints resulting from the existence of a party line or strategy on particular issues are inevitable ..... A political party is entitled to take steps to ensure its cohesion and I can see nothing intrinsically wrong in a decision to change a party's representation on a committee ..... to advance the policies which the party considers desirable.....group discipline does not connote punishment but an attempt to keep the group together." (*Greenwich L.B.C.* at p 523)

These observations go further than what was stated in *Waltham Forest* :

> " What would be objectionable would be a provision that a member had forthwith to resign his membership of the council, if, in the absence of a conscience situation, he intended to vote contrary to group policy." (p. 674)

The Petitioners rely on this for their contention that expulsion is equally objectionable. However, these observations were made in the absence of legislation permitting that sanction, and seem inapplicable to Sri Lanka as Article 99 (13) (a) expressly recognises the power of expulsion. Such expulsion is permissible only if the Member is also a member of that party ; a candidate who wishes to be free of party control seems free to avoid that sanction by the simple expedient of giving up his membership prior to election.

A voluntary association is a collection of individuals who have agreed to come together, for a common purpose, under a single leader or a collective leadership. A political party is a voluntary association the common objective of whose members is to secure governmental power on the basis of its declared political, economic and social principles, policies and programmes. How an association deals with internal dissent and conflict would vary according to its objectives : a group with religious objectives may thus be more strict in this respect than a social group. A political party which is in its formative period, seeking to attract a wide membership, may be more lenient, than an established party ; one seeking to gain power may be more accommodating than one which is in power. However, all political parties, seeking mass support, need to be cohesive ; this requires internal unity and loyalty. To attain their objectives, they need to be effective ; problems and conflicts have to be internally resolved. These are features common to all groups. Thus group norms, or common standards of behaviour, are implicit. Members of a political party who find themselves unable to agree with their colleagues in regard to objectives, leadership and any other aspect of their " group " are subject to, at least, an implied obligation to bring up contentious issues for internal discussion and resolution in the first instance. That is a duty they have in common with all groups, small or big, insignificant or important. Thus dissent in the family must first be discussed within the family circle, before being raised by a parent in the workplace or a child in the classroom. At the other end of the scale, disagreement among members of the Cabinet must first be raised within, before being ventilated in public ; collective responsibility and confidentiality are not artificial rules but practical norms essential for proper functioning. That obligation exists quite independent of express provisions in the Party Rules. Those Rules must not be interpreted without regard to the realities underlying all associations and groups. The question therefore

is not whether the obligation to discuss internally can be constructed out of little bits and pieces, gathered from here and there in the Rules : that members must not bring the Party into disrepute (Rule 3 (1) (d)), that they must give a pledge on obtaining Party nomination, to abide by the Party Rules (Rule 9(d)), that Members of Parliament must subscribe a pledge of loyalty to the Party (Rule 17 (1)), that Members must take every opportunity to raise internally questions of Party policy about which they are doubtful (Rule 17 (6)), etc. It is not by asking whether " Party Policy " includes the suitability of a particular individual to be the leader ; or asking " what is loyalty? " The Party Constitution does not manifest an intention to displace a fundamental obligation of a member of a political party, that dissent in regard to basic objectives and leadership must first be internally raised and discussed ; on the contrary, several providence such as those just mentioned re-inforce that obligation.

The question arises whether the Executive Presidential system is a fundamental principle of the Party Policy. The fifth recital in the expulsion resolution unambiguously asserts this. There is not a word to the contrary in the petition. In the Respondents' objections it was stated.

> " It has been and is the policy of the United National Party since 1977 that the government of Sri Lanka should consist of a Executive President elected by the people and an elected Parliament. This system of Government was first advocated by the Party in the General Election campaign of 1977 and accepted by the majority of voters. Thereafter, the United National Party Government effected Constitutional changes in 1978 to bring into existence the Executive Presidential System. At subsequent elections also over the past twelve years, where this system was criticised by Opposition Parties, the United National Party consistently supported the same and succeeded at all such elections."

In the Petitioner's counter-affidavits there was a bare denial together with the further plea that :

> " by the adoption of an 'Executive Presidential System of Government' neither the United National Party nor its membership were irrevocably committed to the continuance of this system of government nor were they precluded from agitating for its reform

once anomalies in its working and the consequent abuse or misuse of executive power was observed in its working. The reform of the Constitution in regard to this new feature of government was within the objectives of the Party....."

The Petitioners thus did not deny that the Executive Presidential system was since 1978, and upto August 1991, a fundamental plank of Party policy and principle ; all that they asserted was that it was not immutable, and that they had a right to agitate for its reform. I therefore hold that the issues in regard to leadership and the system of government were matters of prime importance to the Party, and dissenting views should have been the subject of prior internal discussion before being ventilated outside Party circles.

Learned President's Counsel for the Petitioners did concede in the course of his reply that a norm requiring prior internal discussion could be legitimate, but submitted that after such discussion if the dissentient view did not find favour with the majority, the minority were at liberty to raise those same issues publicly ; they were not bound by the Party decision, and therefore, he sought to argue, the rules regarding prior internal discussion were not mandatory, not being mandatory, a breach could not be punished. This is a *non sequitur*. From the fact that the prescribed procedure does not result in a binding decision, it cannot be concluded that the procedural rule is not binding. This can be seen in many contexts : that a party must attempt conciliation (or mediation) before having recourse to the courts, although he is not bound to accept a suggested settlement, and may be non-suited if he has failed to resort to the non-binding conciliation procedure ; that a party must exhaust administrative remedies, before applying for a prerogative writ. I am of the view that the internal discussion procedure was mandatory, even if the internal decision might not be binding.

I discern several significant points of difference under our Constitution. It is the people who are sovereign, not Parliament. Parliament does not have a monopoly of legislative power, as there are some laws which it cannot itself enact, and its refusal to enact an ordinary law can be over-ridden (see Articles 85 (1) and (2)). The judiciary has a right, although limited, to check an excess of legislative power, by reviewing Bills for consistency with the Constitution. From 1978 the Constitution provided that a recognised political party had the right to expel a member, resulting in vacation

of his Parliamentary seat. Learned President's Counsel sought to contend that this power of expulsion did not extend to conduct *qua* Member of Parliament, but there is nothing to justify such a restrictive interpretation of Article 99 (13) (a). Article 99, as first enacted, gave overwhelming prominence to the party, and not to the individual candidate for election : nomination was of the party, which determined the order of priority of candidates on the party list, whose names did not even appear on the ballot paper, and votes were cast for the party. The 14th, Amendment did away with the pre-determined order of priority, and enabled the voter, after casting his vote for the party, to express preferences for candidates. Even before, it was arguable whether voters were influenced more by the party or the individual candidates, but after 1978 the choice was primarily : between rival parties, although certainly the identity of the candidates continued to be of some relevance. Hence the position of the individual Member *vis-a-vis* his party is undeniably weaker in Sri Lanka than in the United Kingdom ; he does not enjoy the same freedom to resign from his party and to cross the floor of the House, and to continue as a Member. The word " representative " in Article 4 (a) is by no means conclusive in favour of the " free mandate " theory, and the position of a Member has to be determined by examining the relevant provisions of the Constitution as a whole. It is neither possible nor necessary in this case to attempt a comprehensive definition of that position, and it is sufficient to ascertain whether he retains a power of independent action, in any significant respect.

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. While his relationship to the party tends to suggest that he has no independence, some of his constitutional functions are essentially discretionary and quasi-judicial ; some even judicial. Thus Article 4 (c) enables Parliament to exercise the judicial power of the people in regard to matters concerning Parliamentary privilege ; in determining, both the facts and the law, as to whether a Member or an outsider has committed a breach of privilege, it is unthinkable – in the absence of specific provision to that effect – that the Constitution intended a Member to act otherwise than judicially. In exercising power to remove high officers (Commissioner of Elections, Auditor-General, and Ombudsman : Articles 103 (3) (e), 153 (3) (e) and 156 (4) (e)) and Judges (Article 107 (2)), a Member likewise performs not just a discretionary administrative function, but a

quasi-judicial function, for there can be no party policy as to the existence of facts warranting removal, which must be determined solely on the evidence. If he did not, a serious question may well arise as to whether Parliament is an institution whose judicial functions are liable to judicial review for instance under Article 140. That I do not have to decide, but it is clear that Members do have certain discretionary functions, were they must not act under dictation. In considering whether a Member has a similar discretion under Article 38 (2), it is relevant that the like power under Article 107 (2) is quasi-judicial. It is also relevant that under Article 37 (2), the Chief Justice in forming an opinion, in consultation with the Speaker, that the President is temporarily unable to discharge the duties of his office, is clearly required to act judicially. If that opinion is formed on account of physical infirmity, which thereafter persists, and if Parliament is then called upon to act under Article 38 (2) (a), in respect of that same infirmity, can it be that Parliament is not required to act judicially? It seems to me that if " suspension " from office requires the exercise of an independent discretion, then necessarily the entire process of " removal " must also be discretionary ; party policy and party discipline may apply, in the same way as such considerations legitimately apply to other discretions, but the decision is ultimately one of conscience and independent judgement. Learned President's Counsel for the Respondents strenuously contended that the removal of a President must be looked at very differently from the removal of Judges and high officers, because the President is directly elected by the people, and his election and continuance in office involve questions of policy and politics ; he thus attempted to minimise the element of discretion. Article 38 (2) has placed three hurdles in the path of removal of a President; accepting this contention would add a fourth, namely approval by the majority in one or more party Parliamentary groups, and this may well be an insurmountable barrier, which will make Article 38 (2) inoperative. That contention must fail for another reason as well ; Article 38 (2) applies equally to a President not directly elected by the people, for it is possible for a Member to be elected President, under Article 40, even though he has never faced any election in his life (e.g. if he was nominated to Parliament under Article 99A).

(b) Signing the notice, and agitating for Constitutional change :

It would be quite unrealistic to treat these as two unconnected and severable issues. The Petitioners' position is that defects and anomalies in the working of the Executive Presidential system enabled abuse and misuse of executive power by the President ; when such abuse and misuse were observed, the need arose for removal ; and it was only then that the necessity for constitutional reform was realised. It is implicit in this position that but for such alleged abuse and misuse of power, they would not have appreciated the need, and would not have agitated, for constitutional change.

The Petitioners contend that they had a constitutional right to sign the notice of resolution, exercising their independent judgment and discretion, by virtue of Article 38 (2), and also that such conduct could not have been questioned in any place outside Parliament, by virtue of the Parliament (Powers and Privileges) Act ; they were entitled to campaign for the abolition of the Executive Presidential system unfettered by any restraint imposed by the Party Rules, policy and principles, by virtue of their fundamental rights under Articles 10 and 14 (1) (a).

For the reasons already stated, I hold that any Member of Parliament was entitled to sign the notice of resolution in the exercise of his independent judgement and discretion ; and that signing a notice intended to be presented, and in fact presented, to Parliament, in respect of a matter within its province, is a " proceeding in Parliament." I also hold that freedom of speech (and thought, conscience, and expression) clearly embraces the people's right to know, the wide dissemination of information and opinions, the public discussion of all matters of public concern, and criticism, however strongly worded, and even if foolish and without moderation, of public measures and government action ; all this, of course, by peaceful means and without incitement to violence. Relevant authorities have been cited and discussed by Sharvananda, C.J., in *Joseph Perera v. A. G.* [9].

However, that does not entitle the Petitioners to relief, because they are also charged with the failure to raise these matters internally.

(c) Failure to initiate prior internal discussions :

I have already held that the Petitioners were under a duty in this respect. However it is their contention that even if there be such a duty in general, yet upon a conflict between constitutional and statutory rights on the one hand, and rights or duties arising from private agreements (and in their submission the Party Rules fell into this category) on the other, the latter must give way. Kelsen's hierarchy of norms was relied on. Certainly, this contention would prevail if the *grundnorm*, or a superior norm, said " You shall do A ", while an inferior norm purported to say " You shall *not* do A ". But the normative conflict here is between norms of a different sort : the superior norm says " You may do A ", while the (allegedly) inferior norm says, in effect, " You may do A, *provided* you first do B ". There is thus no real conflict. The " rights " that the Petitioners rely on are not true rights, in Hohfeld's classification, with correlative duties ; Articles 11 and 13 (1) are examples of rights of that kind. Articles 10 and 14 (1) (a), and the Parliamentary privileges and immunities relied on, are not " rights " but " liberties " or " privileges ", without correlative duties. The Party Rules prescribe, consensually, only pre-conditions for the exercise of those liberties, implicit in each of which was a genuine option ; the petitioners were free to accept or regard such pre-conditions, but once accepted they were binding.

In that background, I am of the view that the obligation to initiate prior internal discussions was valid and binding on the petitioners for several reasons.

(i) In regard to freedom of speech, I do not agree that in our law " any system of prior restraints of expression bear a heavy presumption against its constitutional validity ' (*New York Times v. U.S.* [10]. The American Bill of Rights was primarily directed against State action, and made no express provision in respect of permitted restrictions. These had therefore to be judicially prescribed. Our fundamental rights are differently defined, and are available not only as against the State but as against all others ; permissible restrictions are specified in detail. There is thus no reason to interpret them with " heavy presumptions ", one way or the other. The Respondents relied heavily on *Dissanayake v. Sri Jayawardenepura University* [11], which has been the subject of critical analysis in an article by

Prof. G. L. Peiris and Erick Jensen in (1989) 38 I.C.L.Q. 788. That decision suggests that the State has the power to regulate freedom of speech in areas outside those specified in Article 15 (2) and (7), and otherwise than by law ; that a student by entering the University consents to the regulation of his constitutional rights in keeping with the special characteristics of the University environment. From this the Respondents argue that the Petitioners, by their membership of the Party, consented to the Party regulating their freedom of speech. I am unable to agree to this wide proposition as to the State's right to regulate fundamental rights. However, I am of the opinion that the freedom of speech is subject to three limitations. First, limitations which are intrinsically inherent in the freedom itself ; the familiar example, that no one has the freedom of speech falsely to shout " fire " in a crowded place and to cause panic. Next, Articles 15 (2) and (7) permit certain restrictions to be prescribed by law ; and it seems to follow both that such restrictions cannot be prescribed otherwise than by law, and that even by law other or further restrictions cannot be prescribed. Finally, since freedom of speech is a " liberty " (and not a " right "), a citizen has always an option, to exercise his right, or not to exercise it, or to exercise it subject to some limitation. Such limitations would usually be accepted for the sake of some benefit or advantage. Thus the bank employee who signs a non-statutory declaration of secrecy, can hardly be heard to complain that his freedom of speech has been denied by his employer ; so also the Attorney-at-law who accepts judicial office, and finds that by convention he is debarred from speaking out on various issues. When Ruth entreated Naomi, " Whither thou goest, I will go ; and where thou lodgest, I will lodge. Thy people shall be my people, and thy God my God ", there was no incipient violation of her freedoms of religion, residence and movement, but only a voluntary self-limitation. The politician who joins a political party in order to enter Parliament can validly subject himself to a condition which regulates, without denying, his freedom of speech. If you wish to play cricket, you must accept the rules of cricket ; if you are selected for the team, it is very likely that you will have to agree to procedures about changing the captain.

(ii) There is a further consideration. The Petitioners' case was presented throughout as if only *their* rights, and fundamental rights, were involved. The Party Rules involve all the other members as well. What of their rights? Just as the Petitioners agreed not to criticise

their Party and colleagues in public, without prior internal discussion, so also their fellow-members undertook a reciprocal obligation not to criticise the Petitioners. That is not all. The Petitioners sought to relegate the Party Rules to the lowest level in the hierarchy of norms. But Article 99 (13) (a) impliedly recognises at least one aspect of the Party Rules and discipline. More important, the rules of a political party are not a mere matter of contract, but the basis of the exercise of the freedom of association recognised by Article 14 (1) (c) (and by section 18 (1) (f) of the 1972 Constitution). One of the conditions on which Party members agreed to exercise this fundamental right was by mutually accepting reciprocal obligations placing limitations on the exercise of the freedom of speech by each other, in the interests of their association. Hence no question of superior and inferior norms arises. Inherent in the two freedoms is the liberty to make necessary adjustments. As between freedom of association and Parliamentary privilege, it can hardly be said that the latter is a " superior " norm.

(iii) Insofar as Parliamentary privilege is concerned, learned President's Counsel for the Petitoners was forced to concede that the conduct of a Member in Parliament can be questioned outside Parliament by a political party or other Association of which he was a member. He submitted that this was limited to matters which were fundamental: if a Member spoke or voted in Parliament against a particular economic or religious principle or doctrine which was fundamental to such party, or if a member of a temperance association advocated the consumption of liquor, disciplinary action was permissible. He submitted that supporting a resolution for the removal of the President could never be fundamental, because it could never be a fundamental policy or principal of a party that a particular individual should continue to hold that office. In answer to the question whether a Member guilty of some serious misconduct in Parliament, but leniently dealt with – either because Parliament chose to treat it lightly or because Parliament lacked the power to impose a greater penalty – could be penalised by his party, he doubted whether that was permissible. But that would mean that a political party cannot insist on higher standards of conduct than Parliament : which I doubt. If conduct can be questioned in regard to fundamental matters. I see no reason why it cannot be questioned in regard to other matters, because the law itself makes no such distinction. However, it is clear from Counsel's concession that there is an area in which disciplinary

action is permissible. In the United Kingdom, Parliament is not only sovereign but is the " High Court of Parliament "; and Parliament can by an ordinary law define its privileges in any terms it pleases. The doctrine restricting review by the ordinary courts must be viewed in that context. But the charge in the present case relates essentially to a matter outside the area of proceedings *in Parliament*, and anterior to conduct in Parliament. Whatever the position as to the act of signing, I am of the view that the Petitioners' conduct in regard to the failure to observe the pre-condition as to internal discussions could be questioned in disciplinary proceedings leading to an order of expulsion as contemplated in Article 99 (13) (a).

(d) Causing insult and injury to the President :

There is not a word in the 2nd Respondent's statement to the Working Committee on this matter ; no specific acts are mentioned. Although he did refer to newspaper reports, these have not been identified in the minutes of that meeting. The newspaper reports produced contain some critical statements, but we cannot be certain that these were produced to the Working Committee ; some of the statements are ambiguous. The Working Committee could not have regarded this charge as having been proved, and expulsion on that ground cannot be justified.

(e) Deceiving the Cabinet :

This charge has been clearly and precisely referred to in the 2nd Respondent's statement and in the expulsion resolution ; there is no ambiguity or uncertainty as to the facts. Expulsion on this ground was proper. I will deal with this later.

6. BREACH OF NATURAL JUSTICE : (a) audi alteram partem:

It is admitted that the Petitioners were neither informed of the allegations and the evidence against them, nor afforded an opportunity (i) to submit an explanation (ii) to be heard in their defence or (iii) to make any submissions, on the law or the facts, as to whether misconduct warranting disciplinary action had been proved, and, if so, whether a lesser penalty than expulsion was appropriate.

The powers of public authorities, and of certain other bodies, are subject to control in two ways : *what* they can do is circumscribed by legal rules relating to jurisdiction and so on ; *how* they exercise their powers and discretions is governed by principles of natural justice, which are a code of fair administrative procedures devised by the courts. These procedural rules are by no means merely technical, or of secondary importance ; or a tiresome waste of time impeding efficiency. With the growing complexity of modern society, the citizen is constantly affected by the exercise of powers of various kinds, and procedural fairness increases in importance.

> " Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied..... due process of law is not for the sole benefit of an accused. It is the best insurance for the Government it self against those blunders which leave lasting stains on a system of justice but which are bound to occur on ex parte consideration." (*Shauqhnessy v. U.S.* [12])

> " The history of liberty has largely been the history of observance of procedural saferguards." (*Mcllabb v. U.S.* [13])

The most fundamental principle of natural justice is the *audi alteram partem* rule, which is an obvious principle of justice applicable in all judicial proceedings. Natural justice is not now considered to be part of some fundamental and immutable law, constituting a fetter on the legislative power ; today the courts presume, unless the contrary appears, that the legislature intended that powers conferred by it be exercised fairly, for " although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature " *(Cooper v. Wandsworth Board of Works* [14], *Mersey Docks* (etc) *Trustees v. Gibbs* [15]. Whether this principle extends into non-judicial spheres was for long a matter of serious controversy, but it can now be regarded as settled that –

> " This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil

consequences to individuals." *Wood v. Wood* [16], cf *Byrne v. Kinematograph Renters Society Ltd.,* [7].

There was a series of decisions (e.g. *Franklin v. Minister of Town and Country Planning* [18], *Nakkuda Ali v. Jayaratne* [19], *R V. Metropolitan Police Commissioner ex p. Parker* [20], over a period of about three decades – which Professor Wade labels " the retreat from natural justice " – which constituted a severe setback to the development of this branch of the law. However, that period of confusion ended with *Ridge v. Baldwin* [21], when the older authorities were re-affirmed.

It was uncertain at one time whether " purely administrative " powers were subject to the *audi alteram partem* rule, or only " judicial " powers, and considerable judicial ingenuity was exercised to characterise administrative powers as " judicial " or "quasi-judicial " to justify intervention (as in *Hall v. Manchester Crop* [22], *Hopkins v. Smethwick Local Board of Health* [23], *Urban Housing Co. Ltd. V. Oxford City Council* [24].

However, the older authorities, particularly *Cooper v. Wandsworm Board of Works, Wood v. Woad,* and *Board of Education v. Rice* [25], recognised the universality of the *audi alteram partem* rule in its application to administrative powers in general. In *Cooper,* a builder commenced erection of a building, without giving seven days notice to the Board as required by statute ; the Board thereupon exercised its statutory power to demolish the building ; the builder's action for damages succeeded on the ground that the Board had no power to act without giving him notice and allowing him to be heard. While Erle, C.J., considered the exercise of the Board's power to be " in the nature of judicial proceedings ", Willes, J., thought that a tribunal invested with power to affect property rights is bound to give an opportunity of being heard before it proceeds, and Byles, J., held that the Board was wrong whether it acted judicially or ministerially. In *Rice,* Lord Loreburn, L.C., dealing with the Board's power to discriminate between teachers in church schools and in its own schools, put it in much broader terms :

> "..... what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind ; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, *for that is a duty lying upon every one who decides anything .....*"

Ridge v. Baldwin settled that question. Lord Reid explained how the mere fact that the power affects rights or interests makes natural justice applicable to its exercise, and re-affirmed the older authorities which clearly showed how the courts engrafted the principles of natural justice on to a host of provisions authorising administrative interference with private rights. Lord Hodson was explicit :

> ".....the answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that were the antithesis of a judicial capacity. The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative have been held by the courts to be subject to the principles of natural justice." (at p. 130)

These views were later affirmed in no uncertain terms. Lord Denning, M.R., observed (in R v. Gaming Board for G.B. [26] that the heresy that the principles of natural justice only apply to judicial proceedings, and not to administrative proceedings, was scotched in *Ridge v. Baldwin*. In *Schmidt v. Home Secretary* [27], he held that an administrative body may be bound to give a person who is affected by its decision an opportunity of making representations, if he has some right or interest, or even some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say. Lord Diplock (in *A.G. v. Ryan* [28]) held that a person having legal authority to determine a question affecting the rights of individuals is, by necessary implication, required to observe the principles of natural justice when exercising that authority, and that if he fails to do so, his purported decision is a nullity.

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.

Thus today natural justice controls the exercise not only of judicial power but of practically all powers and discretions. In public law areas, it applies to powers conferred by statute relating to property, office or status (e.g. to demolish buildings ; *Cooper v. Wandsworth ; Urban Housing Co. v. Oxford City Council,* to dismiss a public officer : *Ridge v. Baldwin ; Cooper v. Wilsom* [29] ; *Kanda v. Federation of Malaya* [30], *Chief Constable (North Wales) v. Evans* [31]), but not in respect of an office held " at pleasure ", where dismissal without cause being assigned is authorised, or where the relationship is simply that of " master and servant " : *Ridge v. Baldwin ;* cf. *Vidyodaya University v. Silva* [32] ; to register an applicant for citizenship : *A.G. v. Ryan* ; to dissolve a local authority ; *Durayappah v. Fernando* [33], to make zoning orders regulating the supply of dairy products: *Jeffs v. N.Z. Dairy Products (etc) Board* [34], to suspend or dismiss registered dock workers : *Barnard v. National Dock Labour Board* [35], cf. *Vine v. National Dock Labour Board* [36]. Natural justice applies in many other areas, such as membership and office in trade unions (*Lawlor v. Union of Post Office Workers* [37], *Burn v. National Amalgamated Labourers Union* [38], *Abbott v. Sullivan* [39], *Lee v. Showmen's Guild* [40], *Taylor v. National Union of Seamen* [41], *Annamunthodo v. Oilfield Workers Trust Union* [42], *Stevenson v. United Road Transport Union* [43]), societies (*Wood v. Woad,* at p. 196 ; *Byrne v. Kinematograph Renters Society Ltd ; Innes v. Wylie* [44], (*Andrews v. Milchell* [45]), social clubs (*Fisher v. Keane* [46], *Labouchere v. Wharncliffe* [47], *Dawkins v. Antrobus* [48], *Gray v. Allison* [49]), and other private associations : (*R v. Saddlers' Company, ex. p. Dinsdale* [50], *Johnson v. Jockey Club of South Africa* [51], *D'Arcy v. Adamson* [52], *Graham v. Sinclair* [53]). Although the rights in question arose essentially from contract, a fair hearing was a pre-condition to deprivation of rights or to imposition of penalties and disabilities being an implied term of such contract (*Dawkins v. Antrobus* [54], *Wood v. Woad,* at p. 196 ; *Lee v. Showmen's Guild,* at p. 342 ; *Burn v. National Amalqamated Labourers Union),* any agreement or practice to the contrary being invalid (*Abbott v.*

Sullivan [55], per Denning L.J., dissenting ; *Edward v. SOGAY* [56], *Lee v. Showmen's Guild,* at p. 342). It also applies to ecclesiastical rights and offices : (*R v. Archbishop of Canterbury* [57], *Capel v. Child* [58], *Bonaker v. Evans* [59], *R v. North, ex. p. Oakey* [60]), to the deprivation of University degrees for misconduct (*Bentley's Case, R. v. University of Cambridge*) [61], *Re Perqamon Press Ltd.* [62]) ; and to some extent in relation to academic discipline (*University of Ceylon v. Fernando* [63], R. 505 ; *R. v. Aston University* [64], *Blynn v. Keele University* [65], cf. *Herring v. Templeman* [66]). Exceptionally natural justice applies to some preliminary investigations as to whether a *prima facie* case has been established, if serious legal consequences could ensue : (*Selvarajan v. Race Relations Board* [67]). Indeed, " there has been a marked expansion of..... natural justice and fairness reaching beyond statute and contract " : (*McInnes v. Onslow-Fane* [68]).

A further source of confusion has been the suggested distinction that " in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness " (*Bates v. Lord Hailsham* [69], cf. *Pearlberg v. Varty* [70], *Re Pergamon Press*).

> " But other judges have expressed what is clearly the preferable view, that there is no difference in principle between natural justice and 'acting fairly', but that natural justice is a flexible doctrine whose conteht may vary according to the nature of the power and the circumstances of the case. In the words of Lord Denning, M.R., the rules of natural justice - or of fairness - are not cut and dried. They vary infinitely. Attempts to represent natural justice and 'acting fairly' as two different things are a sure sign of failure to understand that administrative powers are subject to the principles of natural justice." (Wade, Administrative Law, 5th ed. p. 467).

While I readily accept that exposition of the law, I must add that on the facts of this case any such distinction would make no difference.

In *Ex. p. Parker* [71], Lord Boddard, C.J., held that the exercise of disciplinary powers was not subject to natural justice :

" where a person ..... whose duty is to act in matters of discipline, is exercising disciplinary powers, it is most undesirable ..... that he should be fettered by threats of orders of certiorari and so forth, because that interferes with the free and proper exercise of the disciplinary powers which he has. "

Now, however, it is accepted that disciplinary bodies " must act fairly just the same as anyone else and are just as subject to control by the courts " (*Buckoke v. Greater London Council* [72], *R. v. Hull Prison Visitors ex p. St. Germain* [73]).

An expansive, rather than a restrictive, interpretation of the protection afforded by the principles of natural justice is demanded by the equality provisions in Article 12 of the Constitution ; fairness lies at the root of equality and equal protection.

Applying those principles, I do not find it necessary to consider whether the power of expulsion conferred by the Party Constitution is judicial or quasi-judicial ; it is a power vested in a body of persons having authority to determine disputed matters involving civil consequences to individuals ; it affects their rights and interests. The numerous authorities which I have cited, are but part of a current - indeed, a flood – of authority, overflowing the bounds of administrative law and statute, into contract, and even beyond, which it is too late to stem or to divert. In a democratic multi-party system, political parties are voluntary associations, and the rights of members are contractual in nature. There is nothing in the Party Constitution which tends to place a member in the position of a servant in an ordinary master and servant relationship, or a person holding office at pleasure. The rights of members are of far greater importance to the individual, and to the democratic way of life, than those of members of social clubs ; or even rights relating to employment and livelihood. 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.

Natural justice has been described as " fairplay in action " or " fairness writ large and judicially ". Even if the applicable standard was not " natural justice " but " the duty to act fairly ", the power of expulsion has to be exercised fairly. In my view, fairness required

prima facie that the Petitioners be given notice of the allegations and the material evidence, an opportunity to explain, controvert or mitigate the case against them, and the right to make submissions. This was not done. This Court would therefore, in the ordinary course, declare the expulsion to be void ab initio (*Ridge v. Baldwin ; General Medical Council v. Spackman* [74], *infra*).

However it is necessary to consider whether there were any exceptional circumstances which render the proceedings fair in substance, despite the lack of notice and hearing. There is no express legislative exemption. The Party Constitution does not purport to exclude natural justice ; indeed, the 2nd Respondent, as General Secretary, issued on 8.8.91 " Guidelines for Disciplinary Inquiries " which embody fundamental concepts of natural justice ; and I have already referred to the authorities indicating that an attempted exclusion of natural justice would have been invalid. This is also not an instance in which the very nature of the power, or the urgency for its exercise, excludes natural justice (*White v. Redfern* [75] ; *R. v. Davey* [76]).

There have been cases in which relief has been refused on the ground that hearing would have made no difference ; but this is a principle to be sparingly applied.

> " If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision." (*General Medical Council v. Spackman)*

In that case a medical practitioner was a co-respondent in a divorce suit. He was found guilty of adultery with the respondent, to whom he stood in a professional relationship. Proceedings were taken by the Council against him for infamous conduct. To disprove adultery, he sought to lead evidence which had not been led in the divorce suit ; the Council declined to hear fresh evidence. The House of Lords held that although the decree in the divorce suit was *prima facie* evidence of adultery, the Council, by refusing to hear the fresh evidence had failed to make due inquiry. It is never easy to say that the result was obvious from the start :

" As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not ; of unanswerable charges which, in the event, were completely answered ; of inexplicable conduct which was fully explained ; if fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events." *(John v. Ress)* [77]

There are however several cases in which orders have been allowed to stand although made without a hearing. Extracting a consistent set of principles from these decisions involves, in Tennyson's words,

" Mastering the lawless science of our law,
That codeless myriad of precedent,
That Wilderness of single instances, "

through which we have to beat a pathway out to fairness. To these I now turn.

" No legitimate expectation " : In one category of cases it is said that the victim had no " legitimate expectation ", either of a fair hearing, or of receiving the benefit he sought. This has no relevance where he already enjoys a legal right, in respect of property, office, status and the like. The " legitimate expectation " principle is not a *former* on the right to a hearing in those situations, but an *extension* of the protection of the *audi alteram partem* rule to other situations, to persons who do *not* have legal rights : such as an applicant for a licence (*Mc Innes v. Onslow-Fane, R. v. Gaming Board for G.B.*, or for the renewal of a licence or permit (*Schmidt v. Home Secretary,* or a member of the public, who seeks to be allowed to enter and remain upon a racecourse on payment of the usual fee (*Heatley v. Tasmanian Racing (etc) Commission* [78]. That there are three categories is made clear in *R. v. Secretary of State for the Environment, ex p. Brent L.B.C.* [79], in the first, there is a decision which takes away some existing right or position ; the second at the other extreme, covers the " application cases ", where a decision

merely refuses to grant an applicant the right or position which he seeks, and there is no duty to grant a hearing ; the third differs from the second only in that the applicant has some legitimate expectation, arising from what has already happened, that his application will be granted. Such " expectations " can arise from pronouncements or undertakings of the authority concerned : *A.G. of Hong Kong v. Nq Yuen Shiu* [80], at 350 ; or from a general practice : *O' Reilly v. Mackman,* [81] ; *Civil Service Unions case* [82], *Cinnamond v. British Airports Authority* [83], which the Respondents relied on strongly, was not in the first category, but was an " application " case. In deciding that it fell into the second category, and not the third, the court took into account what had already happened : extensive previous misconduct, namely a long record of convictions, with large unpaid fines. What is more, in that case the order was not final, but was more like an indefinite suspension, which would have been lifted on giving satisfactory undertakings as to future good behaviour ; hence no real prejudice was suffered. In view of what had already happened, there was no legitimate expectation.

"Useless formality " : The Respondents also relied heavily on *Malloch v. Aberdeen Corporation* [84]. That concerned an office held at pleasure, and ordinarily there would not have been a right to be heard before dismissal. However, by a 3 to 2 majority the appellant was held entitled to a hearing because the statute forbade dismissal without " due deliberation " and invalidated a dismissal unless three weeks notice had been given to the office–holder of the meeting to consider dismissal. Lord Reid agreed that it might be a good defence if it could be clearly demonstrated that hearing " the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference "; but there was a substantial possibility that a sufficient number of the committee might have been persuaded not to vote for dismissal ; the appellant might have argued that the regulation in question did not require the committee to dismiss him, or that it was *ultra vires;* he said that the validity of the regulation was not obvious ; and he thought the appellant had at least an arguable case (p 1283). It is Lord Wilberforce's observation that the Respondents' stress :

> " The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make. A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, unless behind there is something of substance which has been lost by the failure. The court does not act in vain." (p. 1294)

Having said that, Lord Wilberforce considered whether the first requirement was satisfied ; and held that there was a right to a hearing. He then said

> " Then was there anything he could usefully have said, if a hearing had been given? The reason for his dismissal was stated: it is, to say no more, controversial. My noble and learned friend Lord Reid, has dealt with this matter and I am happy to accept his conclusion, for the reasons he has developed, that at least on two points – the validity of the regulations and the construction of [regulation 4(2)]..... there were genuine contentions to be made." (p. 1297)

The Petitioners contend that the Respondents must show that a hearing would have been a " useless formality "; the Respondents reply that it is for the Petitioners to show " a case of substance ". I do not regard Lord Wilberforce's dictum as casting a burden on the Petitioners ; and certainly not the burden of establishing a probable case. Once the petitioner brings himself *prima facie* within the scope of the *audi alteram partem* rule. It is for the respondent to establish circumstances which would nevertheless deny him its protection. Lord Wilberforce expressly adopted Lord Reid's conclusion and reasons, and, with respect, it appears to me that what he meant by " a case of substance " was no more than what he later called " a genuine contention ", or what Lord Reid termed " an arguable case ". If a petitioner shows he has an arguable case, then the respondent has failed to show that an antecedent hearing would have been an useless formality, which would have made no difference ; he may prove more, that he had a weighty case, but this he is not bound to do. Lord Simon agreed with Lord Reid, and added :

" It is unnecessary to determine whether the normal effect of a failure to proceed in accordance with natural justice by according a hearing before dismissal – namely, that the proceedings are a nullity – might be obviated were it is shown that such hearing could only be a useless formality – either because the employer had no discretion save to dismiss, or because there was nothing that the employer could say against dismissal. That is not the present case." (p 1298)

Of some relevance to the present case is his observation that the appellant " might have swayed [the committee] by arguments based on general educational policy which he sought to urge before us, but which we were in no position to weigh." Whether the right to a hearing exists is not to be determined by asking, after the event, what kind of case might have been made out. That there was no case at all is a fact relevant only to the logically and chronologically distinct issue, whether the usual consequences of non-compliance with the *audi alteram partem* rule should follow.

Ex. p. Brent, made the distinction clear beyond doubt ; the court held that it would be wrong to speculate how the authority would have exercised his discretion if he had heard the representations ; it was unrealistic not to accept that it was certainly *probable* that the authority would nevertheless have made the same decision (adhering to a declared policy) ; yet there was material to suggest that the authority might have been under some misapprehension. But the court was not satisfied that the authority would *inevitably* have made the same decision, and Certiorari was granted to quash the decision. In *Maradana Mosque v. Mahmud* [85], the Privy Council did not come to a finding that a substantial case had been made out ; the appellant had placed some material and it was considered unnecessary to decide whether it could be a valid answer to say that he had in truth no defence if given a hearing.

" No injustice " or " no real prejudice " : This is related to the " useless formality " principle, although the stress seems to be more on the penalty rather than the decision. *Blynn v. Keele University*, was invoked to support the contention that the denial of a hearing caused no injustice. The Court did not hold that because there was no injustice, there was no duty to give a hearing, but, in the exercise of its discretion, refused to grant relief in respect of the denial of

natural justice. Certain undergraduates had appeared naked in the campus. By 30th June 1970, the Vice-Chancellor had clear and reliable evidence that the plaintiff was one of the offenders ; term ended that day, and some of the offenders were graduating on 1st July, whereupon they would no longer be subject to the disciplinary jurisdiction of the University ; holding an inquiry would then have become futile in regard to them. He could have punished them summarily, and granted a hearing to the others, but in order to treat all offenders equally, he decided to exercise his disciplinary powers summarily, and to give them all a right of appeal to the University Council. Accordingly, he excluded the plaintiff from residence on the campus for one year, and imposed a fine of ten pounds. The plaintiff appealed to the Council (justifying his harmless " sunbathing ", and deploring the " proven psychologically harmful aftermath of Victorian prudishness ") ; on 10th August the Council notified him that his appeal was fixed for 2nd September. The plaintiff had gone abroad, but his mother acknowledged the letter, and stated her own views. He was absent and unrepresented, when his appeal was taken up, and it was dismissed. It was held that the Vice-Chancellor was acting in a quasi-judicial capacity (and not in a " magisterial " capacity or in a matter of internal discipline) ; that he was bound to comply with natural justice. However the plaintiff was refused relief in the exercise of a discretion which " should be very sparingly exercised "; the facts were not in dispute, the offence merited a severe penalty, the penalty imposed was appropriate, and had he been heard, all that he could have done would have been to plead in mitigation. While not disregarding the importance of such a plea in an appropriate case, the deprivation of that opportunity was not considered sufficient to set aside a decision which was intrinsically a perfectly proper one. That decision cannot apply where the charge is not clear, or defence is imposed, especially where mitigation is not obviously out of the question.

I must not fail to mention that the Privy Council, in *Annamumthodo* (at p. 625), rejected the suggestion " that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it ..... It is a prejudice to any man to be denied justice. He will not, of course, be entitled to damages if he suffered none. But he can always ask for the decision against him to be set aside."

" Urgency " : Learned President's Counsel for the Respondents submitted that the need to take prompt action justified the denial of a hearing. The Petitioners after signing the notice of resolution commenced a campaign against the Executive Presidential system and the President, couched in unrestrained language and accompanied by the widest possible publicity. The unity, stability and cohesiveness of the Party was threatened. Urgent action was necessary. After expulsion the Petitioners intensified their campaign, and this confirmed that prompt action was vital (but such subsequent conduct may equally be attributable to resentment engendered by denial of natural justice). Reliance was placed on *Glynn* as well as *Gaiman v. National Association for Mental Health* [86]. In *Glynn,* there was absolute urgency : had the Vice-Chancellor waited one day more, some of the offenders would have been outside jurisdiction. The penalty was not grave, and a right of appeal was expressly reserved ; the plaintiff failed to avail himself of it. The punishment imposed on the Petitioners was the maximum ; once communicated to Parliament the decision was probably irrevocable ; there was no provision for internal review or reconsideration. It may be that Working Committee justifiably felt that the Petitioners were seeking to tie up the matter in the courts indefinitely, by improperly instituting the District Court actions ; it is arguable that the effect of Article 99 (13) (a) is to exclude injunctive relief. Those considerations would have justified not delaying a decision beyond Monday morning. Where urgent action is required, the action taken must not be more precipitate than the circumstances require. Socrates was given a hearing before he was condemned, but pleaded with his judges :

> " I cannot convince you, the time has been too short ; if there were a law at Athens as there is in other cities, that a capital cause should not be decided in one day, then I believe that I should have convinced you. But I cannot in a moment ....."

Surely the Petitioners could have been given one day, in a capital cause? Time till Sunday to show cause, may be in writing, thus enabling the Working Committee to take a decision on Sunday evening or early Monday morning. Greater urgency than that has not been established. *Gaiman* does not help the Respondents. It dealt with the expulsion of members of a *Company* limited by guarantee, by a decision of the council of management. The point in issue was whether the council had exercised the power to expel members acting

bona fide in what it believed to be in the interests of the company; in the exercise of that power the council might have to act at short notice, without hearing those affected, but this did not constitute an abuse of power. It was expressly held that the principles of natural justice did not apply to the expulsion of members, and the court did not decide that urgency superseded natural justice.

" Discretion " : The Respondent's also contended that the court has a discretion to refuse relief, despite a denial of natural justice. I have already dealt with the circumstances in which that discretion was very sparingly exercised in *Glynn*, which is completely distinguishable. Learned President's Counsel referred to a passage in *Gaiman* (at p. 381) where Megarry, J., having held that natural justice does not apply, says " If I am wrong in that, then I consider that the injunctions should be refused as a matter of discretion ". His reasons are clear : the plaintiff had not shown a strong *prima facie* case for the existence of the right claimed, nor did the balance of convenience lie in favour of granting the injunctions. These are considerations relevant to interlocutory injunctions, and that indeed – and that alone – was what Megarry, J., was dealing with. That *dictum* therefore has no application when, as now, a final order has to be made. *Secretary of State for Trade v. Hoffman-La Roche* [87], was also cited. That too dealt with an interlocutory injunction, sought in proceedings to enforce a statutory order (pursuant to a report of the Monopolies Commission), which had been approved by Parliament. It was contended that the Monopolies Commission acted contrary to the rules of natural justice. Even if this be assumed, said Lord Denning, M.R., its report was not void, and

> " .....it is within the discretion of the court whether to grant him such a remedy or not. He may be debarred from relief if he has acquiesced in the invalidity or has waived it. If he does not come with due diligence and ask for it to be set aside, he may be sent away with nothing : *see R. v. Senate of the University of Aston, ex parte Roffey.* If his conduct has been disgraceful and if he has in fact suffered no injustice, he may be refused relief : see *Glynn v. Keele University : Ward v. Bradford Corporation* [88]. If it is a decision or order or report which affects many other persons besides him, the court may not think it right to declare it invalid at his instance alone ....." .

He did not think that it would be open to the court, even at the end of the trial, to declare invalid a statutory order *approved by Parliament.* That decision is therefore inapplicable to the case with which we are concerned.

"Subsequent hearing is enough ": It was then contended that since the Petitioners were entitled to canvass their expulsion in proceedings under Article 99 (13) (a), firstly, the denial of a hearing did not matter, and secondly, even the right to a hearing was excluded. Reliance was placed on *De Smith, Judicial Review of Adminstrative Action* (4th ed, 1980, pp 193–194):

> " Can the absence of a hearing before a decision is made be adequately compensated for by a hearing *ex post facto* ? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all ; and in some cases the courts have held that statutory provisions for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original is made. This approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings ..... If, of course, the initial decision is only provisional in the sense that it does not take effect at all until a prescribed period for lodging objections has expired, the opportunities thus afforded to a person aggrieved are in substance a right to an antecedent hearing."

The learned author does not express unqualified approval of any such judicial approach ; he considers only that it " *may* be acceptable " in three situations : no serious detriment, urgency, and impracticability. Those are some of the exceptional situations which I have just considered, and they do not exist here. He sets out a further proviso : statutory provisions must exist for either an administrative appeal or full judicial review on the merits. That seems to me to refer to an integrated statutory scheme, covering both the original decision and the appellate proceedings ; not to situations where review or appeal is by reason of some independent provision. This is made clear elsewhere :

" Whether a decision vitiated by a breach of the rules of natural justice can be made good by a subsequent hearing does not admit of a single answer applicable to all situations in which the issue may arise. Whilst it is difficult to reconcile all the relevant cases, recent case-law indicates that the courts are increasingly favouring an approach based in large part on an assessment of whether, in a particular context, the procedure as a whole gave the individual an opportunity for a fair hearing, Thus, when a provision is made by statute or by the rules of a voluntary association for a full re-hearing of the case by the original body (constituted differently where possible) or by some other body vested with and exercising original jurisdiction, a court may readily conclude that a full and fair hearing will cure any defect in the original decision ....." (pp 242-243)

Wade makes the following observations in regard to the same question:

" Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both stages ; and accordingly natural justice is violated if the true charge is put forward only at the appeal stage. If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial. This was pointed out by Megarry, J., in a trade union expulsion case, holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body .....

According to the Privy Council, however, Megarry, J. 's 'general rule' was too broadly stated, since in some cases members of organisations, whose rights depend upon contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect. An appeal to the committee of the Australian Jockey Club was held, for this reason, to cure an initial decision of the stewards which failed to observe the principles of natural justice in disqualifying the owner of a horse found to have been raced improperly .....

In the case of a public authority acting under statutory powers it would seem paradoxical to interpret the provision of a right of appeal as meaning that the initial decision may be any less fair than it would have to be if not subject to appeal. In *Ridge v. Baldwin* the House of Lords did not allow the chief constable's unsuccessful administrative appeal to the Home Secretary to prejudice his right to a fair hearing before the watch committee. Nor does a full hearing on appeal justify cancellation of a taxi-driver's licence or dismissal of a school-teacher without an initial hearing. Nevertheless it is always possible that some statutory scheme may imply that the 'appeal' is to be the only hearing necessary. And an appeal may have greater curative effect where the appeal tribunal has original as well as appellate jurisdiction." (pp 487-489)

The following are the principles which seem to me to be applicable. If an order is " provisional ", and is subject to appeal or objection, antecedent hearing is probably not necessary. If it is final, but by statute or contract there is provision (a) for a "full re-hearing " by the same or another body having original jurisdiction, or (b) making the decision and an appeal against it (especially if it is by way of " full re-hearing ") part of an integral scheme, it may be that an initial hearing is dispensed with, or that the absence thereof is not fatal. Where the re-hearing is appellate in nature, even if it has been partially successful (as in *Ridge v. Baldwin*) it will seldom cure the initial defect ; particularly where the initial error is grave and the decision has serious consequences for the individual. 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 " re-hearing " and " appeals " does not apply at all to applications for judicial review or proceedings under Article 99 (13) (a). The fact that *Certiorari* lies in respect of a decision can never be a circumstance which will dispense with the need for an antecedent hearing. The anomalies inherent in the Respondents' contention can be illustrated : if disciplinary proceedings are taken against two Party members – one a Member of Parliament, the other not – it can never be that an antecedent hearing is required for the latter, but not for the former, simply because of Article 99 (13) (a). Further the proceedings before us cannot in any way be considered a " re-hearing ", let alone a " full re-hearing ". Procedural and time constraints prevented a full investigation by this Court. The precise charges relied on by the

Respondents became clear only in the course of their Counsel's reply, and it was only then that the question of the adequacy of the Petitioners' explanation for the lack of internal discussion could be properly appreciated. Had we to determine, by way of a " full re-hearing ", matters such as Party policy as to the system of government, the relevant documents (decisions of Party Convention, Manifestos, etc) would have become necessary. I therefore 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.

" No evidence " : Finally learned President's Counsel for the Respondents submitted that the Petitioners had not indicated what facts they would have placed before the Working Committee had they been given a hearing. This is perhaps another aspect of the "useless formality " or " open and shut case " principle, namely that if the party aggrieved does not adequately indicate to the Court what factual or legal matters he could have relied on, then the Court will more readily hold that a hearing would have made no difference. I will assume that this is right. It was only in their counter-affidavits that the Petitioners alleged " that there did not exist a degree of freedom necessary to raise questions which would involve a curtailment of Presidential power ", and they gave no particulars. I have already noted that the ambiguity in the allegations may have somewhat obscured the need for such explanation ; the reference to the failure to initiate internal discussions could legitimately have been regarded as an aggravating feature of the offence, and not as an independent charge : *Annamunthodo* is an instance of such ambiguity. If so, a successful defence in respect of the main charge would result in an acquittal in respect of the aggravated charge as well. That apart, there is material on record. The Petitioners averred that the Party Manifesto of 1989 referred to the proposed restructuring of political systems and relationships including an enhanced role for Parliament ; that in October 1989, at the All Party Conference ("A.P.C.") a proposal was made by the S.L.F.P. that the Executive Presidential system be abolished, and that it was thereupon agreed (subject to further consultations by all Parties) to consider Referendum being held once peace and normalcy was restored to decide on the acceptability of the Presidential system ; according to the Respondents this was not pursued by the A.P.C. as the S.L.F.P. stopped attending the Conference shortly thereafter. A newspaper report produced by the

Respondents contains a claim by Mr. Gamini Dissanayake that in 1989, to the knowledge of the President, he had advocated the abolition of the Executive Presidential system ; this was not denied. There was another report of a statement by Mr. Athulathmudali that this question arose within the Party Youth League, and that they had often to give answers to Youth League members ; what exactly this means is not clear. Yet another report produced by the Respondents was to the effect that Mr. G. M. Premachanda had lobbied in the Cabinet to remove certain Emergency Regulations and that this met with vehement opposition from another Minister. Bearing in mind that the Petitioners had only three or four days to reply to the Respondents' statement of objections I am of the view that the ground on which the Petitioners would have relied was stated, and that there is material before this Court relevant to that ground. The position in regard to the charge of deceiving the Cabinet is considered separately.

Resulting position : Let me now examine the position in regard to all the charges, apart from that affecting only Messrs Premachandra and Athulathmudali. The Respondents' position is that signing the notice of resolution and seeking the abolition of the Executive Presidential system are not relied on to justify the expulsions ; the charge of insult and injury to the President is not mentioned, even indirectly, in the 2nd Respondent's address to the Working Committee, and as I have already indicated it is difficult to understand how the Working Committee came to a decision on that charge. Thus out of four charges only one remains : the failure to initiate internal discussions. The Petitioners could have tendered an explanation ; it may well be that the Working Committee could *probably* have reached the same decision, but I cannot say that they would *inevitably* have done so. As Wade points out, (p 477) a distinction might be made, justifying the disregard of natural justice in the case of a tribunal required to decide *according to law*, where the demerits of the claim are such that it would be struck out in legal proceedings as being an abuse of the process of the court ; but in the case of a *discretionary* administrative decision hearing the case can soften the heart of the authority so as to reduce the penalty even though it is clear from the outset that punitive action was justified. I hold that a hearing would not have been a useless hearing and that grave prejudice was caused by the denial of a hearing. There being no exceptional circumstances, the decision would have had to be declared void *ab inito* had these

been proceedings for judicial review *simpliciter,* where that Court is concerned with observance of procedure, rather than with the substance of the decision. As observed in *Chief Constable (North Wales) v. Evans :*

> "..... the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual Judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law." (p 143)

> " judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power ..... [It] is not an appeal from a decision, but a review of the manner in which the decision was made." (pp 154-155)

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 re-hearing. Are we concerned only with the decision-making *process,* or must we also 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. In *Oimes v. Grand Junction Canal* [84], decrees entered by the Vice-Chancellor had been affirmed by the Lord Chancellor, who owned shares in the company. On appeal to the House of Lords the Lord Chancellor's order was set aside (although " no one can suppose that [he] would be, in the remotest degree, influenced by [that] interest ") ; but the House of Lords then dealt with the appeal on the merits, and affirmed the original decrees of the Vice-Chancellor. Had these proceedings been purely by way of judicial review, it may well be that we would have to shut our eyes to the merits of the decision, and look only at the defects in the decision-making process. But it is accepted that our jurisdiction is not restricted. 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. The following matters compel me to hold that the Respondents have failed to justify the expulsions :

(i) It became clear that the failure to initiate prior internal discussions was a distinct charge only midway through the legal arguments ;

(ii) although the fact that the Petitioners took no steps to initiate such discussions is undisputed, they have stated the general nature of the explanation which they would have offered ; and there is some material to support it ; that explanation might have been rejected after full inquiry, but it was the defective nature of the proceedings and resolution of the Working Committee which was the main reason for this matter not being fully dealt with in the pleadings and submissions before us ; and

(iii) even if that explanation was rejected, it was relevant to a plea of mitigation, and it cannot be said that this was not an appropriate case for mitigation.

I therefore hold that the expulsion of the Petitioners in S. C. (Special) Nos 4, 6, 7, 9, 10 and 11/91 was invalid ; this will not preclude fresh disciplinary proceedings on the same or different charges. While this would normally have applied to the other two Petitioners (in S.C. (Special) Nos 5 and 8/91) as well, I hold their expulsion to be valid for reasons which I set out below.

The case against Messrs Premachandra and Athulathmudali : I have now to consider the allegation against Messrs Premachandra and Athulathmudali that they misled and deceived the Cabinet on 28.8.91. Learned President's Counsel submitted on their behalf that secrecy was necessary during the period when the requisite signatures were being collected. I will assume that secrecy was justified upto 27.8.91, when the notice was received by the Speaker ; or even right upto the time on 28.8.91 when the President was infromed by the Speaker that he had entertained the notice. Thereafter disclosure could not have caused any prejudice to the notice of resolution. It is not clear when these two Petitioners signed. The material before us suggests that it is possible that they signed

after the Speaker had written to the President : but that would be in itself extremely grave misconduct ; and it would not in any way mitigate their conduct on the 28th, for it would strain one's credulity to assume that on 28.8.91 they had not made up their minds to sign, and decided to do so only after the vote of confidence. I will take, in their favour, the more lenient view, that they signed before the Speaker received the notice. When, as Ministers, they joined in a vote of confidence in the President at the Cabinet meeting on 28.8.91 they thereby represented to the President, and to the Cabinet collectively, that they were not associated with the notice, and that they did not consider that there was justification for presenting a resolution for removal. But how could they possibly have had confidence in a man whose removal from office they actively desired ? Even to a person who knew that they had previously signed the notice, their conduct amounted to an assertion that they had changed their minds, and were no longer of the opinion that such a resolution should be supported. They lied to the Cabinet, and deceived the Cabinet. The Cabinet is charged with the direction and control of the government, and operates on the basis of collective responsibility. Deception completely undermines loyalty, trust and confidence, vital for its functioning.

Members of democratic institutions owe a duty to be frank and candid with their colleagues and the public. Secrecy and deception are not conducive to the working of such institutions, whose affairs must be characterized by openness, honesty and fair disclosure. Thus judges function in open court ; people know what they decide, and why, and if they disagree, why they disagree, and what each has decided. Proceedings in Parliament too are generally open to the public ; secret or unpublished laws and regulations are anathema to a democratic society. In regard to the executive government too, there is a growing global trend towards recognition of the citizen's right to freedom of information. Democracy is not furthered by practising economy with the truth, but rather by full disclosure : the truth, the whole truth, and nothing but the truth, subject to statutory provisions for confidentiality in the public interest. A Member of Parliament who lies to or otherwise deceives Parliament is guilty of a serious breach of privilege :

" The House may treat the making of a deliberately misleading statement as a contempt.

In 1963 the House resolved that in making a personal statement, which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt (profumo's Case CJ (1962-63) 246). " (Erskine May, 20th ed, 1983, p. 149)

No lesser standard can be accepted for a Minister in relation to the Cabinet and Cabinet proceedings. It may be that our society no longer expects high standards from politicians or holders of public office ; that politics is considered to be a dirty game, characterized by intimidation, bribery, false promises and deception. May be ; may be not. Democratic institutions cannot accept or acquiesce in such views. The courts certainly must not give their blessings to such norms of conduct, especially in the case of high officers, and in that context it is relevant that the State accords to Ministers precedence even over Judges of this Court. How then can we lower the norms applicable to Ministers?

In their pleadings the Petitioners gave no explanation at all for their conduct, although in regard to the other charge they alleged that the climate was not conducive to free speech and dissent. Learned President's Counsel submitted on their behalf that they might have given half a dozen explanations had they been asked. He ventured to suggest that premature disclosure was avoided on account of apprehensions about the personal safety of themselves and members of their family. This is unacceptable in the absence of even a suggestion as to the nature and source of any anticipated threat, and nothing but a serious threat would have sufficed. It is also implausible, since they felt able to disclose their role within a day or two. He also submitted that disclosure might have prejudiced the ultimate passing of the resolution ; not only is this highly speculative, but it proceeds upon the assumption that action intended to ensure purity at the highest levels of executive government can itself be founded upon deception and falsehood. Deception may have been politic or expedient, but it was neither right nor honourable. In the result I find that –

(i) the charge was clear and unambiguous from the inception;

(ii) the facts are undisputed ; the only uncertainty lies in the possibility that these two Petitioners may have signed the notice of resolution after it was delivered to the Speaker, which in my view would aggravate rather than mitigate their conduct ;

(iii) no explanation has been offered in their affidavits, nor is one to be found in the documents produced ; the explanations suggested by Counsel in his submissions are speculative ; accordingly, an antecedent hearing would have made no difference ; and

(iv) the misconduct was grave, and expulsion was intrinsically a perfectly proper penalty.

I hold that the expulsion of the Petitioners in S.C. (Special) Nos. 5 and 8/91 was valid.

7. BREACH OF NATURAL JUSTICE: (b) bias

Learned President's Counsel submitted that the proceedings and order of the Working Committee were vitiated by bias, in that –

(i) The President was present and presided at the meetings of the Disciplinary Committee and of the Working Committee, although he did not participate in the discussions, recommendation and decision ; he had an " interest " in the issue as the notice of resolution was directed at him.

(ii) The eleven members of the Disciplinary Committee were present and actively participated in the proceedings and decision of the Working Committee ; since they had recommended expulsion, they should not have participated.

(iii) The 2nd Respondent, the General Secretary of the Party, had been named a defendant in the District Court proceedings, had been present in the District Court, had participated in the proceedings of the Disciplinary Committee, and presented the case against the Petitioners to the Working Committee, virtually as the prosecutor ; he should not have participated in the proceedings and decision of the Working Committee.

There has been controversy as to the precise formulation of this rule against bias. Thus Lord Hewart's celebrated dictum in *R. v. Sussex Justices* [90], seems to suggest that those who decide must, like Caesar's wife, be above suspicion :

> " Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

In *Cooper v. Wilson,* it was said

> " The risk that a respondent may influence the Court is so abhorrent.....that the possibility of it or even the appearance of such a possibility is sufficient to deprive the decision of all judicial force, and to render it a nullity."

The same notion appears in the headnote in *Uannam v. Bradford City Council* [91]. In *Eckersley v. Mersey Docks and Harbour Board* [92], it was said that judges of all kinds must be free from even unreasonable suspicion of bias. The better view however is that mere suspicion or possibility of bias is not enough. It is settled that actual bias need not be proved. Two tests vie for acceptance, was there a real likelihood of bias? (*R. v. Essex Justices* [93], *R. V. Camborne Justices* [94], *R. v. Nailsworth Justices* [95], *R. v. Barnsley (etc) Justices* [96], *Simon v. Commissioner of National Housing* [97]). Or would a reasonable person reasonably suspect that the tribunal might be biased ? (*Law v. Chartered Institute of Patent Agents* [98], *Metropolitan Properties v. Lannon* [99]). Sometimes these two tests are interwoven as if they were one :

> ".....if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit..... Nevetheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that [he] would, or did, favour one side unfairly at the expense of the other." (*Lannon,* at p 310)

> " If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias " (*Hannam* at p 700)

It has also been suggested that both tests produce virtually the same result (Hannam, at p 694). On the other hand it has also been pointed out that sometimes the two tests lead to different results (*R. v. Barnsley Justices ; and as in Dimes v. Grand Junction Canal*).

It seems to me that the test of bias has an objective as well as a subjective element. Apart from what a person legitimately interested in the matter may actually think, if there are circumstances which in the opinion of the court would lead a reasonable man to think it likely or probable that the adjudicator would or did favour one side unfairly, then the test is satisfied ; it does not matter (as in *Dimes*) that no one actually did think so ; and those circumstances need not have been known to the person concerned. The subjective element is that even if in those cicumstances the court would not form that opinion, it may be that the objector knew only some of those circumstances ; if with such limited knowledge (as in *R. v. Sussex Justices*) he would reasonably think the adjudicator would or did favour the other side unfairly, then too the test is satisfied.

The authorities cited fall into distinct categories. The first group relates to instances of actual or apparent participation in the deliberations of the deciding body, by complete " outsiders " (e.g. an " observer " in *R. v. Leicestershire Fire Authority* [100], a witness in *R. v. Bodmin Justices* [10] or a party (e.g. *Cooper v. Wilson ; R. v. Surrey Assessment Committee* [102] or even its own officer (e.g. its clerk : *R. v. Sussex Justices, R. v. Essex Justices*).

The next group of cases deals with the conduct of the adjudicators. The first point to be noted is that it is proper for a numerically large tribunal to authorise a small sub-committee drawn from its own membership to make preliminary investigations and recommendations, provided that the ultimate decision is by the main body. This is the effect of *Queen v. L.C.C., ex p. Akkersdyk* [103], which held only that a member who had by his conduct made himself interested, could not sit with the main body. Similarly, in *Jeffs v. N. Z. Dairy Products (etc) Board,* the Privy Council did not consider it objectionable for the members of such a sub-committee to participate in the decision of the main body ; that decision was held to be bad only because when the main body met, the members, other than the members of the sub-Committee, did not have all the evidence and submissions. It seems to me that all those who are charged with

the duty of adjudicating on some matter are entitled to participate in the decision ; if some of them assist their colleagues by conducting some preliminary investigation, it cannot be that they are thereby disabled from performing their principal duty., (cf. also *R. v. Greenwich L.B.C.*)

However, if as a member of such sub-committee an adjudicator does something whereby he makes himself interested in the proceedings, or places himself in the position of a party or a party's advocate, then he is disqualified by bias. In *Akkersdyk*, some members of a sub-committee recommended that a licence should not be granted, retained counsel and solicitor to oppose the application for a licence, and then participated in the proceedings ; but when it appeared that they were both accusers and judges, they abstained from further participation. The decision to refuse the licence was quashed. *Frome United Breweries v. Bath Justices* [104], was similar.

The third category are cases of interest, involving no question of sub-committees. In *R. v. Hendon Rural District Council* [105], a councillor voting for a resolution had a disqualifying interest in the subject-matter of the resolution ; the unanimous decision of the council was quashed. In *Lannon*, an adjudicator was disqualified because he had an interest adverse to one party. *R. v. Altrincham Justices* [106], was similar :

> " It is enough to show that there is a real likelihood of bias, or at all events that a reasonable person advised of the circumstances might reasonably suspect that the judicial office was incapable of producing the [requisite] imparliality and detachment."

In *Hannam*, an adjudicator was a member of the body whose decision was being challenged, and although he had not participated in that decision he was held to be interested as he was an integral part of the body whose action was being impugned. In *Roebuck v. National Union of Mineworkers* [107], this president of the union successfully brought a libel action, on behalf of the union, against a newspaper. The members of the union gave evidence for the newspaper ; one contradicted a written statement made to the union's solicitors, and the other showed the newspaper official correspondence. The executive committee of the union expelled the two members ; the president look an active part in the proceedings, but

did not vote. It was held that it was no answer to say that he did not influence the result. The expulsion was quashed.

There is no question here of participation by outsiders. Clearly the participation of the members of the Disciplinary Committee in the decision to expel was not improper. None of the authorities in the second category are applicable. The 2nd Respondent participated more actively, and this is understandable as he was the General Secretary. But none of the members made themselves accusers or prosecutors, or did more than carry out their legitimate functions in regard to a preliminery investigation. The presence of the President does not make this case comparable to *Roebuck,* because he did not participate at all in the proceedings. Superficially, his presence appears to fall within the first category, but all those were instances in which an impression was created in the mind of the party complaining that an interested person had participated in the deliberations. Here no such impression was created, because the Petitioners were not there ; and they do not complain in their petitions of any such impression. In other words, neither the objective nor the subjective element in the test of bias is satisfied. It was submitted that the mere presence of the President would have been a dominating influence ; that would probably be true of practically every leader of almost any political party in Sri Lanka since independence. It is idle to think that his absence would have diminished his influence. In any event, the test of bias cannot be applied as strictly as in judicial proceedings, for here all members of the tribunal would inevitably have had views, and possibly strong views, on the matters in issue (see the *Bromley L.B.C.* case, at pp 131-2, for an intance where the court might be considered " interested ", but yet not disqualified). Had the " dissidents " been in a majority, if the question of disciplinary action against the " orthodox " minority had arisen, I doubt whether the tribunal could be regarded as biased simply because it consisted of the " dissident " majority. Although the principle against bias does apply, this serves to illustrate the difficulty of applying that principle to a situation in which there is no *lis* between two contesting parties. I hold that the mere presence of the President did not vitiate the decision. It must be noted that in any event the President could not be regarded as having a disqualifying interest in relation to the charge of deceiving the Cabinet ; and on the merits, I consider that charge to have been established. Further, in view of my findings regarding denial of natural justice in

respect of the failure to initiate internal discussions, it is not strictly necessary for me to consider the issue of bias.

8. CONCLUSION :

I am deeply appreciative of the ready co-operation and assistance extended by Counsel to the Court in elucidating the many important issues, of rare complexity, which arose right through these proceedings.

I direct the Registrar to expunge the matters referred to in paragraph (2) of this judgment.

I determine that :

(a) the expulsion of the Petitioners in S.C. (Special) Nos 4,6,7,9,10 and 11/91 was invalid ; and

(b) the expulsion of the Petitioners in S.C. (Special) Nos 5 and 8/91 was valid.

I make no order as to costs.

KULATUNGA, J.

These Applications (Special) Nos. 4-11/91 were of consent heard together as they involved the same issues and rested substantially on the same facts. The petitioners are Members of Parliament and are members of the United National Party (UNP) (the 4th respondent) which is a recognised political party within the meaning of the Parliamentary Elections Act No. 1 of 1981. The 1st, 2nd and 3rd respondents are the Chairman, General Secretary and General Treasurer of the UNP respectively ; they are all members of the National Executive Committee (NEC) and the Working Committee of the UNP. The 5th respondent is the Secretary General of Parliament against whom no relief has been claimed ; he has been joined for the purpose of giving him notice of these proceedings.

The petitioners have invoked the jurisdiction of this Court under the Proviso to Article 99 (13) (a) of the Constitution. Each of them seeks a determination that his expulsion from the membership of the UNP communicated by the letter dated 09.09.91 (P1) under the hand of the 2nd respondent is invalid. The decision for the expulsion of these petitioners has been made by the Working Committee of the UNP by its resolution dated 06.09.91 (P1A). The grounds for such expulsion have been set out in P1A ; and the decision of the Working Committee to expel the petitioners has been endorsed by the NEC on 07.09.91 as evidenced by the extracts of the minutes of the NEC, marked R5.

FACTS

The petitioners are Members of Parliament having been elected to Parliament from the UNP at the General Elections held in February 1989. The petitioner in application No. 4 held office as a Cabinet Minister until March 1990. The petitioners in applications Nos. 5 and 8 were Cabinet Ministers and the petitioners in applications Nos. 6 and 7 were a State Minister and a Project Minister respectively in the government ; each of them had resigned from his office as such Minister a few days prior to the impugned expulsion. The petitioners in applications Nos. 9, 10 and 11 are Members of Parliament for the electoral districts of Kegalle, Badulla and Colombo respectively. Under Article 99 (13) (a) of the Constitution the seats of these petitioners will become vacant by reason of their expulsion from the membership of the UNP and they will be deprived of their status as Members of Parliament unless they obtain a determination from this Court that the impugned expulsion is invalid.

The conduct of the petitioners for which they were expelled consists of a series of alleged acts and omissions by them in the course of a campaign connected with an attempt by some Members of Parliament to take proceedings under Article 38 (1) (e) read with Article 38 (2) for the removal of His Excellency Ranasinghe Premadasa from the Office of President of the Republic of Sri Lanka. Under Rule 7 (1) of the UNP Constitution (P2) The President, being a member of the UNP, is also the Leader of the Party. A copy of the requisite notice of resolution given to the Speaker under Article 38 (2) (a) has been produced marked P3B. The petitioners state that the said notice of resolution had been signed by not less than one-half of the whole

number of Members of Parliament ; and that on 28.08.91 the Speaker informed the President by writing that he had entertained the said resolution in terms of Article 38 (2) (b) and further drew the attention of the President to Proviso (c) to Article 70 (1).

The respondents deny that the said resolution was duly entertained by the Speaker inasmuch as the Speaker announced in Parliament on 08.10.91 that having inquired into the matter, he was of the view that the notice of resolution did not have the required number of valid signatures and accordingly it could not be proceeded with. The petitioners have joined issue on this and reiterate that the said resolution was duly entertained ; but those are proceedings in Parliament which this Court cannot or need not inquire into for the purpose of determining the applications filed by the petitioners. Reference will, therefore, be made to the said resolution only to the extent that the contents thereof may be relevant to the question before us namely, the validity of the impugned expulsion.

The resolution alleges the existence of all the grounds for the removal of the President provided by Article 38 (2) (a). It alleges that the President is guilty of –

(a) intentional violation of the Constitution and/or
(b) treason and/or
(c) bribery and/or
(d) misconduct or corruption including the abuse of the powers of his office and/or
(e) any offence under any law involving moral turpitude.

It also alleges that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity. This is followed by a purported statement of the particulars of the allegations. From that statement I have extracted the following items as they are relevant to a consideration of the conduct of the petitioners outside Parliament between 28.08.91 and 06.09.91. i.e. during the period prior to their expulsion which conduct is evidenced by copies of news paper reports R 3A to R 3G and R 4A to R 4L. The respondents rely inter alia, on such conduct as constituting good grounds for the impugned expulsion. The resolution states that the President has –

(1) violated several provisions of the Constitution whereby the powers of Parliament and of Cabinet Ministers have been undermined ;

(2) given direct orders to Secretaries by-passing their Ministers;

(3) engaged Secretaries to obtain confidential reports on their Ministers ;

(4) endangered the security of the State by arming the Liberation Tigers of Tamil Eelam (LTTE) and sending off the Indian Peace Keeping Force (IPKE) without considering military aspects.

(5) resorted to unlawful telephone tapping including the telephones of Ministers ;

(6) engaged in wasteful expenditure including for Gam Udawa Celebrations ;

(7) established a one man dictatorship colloquially referred to as a "one man show."

The newspaper reports R 3A to R 3G and R 4A to R 4L which have not been denied show that the petitioners led by the petitioners in applications Nos. 4, 5 and 8 had prior to 06.09.91 commenced a public campaign in the course of which they had agitated every one of the matters referred to above at regular press conferences and in statements to the media by them, and also in a speech made by the petitioner in application No. 4 at a religious ceremony in a temple and in a speech made by the petitioner in application No. 8 to the officers of the Education Ministry when he went there to wind-up duties upon resignation.

One of the allegations contained in P 1A is that on 28.08.91 after the speaker had informed the President that he had entertained the notice of resolution P 3B the petitioners in applications Nos. 5 and 8 joined the rest of the members of the Cabinet in passing an unanimous vote of confidence in the President by a show of hands individually. This has not been denied by either of petitioners ; and the petitioner in application No. 8 has in R 3B and R 4E admitted the event.

On 03.09.91, 116 members of Government Parliamentary Group presented to the Speaker a writing dated 30.08.91 (R15) regarding the resolution for the removal of the President stating, inter alia, as follows :-

> " We write to hereby inform you that we do not support the said resolution. Those of us who have placed our signatures do hereby withdraw and revoke our signatures and consent thereto ",

and proceeded to request the Speaker not to place the resolution on the Order Paper. On 02.09.91 the same members passed a vote of confidence in the President (R16). This document also contains a statement that interested parties had obtained the signatures of certain Government and Opposition Members of Parliament through misrepresentation and deceit.

Simultaneously with the above developments the petitioners commenced holding of daily press conferences which were presided over by the petitioners in applications Nos. 4, 5 and 8. At the first conference reported in the press on 01.09.91 (R 3G) which was attended by all the petitioners, they claimed to have with them 47 UNP M.P.s. The same number is claimed in R 4C (02.09.91) and R 4G (04.09.91). They also assured the public that the resolution will have the support of two thirds of the Members of Parliament and claimed that more will join them. In R 11K (06.10.91) they claimed that 44 out of the original 47 M.P.s were still with them.

On 05.09.91 the petitioners filed actions in the District Court of Colombo. In the plaint (P4) they set out the events relating to the resolution for the removal of the President a copy of which they annexed to the plaint and state that they apprehend that the NEC and/or the Working Committee of the UNP would suspend or expel them from the party particularly in view of the fact that a meeting of the NEC had been summoned for 07.09.91 by a notice dated 05.09.91 a copy of which they annexed to the plaint. They prayed inter alia for a declaration that they are not liable to be so suspended or expelled and for an enjoining order and interim and permanent injunctions in that regard. On 06.09.91 the District Judge after hearing Counsel made order (P6) refusing to entertain the actions and refusing the enjoining orders sought by each of the petitioners. At 7.30 p.m. on the same day the Working Committee passed the resolution P1A

expelling them. On 07.09.91 the NEC attended by 2500 members endorsed the decision of the Working Committee.

The respondents state that subsequent to their expulsion the petitioners launched a country-wide campaign and condemned the Executive Presidential system and the party leader ; between 10.09.91 and 20.10.91 they held public rallies for this purpose at Nugegoda, Kandy, Kurunegala, Kegalle, Badulla, Galle, Kalutara, Ratnapura, Kiribathgoda, Puttalam and Polonnaruwa. The petitioners do not deny this but state that these activities being subsequent to their expulsion are irrelevant to these proceedings and have been introduced to mislead the Court ; and further state that they did not campaign for the abolition of the Presidential system or the reversion to the pre 1978 system. They state that the essence of their contention in public was that the Executive Presidency should be made more accountable to Parliament and the President's powers should be reduced.

After the Speaker ruled on 08.10.91 that the resolution for removal of the President cannot be proceeded with, the opposition moved a motion of no confidence in the Speaker. This was debated on 10.10.91; petitioners voted in favour of it whilst the Government Parliamentary Group voted against it.

GROUNDS OF EXPULSION

The grounds of expulsion as appearing in the Working Committee resolution (P1A) may be summarised as follows :-

1. (a) Signing the notice of resolution (P3B) together with several members of the opposition which is an act of betrayal of the Party Membership and the confidence placed by the people in the Party and its Leadership at successive elections.

   (b) Signing the said notice of resolution without any prior information to the party or raising or discussing the same within the Party Organizations or the Government Parliamentary Group.

2. In particular the petitioners in applications Nos. 5 and 8 misled and deceived the Cabinet of Ministers on 28.08.91 into the belief that they were ignorant of and were not associated with

the notice of resolution by joining the other members of the Cabinet in passing a vote of confidence in the President.

3. Having been elected to Parliament as UNP M.P.s on the basis of the Executive Presidential System and under the Leadership of the President ;

(a) engaged in a public campaign against the Executive Presidential System which is the principle and policy of the UNP.

(b) used such campaign as a cover to cause insult and injury to the character, integrity and ability of the Leader of the Party in his capacity as President of the country.

4. Doing all the aforesaid acts without first raising the said issues within the Party Organizations or the Government Parliamentary Group as is required by the Party Constitution and conventions.

5. By such conduct and actions the petitioners have manifestly and flagrantly and in disregard of Party discipline, duties and responsibilities.

(a) breached the conditions of membership of the Party ;
(b) acted contrary to the principles and policies of the Party ;
(c) repudiated and violated the Constitution and conventions of the Party ; and
(d) brought the Party and its Leadership to disrepute and held it up to public ridicule.

THE UNP CONSTITUTION

The respondents rely upon the following provisions of the UNP Constitution (P2).

Rule 3 (1) – In accepting membership of the Party a person agrees–

(a) to accept the Principles, Policy, Programme and Code of Conduct of the Party ;

(b) to conform to the Constitution and Standing Orders of the Party ;

(c) not to take part in political or other activities which conflict or might conflict with the above undertakings and not to bring the Party into disrepute.

Office bearers ; line of authority

Rule 7(1) – The President of the country, if he is a member of the Party, shall be the leader of the Party.

7(3) – Members of the Parliamentary Party shall be bound by orders and directions of the Leader and in his absence the Leader of the Parliamentary Party as to the conduct of matters in Parliament.

Parliamentary elections ; obligations of party candidates and M.P.s

Rule 9(d) – A candidate shall be called upon to give a pledge that if he succeeds in entering Parliament on the Party Ticket he will conform to the Principles, Policy, Programme and Code of Conduct of the Party and that he will abide by the Standing orders and the Constitution of the Party and that he will carry out the Mandate of the Party ; if he fails to do so, the Executive Committee shall take action for the punishment of such offender.

9(g) – Any candidate who after election fails to act in harmony with the Principles, Policy, Programme, Rules and Code of Conduct and Standing Orders of the Party shall be considered to have violated the Constitution.

Standing Orders of the Parliamentary Party

17(1) – Every member of the Parliamentary Party shall subscribe to a pledge of loyalty to the Party.

(2) – He shall vote in the Parliament according to the Mandate of the Parliamentary Party conveyed through the whip of the Party.

(3) – If any member has any conscientious scruples on any matter of Party Policy he may be free to abstain from voting, subject to the written approval of the Leader of the Parliamentary Party.

(4) – Members should take the fullest advantage of the opportunity at the Party meetings of raising questions of Party Policy concerning which they may have doubts.

GROUNDS URGED AGAINST THE EXPULSION

The petitioners challenge the expulsion on three grounds namely,
(a) absence of jurisdiction in the Working Committee ;
(b) inconsistency with the provisions of the Constitution of Sri Lanka and Statute Law ;
(c) breach of the rules of natural justice.

They allege that the decision to expel them is mala fide.

ABSENCE OF JURISDICTION IN THE WORKING COMMITTEE

The two main constituent bodies of the UNP are the Party Convention and the National Executive Committee. The former is the largest representative body at national level and meets regularly once a year. The latter is the Administrative Authority of the Party at national level and consists of approximately 2500 members. Under Rule 8 (3) it has the power, inter alia, to take disciplinary action against any member in a manner suitable to the circumstances of each case and mete out punishment. The Working Committee is established by Rule 8 (3) (m) and is appointed by the Leader of the Party from the NEC consisting of himself, Deputy Leader and all other office bearers and any other members not exceeding fifty. The same rule confers on the Working Committee the authority to exercise the powers and functions vested in it by the NEC. By a resolution of the NEC dated 19.04.91 (R2) the Working Committee has been vested with full powers to carry out the responsibilities and functions of the NEC.

Mr. H. L. de Silva, P.C. for the petitioners strenuously contends that under rule 8 (3) the power to take disciplinary action is vested solely in the NEC ; that such power being judicial or quasi judicial it can be exercised by the NEC alone ; that Rule 8 (3) (m) which provides for vesting of powers as opposed to delegation would enable

the NEC to give away only its ancillary powers e.g. running of the Head office, fund raising or propaganda ; that R2 is a wholesale divesting by the NEC of its power vested in it by the UNP Constitution and the Working Committee cannot exercise such power in the absence of an amendment to the Constitution enabling the delegation of particular powers ; that R2 is outside the contemplation of Rule 8 (3) ; that even assuming the possibility of a delegation of powers, NEC cannot delegate its disciplinary power because Rule 8 (3) (m) is in general terms and gives no such power either expressly or by necessary implication. Mr. de Silva cited a number of decisions including *Barnard v. National Dock Labour Board* [35] ; *Vine v. National Dock Labour Board* [36] and *Young v. Fife Regional Council* [3]. The first two cases relate to sub delegation of powers not authorised by statute. In the third case power was delegated without any authority therefor. In Vine's case Lord Somervell said –

> " I am, however, clear that the disciplinary powers whether " judicial " or not, cannot be delegated " (p. 951)

In Young's case it was held that the delegation was not empowered expressly or by necessary implication and hence the decision made in virtue of delegation is a nullity ; per Lord Ross p. 334.

Mr. de Silva further submits that the expulsion in P1A being invalid, the NEC could not have validated it by its endorsement R5 ; he supports this with the decisions in Barnard's and Vine's cases (Supra) and *Blackpool Corporation v. Locker* [109].

Mr. Choksy, P.C. for the respondents submits that in the cases cited by Mr. de Silva the power had been delegated without any authority therefor or there was held to exist an unauthorized sub-delegation of power ; here is a case where the power to delegate is conferred expressly by Rule 8 (3) (m) ; the word 'vest' appearing therein, properly construed in the context and as appearing in a non-statutory document, means "delegate" ; and hence the power may be withdrawn expressly by revoking R2, and there is no abdication of power by the NEC. He concedes that the power may even be impliedly withdrawn in the event of NEC resuming the exercise of power see *Huth v. Clerk* [110]. Mr. Choksy contends that the power of delegation in Rule 8 (3) (m) is express and unqualified and the Court cannot by interpretation limit that power ; that in any event

the power given by the said rule is by necessary implication very wide and is absolutely necessary for the proper functioning of the Party ; that it forms part of the contract between members of the Party which cannot be avoided unless it is contrary to public policy or the law. He argues that the petitioners cannot seek to vary it on the ground of expediency or alleged fraud. Answering a question by Court he said that the expulsion does not require ratification and hence R5 was unnecessary.

Mr. Choksy points to the fact that under Standing Order 13 the NEC comprises an unwieldly number of representatives drawn from a wide circle and includes ex-members of Parliament and Chairman of Local Authorities who are members of the Party and representatives of Trade Unions etc., and it is inconvenient and impracticable for the NEC to directly exercise disciplinary powers. It consists of 2500 members who cannot be called upon to exercise their judgment collectively or otherwise.

Rule 8 (3) (m) requires the Leader of the Party to appoint the Working Committee from the NEC the composition of which is fixed as follows :

1. Leader of the Party
2. Deputy Leader
3. All other office bearers of the NEC.,

and other members, not exceeding fifty. It is to be noted therefore that the executive component of the NEC is included in the composition of the Working Committee ; and the Committee itself is " a microcosm " of the NEC to whom power may be delegated even in the absence of express provision. See the dicta of Viscount Kilmuir LC in *Vine's case.* Under the UNP Constitution the Working Committee exercises not only the powers delegated to it by the NEC, but also a variety of other powers such as –

1. to dissolve District Balamandalayas, Polling Division Organizations or main Associations ; Rule 2A(4)

2. to approve the political rules of affiliated member Organizations ; Rule 3 (e)

3. summoning of the Party Convention ; Rule 5 (a)

4. appointment of Nomination Bords for elections ; Rule 9 (b)

5. selection of a candidate for any Presidential Election ; Rule 9 (a)

6. determination of the number of persons to be represented in the NEC among certain categories of representatives ; Standing Order 13

7. certain powers in respect of the UNP Youth League and UNP Women's Union ; Standing Orders 15 and 16

8. acquisition of property and utilization of Party funds ; Standing Order 18

9. giving directions in the interpretation of the Constitution ; Standing Order 21.

All this shows that the Working Committee constitutes the core of the NEC and functions as a body that is singularly suited to be charged with the most vital powers and functions of the NEC including the exercise of disciplinary power but with its roots in the larger body the members of which are spread out country -wide.

CONCLUSION

Upon a consideration of the relevant authorities the submissions of Counsel and all other matters, I am of the view that the Working Committee has been lawfully empowered by R2 to exercise disciplinary powers over members of the party and that there is no merit in the objection to its jurisdiction ; I accept Mr. Choksy's submissions and hold that the Committee has jurisdiction to take disciplinary action against the petitioners.

INCONSISTENCY WITH THE PROVISIONS OF THE CONSTITUTION OF SRI LANKA AND STATUTE LAW

This ground of challenge relates to the lawfulness of the grounds of expulsion set out in P1A which I have summarised earlier in this judgment. The broad grounds of expulsion are linked with two events namely, the signing of the resolution P3B and the public campaign

against the Executive Presidential System. According to the respondents, the said events coupled with the petitioners' conduct in failing to first raise the issues within the Party organizations represent a repudiation of the UNP Constitution and a flagrant breach of party displine and a cover for insulting the character, integrity and ability of the Leader of the Party in his capacity as President of the country which eventually brought the Party and its Leadership to disrepute and held it up to public ridicule.

The petitioners take up the position that in respect of both events referred to above their acts are protected by Article 4 (a) and (e) read with Article 93, 10, 14 (1)(a) and 38 of the Constitution and Section 3 of the Parliament (Powers and Privileges) Act (Cap. 383) ; that the grounds of expulsion derogate sovereignty, their freedom of thought, conscience, speech and expression and their privileges as Members of Parliament assured by the aforesaid constitutional and statutory provisions. They deny having repudiated the Party Constitution and state that in any event the provisions of the Party Constitution in particular Rules 7(3), 9(4) and 17(2) thereof relied upon for the expulsion cannot override such protections, freedoms and privileges and accordingly the order of expulsion is invalid. As regards the allegation that they failed to first raise the issues within the Party organizations, they state that there did not exist a measure of freedom to raise matters which would involve a curtailment of Presidential powers.

Mr. de Silva, P.C. concedes the right to take disciplinary action but submits that expulsion (which has the consequence of loss of Membership of Parliament) cannot be effected on grounds which are contrary to the Constitution which is the paramount law ; contractual obligations are secondary norms. 'General Theory of Law and State' Kelsen (1961) 124, 137. Learned Counsel vehemently contended that the grounds of expulsion are based on alleged breaches of the provisions of the UNP Constitution which strike at the very root of the fundamental postulates of the Constitution. He was particularly critical of Rule 7(3) (obligation of government M.P. s to take directions from the Party Leader or the Leader of the Parliamentary Party as to the conduct of matters in Parliament) ; Rule 9(g) (obligation of M.P.s to conform to the principles, policy, programme, rules and code of conduct and standing orders of the Party) and Rule 17(2) (obligation of M.P.s to vote in Parliament according to the Mandate of the Parliamentary Party conveyed through the Whip of the Party).

Dealing with the ground of expulsion based on the petitioners' conduct in signing the notice of resolution, learned Counsel referred us to 'Theory and Practice of Modern Government' Finer (1946) Vol. I 633–652 and submitted that the 'free mandate' theory discussed therein and which is enshrined in some continental Constitutions is implicit in our Constitution (Articles 4(a), (e) and 93) ; that accordingly a member is not bound by instructions ; and he cannot be penalised for anything done in Parliament. Signing the notice of resolution was not a breach of the UNP Constitution ; on the contrary it was their duty to the nation under the Constitution of the Republic to give such notice (Article 38). Such notice is a "proceeding" in Parliament which cannot be impeached outside the House for want of prior permission for it. The conduct of the petitioners in having signed it is similary protected by the provisions of Section 3 Parliament (Powers and Privileges) Act ; see also, Parliamentary Practice – Erskine May 19th Ed. 87. Counsel conceded that if the sole motive for signing the resolution was to humiliate the Leader of the Party and mala fide, disciplinary action is competent ; but there ought be evidence of such motive. He also submitted that if the emphasis in the charge against them is signing the resolution with some members of the opposition, Article 38 is a complete answer.

As regards the campaign against the Executive Presidential System, Counsel submitted that the Party is not irrevocably committed to continue that system ; that in any event the petitioners were not seeking to abolish but to reform it by remedying anomalies ; that any peaceful advocacy of change is a legitimate exercise of the freedoms guaranteed by Articles 10 and 14(1)(a) of the Constitution ; that even if it were a matter of Party Policy, the party cannot exercise an unqualified right of expulsion for contravening such policy but should consider disciplinary action short of expulsion ; that expulsion would be warranted only in the case of serious conduct such as bribery or offences involving moral turpitude ; and that the campaign intended to reform the party is permitted by the objects of the party contained in Rule 4(c) of its Constitution namely, the promotion of the political education of the people and their political emancipation on the basis of Democratic Socialism. It was also submitted that the allegation that the petitioners should have first raised these matters within the party assumes that there is a measure of freedom within the party to raise such matters. Counsel argued that the UNP Constitution

imposes a centralised system which negatives freedom ; and this is aggravated by the provisions which enables the Leader to enjoy full power ; that matters had reached a stage when no discussion was possible and the action taken by the petitioners was logical and within their rights ; and that actions for reforming the party are also legitimate even if the party were to thereby suffer disintergration. These rights, it was submitted, cannot be comprehended under party discipline.

Mr. de Silva P.C. cited *Bromley London Borough Council v. G.L.C.* [5] ; *R. v. Waltham Forest L.B.C. ex p. Baxter* [7] and *R. v. Greenwhich L.B.C. ex p. Lovelace & Fay* [8]. In the *Bromley case* the vires of a decision by the Council to reduce transport fares in London by way of honouring an election pledge by the Labour Party was successfully challenged on the ground that it imposed an increased levy on rates on the tax payer. In *Waltham Forest,* a resolution of the Council was unsuccessfully challenged on the ground that it is vitiated by reason of certain Labour members having been pressurised to vote for it. In *Lovelace's case* the question was whether a decision to reduce the number of members of the housing committee of the Council which resulted in removing from it certain Labour members who had voted against a proposal moved by the majority is ultra vires the Council powers. The Court upheld the decision. There are dicta in these cases to the effect that members are not irrevocably bound to carry out the pre-announced policies contained in the election manifesto, that they have a measure of freedom to decide what is immediately in the interest of the rate-payers ; that they are not required to abdicate their personal responsibility in favour of group policy ; and that their right to vote cannot be fettered by a decision in the nature of a punishment.

Learned Counsel criticised the judgment in *Yapa Abeywardena v. Harsha Abeywardenea* [11] wherein the view was expressed by Sharvananda, CJ that a Member of Parliament is a mere cog in the Party wheel, that he can remain in the party on the Party's terms and that if he fails to strictly conform to directives or to support the Party in the House, he must resign or face expulsion from the party. Counsel submitted that this decision should not be followed.

Mr. Choksy, P.C. drew our attention to R1 (Minutes of the Working Committee meeting held on 06.09.91) which contains the original resolution for the expulsion of the petitioners and said that they have

been expelled from the Party not for the mere signing of the notice of resolution under Article 38 of the Constitution or for exercising their constitutional rights over the issue of the Executive Presidential System but for infringing the Party Constitution, policy and discipline by their conduct, to wit –

(a) signing the resolution together with several members of the opposition without first raising it within the party organization; taking the allegations to the contrary and agitating them in public ; this is a breach of Rules 3(1) (d) and 17(6) of the UNP Constitution. Rule 3(1)(d) imposes the obligation not to take part in political or other activities likely to conflict with Party Policy and the code of conduct and not to bring the party to disrepute. Rule 17(6) requires members to first raise questions of Party Policy within the Party Organization ;

(b) breach of their pledge of loyalty to the party under Rule 17(1) and breach of their pledge given under Rule 9(d) to act in conformity with Party Policy and the code of conduct ;

(c) taking the issue of the Executive Presidential System to the country and controverting it in public without first raising it within the Party Organization in breach of Rules 3(1)(d) and 17(6) ;

(d) public campaign over both issues using uncontrolled language and making it a cover to insult the character and integrity of the Leader of Party as the President of the country and bringing the Party and its Leadership into disrepute and holding it up to public ridicule, in breach of Rules 3(1)(d) and 17(1).

Mr. Choksy, P.C. proceeded to submit that assuming (but without conceding) their right under Article 38 to sign the notice of resolution, the requirement that the petitioners should exercise that right or their right to publicly agitate the issue of Executive Presidential System in a manner compatible with their obligations to the party including the maintenance of party discipline (Rule 9(g)) is not contrary to the Constitution or other law or the authorities cited; that the failure to first raise the issues involved within the Party Organization is violative of a basic norm of party discipline ; that such failure constitutes gross

indiscipline justifying expulsion ; and that the conduct of the petitioners in applications Nos. 5 and 8 in deceiving the Cabinet of Ministers on 28.08.91 by joining with the other members of Cabinet to pass a vote of confidence in the President constitutes gross deceit. He also submitted that 'loyalty' within the meaning of Rule 17(1) the UNP Constitution means adherence to the Constitution and includes loyalty to the Party Leadership.

As regards Rule 7(3) which came in for heavy criticism by Mr. de Silva, Mr. Choksy submitted that the petitioners have been expelled not for failing to take directions from the Leader as required by the rule but for their failure to first raise the allegations against the Leader within the Party Organizations. He argued that one cannot assume all the members of the UNP to be "yes" men ; that if representations are made in the appropriate manner the members may well consider changing the Leader.

As regards the contention that there was no freedom to raise matters within the party, Mr. Choksy argued that this is a bald statement ; there is no proof that the petitioners had been harassed for raising any matter ; nor have they stated that they tried to raise the issues within the party. Counsel submitted that in the circumstances the allegation that the petitioners failed to bring up matters within the party has not been rebutted. Counsel then conceded that had the petitioners made any attempt to raise the issues before the party and the party had capriciously rejected the allegations or the proposals for reform, the petitioners would be entitled to raise the matters in public.

Mr. Choksy finally submitted that our Constitution confers primacy to the political party as against the individual M.P.; that the party carries the mandate of the electors and in turn gives a mandate to the M.P.. In the circumstances, the exercise of the rights of the petitioners qua M.P.s is subordinate to the requirements of party discipline and their freedom to agitate matters in public is also similarly constrained by reason of their obligations to the party which they have freely undertaken to honour.

Mr. Choksy relied on *Waltham Forest L.B.C. case* (Supra) in which the judgment of Sir John Donaldson MR refers to the whip system approvingly both in relation to local bodies and Parliament and further

refers to Widdicomb report which states that the Whip system is not a matter for concern (674) ; it also refers to circumstances in which the requirement for consultation within the group would ensure party unity without the councillors having to abdicate personal responsibility (676) Counsel submits that such consultation is vital to effective government. He also cited dicta from the decision in *ex P. Lovelace* (Supra) on group policy (517) and inevitable party constraints resulting from the existence of a party line or strategy to ensure cohesion (523). Staughton LJ has this to say with reference to the off-quoted speech of Edmund Burke to the electors of Bristol in 1774

> " One may doubt whether after 200 years, that is wholly in accord with the current political wisdom " (525)

In *Dissanayake v. Sri Jayawardenapura University* [11] where a student complained of the infringement by the Vice Chancellor of his rights under Article 14(1)(a), this Court held that the right to the freedom of speech is not absolute ; that students were bound by reasonable rules governing conduct ; and a student has the right to peacefully express his views *in an appropriate manner.* Sharvananda, CJ said –

> " A student may also exceed his constitutional right of speech and expression by adopting methods of expression that materially and substantially interferes with the Vice Chancellor's right to his reputation. For nobody can use his freedom of speech or expression as to injure another's reputation." (267).

Mr. Choksy sought to apply this decision by analogy to M.P.s and submitted that whilst their freedom of speech in public is constrained by the requirements of party discipline, they also should before signing a notice of a resolution under Article 38, first raise the matter within the party, which is the appropriate manner of exercising the right consistently with their obligations to the party.

Mr. Choksy said that he relies on the judgment of this Court in *Abeywardena's case* (Supra) only on the principle that an M.P. owes an obligation to the party. He argued that the theory of party system is the very soul of our Constitution. In support of this he first cited passages from 'The Theory and Practice of Modern Government' Finer (1946) Vol. I 632-652. He submitted that unlike some continental

Constitutions our Constitution does not contain any provision that an M.P. can vote according to his conscience ; and this is because it is based on the political party ; that Finer himself observed at p. 641 that the factor which today is of the most importance is the political party. At p. 646 the author examines the effects of the proportional representation (P.R.) in Germany and observes that the method of voting for a single representative among a number of individual competitors was abandoned and now the mandatory is, in fact, nobody but the party ; that the party is obliged to control the campaign and the nominations ; and that members are bound *in the first place* to the dictates of the party machine.

Mr. Choksy next referred us to the P. R. provisions contained in Article 99 of our Constitution and to the provisions of Parliamentary Elections Act No. 1 of 1981 and drew our attention to the salient features of the system provided thereunder, which are as follows :-

1. The system of electing individual members for constituencies has been abolished.

2. Nomination papers are submitted not by the individual candidates but by recognized political parties or independent groups.

3. The Secretary of the recognized political party or the independent group is required to sign one nomination paper for an electoral district setting out the names of the prescribed number of candidates for such district.

4. At the election, parties and independent groups are represented by their agents.

5. Electors are required to vote for the party or the group of their choice. They may also express their preference for any three candidates from the same party or group.

6. Votes polled by the party or the group would determine the number of members such party or group will be entitled to return to Parliament from each electoral district.

7. There is no provision for by-elections ; and the composition of Parliament is fixed for 6 years ; any vacancy is filled by declaring elected the candidate from the same party or group whose name appears in the list on the nomination paper and who has polled the next highest number of preferences. If the list is exhausted, the party or the group nominates a member to fill the vacancy.

On this basis Counsel submits that the party system is constitutionally stronger here than in the United Kingdom ; that the provision for voter preference for candidates does not affect the dominance of the party and no provision has been enacted to dilute the obligation of M.P. s to the party.

In the teeth of Article 38 of the Constitution this Court cannot hold that a Member of Parliament who belongs to the same political party as the President who is also the Leader of that Party may not sign a notice of resolution for the removal of such President ; and that the mere act of signing such notice will make him liable to disciplinary action by the party. Nor have we been called upon to consider such a question. In my understanding, the petitioners have been expelled for signing the notice together with the opposition without first raising the allegations within the party ; the ground of expulsion based on their conduct in campaigning against the Executive Presidency is not directed against the freedom of speech, the allegation being that they did so without first raising it within the party ; in this connection Mr. Choksy very properly conceded that had the petitioners been capriciously thwarted in attempting to raise the issues within the party, they would be entitled to agitate them in public. It follows that in such a situation the petitioners would also be entitled to sign the resolution for the removal of the President without further constraint. In the circumstances, there has been no violation of Article 38.

There has been no violation of their freedom of speech as all that has been questioned is the propriety of the manner of exercising such freedom ; as is evident from the language used by them some of which is per se defamatory, they have exceeded the bounds of such freedom. There is, therefore, no violation of Article 14(1)(a). The freedom of conscience under Article 10 has not been infringed because " freedom of conscience " therein connotes the right of a person to entertain beliefs and doctrines concerning matters which

are regarded by him as being conducive to his spiritual well-being. See Constitutional Law of India, Mahajan 6th Ed. 233 ; *Rati Lal v. State of Bombay* [112]. It does not connote the ordinary right which every individual has to make decisions or to support a system of his choice according to his conviction and judgment. This in fact appears to be the right which the petitioners are asserting in their campaign against the Executive Presidential System.

As regards the complaint that the expulsion violates Section 3 of the Parliament (Powers and Privileges) Act, Mr. de Silva contends that signing the resolution is a " proceeding " in Parliament which is protected by Section 3. He cited Erskine May Parliamentary Practice p.87 where the author says that " proceeding " is some formal action taken by the House which extends to the whole process by which it reaches a decision. He proceeds to give illustrations one of which is, giving notice of a motion. In the instant case, what is in issue is not the giving of notice of a motion but the act of signing it which takes place at a point of time anterior to its delivery to the Speaker. As such no proceeding in Parliament has been impeached. Even if, by a liberal construction, one were to construe it as a proceeding in Parliament, the petitioners have not been expelled for signing the resolution but for doing so without first raising the matter within the party. As such there is no violation of rights relating to Parliamentary privilege.

The question, therefore, is one of party discipline the need for which is supported by the authorities cited and by common sense. I agree with the submission that under our law the Party is pre-eminent and carries the mandate of the electors. Articles 4 (a) and 93 of the Constitution do not dilute the dominance of the party. It is true that Article 4(a) refers to " elected representatives of the People " but this is subject to Article 99 which provides for proportional representation, which gives pre-eminence to the party. It is only if the party polls enough votes that its candidates may stand a chance of election.

The UNP Constitution imposes obligations on all members one of which is the undertaking to accept the principles, policy and programme and code of conduct of the party. The other important obligation is not to engage in political or other activities likely to conflict with the said undertaking. There is a further obligation not to bring

the party into disrepute. Then there are special obligations on M.P.s some of which are –

1. the duty to be bound by the directions of the Leader or the Deputy Leader regarding matters in Parliament ;

2. the duty to harmonize with the policy and code of conduct of the party ;

3. the duty to vote in Parliament according to the Mandate of the Parliamentary Party conveyed through the party whip.

I can see no illegality in these arrangements for group action. How can any government or opposition function without disruption if the conduct of M.P.s as a group cannot be regulated including in the matter of voting in the House and each M.P. is free to do whatever he pleases? How can the party fulfil its mandate given to it by the electors? Can an individual M.P. who has been elected on the party vote and policy be heard to say " from today I am a free man, the party and the group are secondary and are subordinate to me "? Can Parliamentary business be transacted without the party having some assurance as to how the M.P.s are going to vote? I see no evil in reasonable restrictions on the conduct of M.P.s in Parliament based on group action or in the obligation to harmonize with party policy or in the Whip system all of which have the effect of ensuring the smooth functioning of Parliament itself and peace, order and good government.

In this country the electors elect a government for six years after an election which is often bitterly fought and in recent times in conditions of turmoil and death. It is then the duty of both the opposition and the government, owed to the people, to ensure as far as possible, stable government. The Constitution has frozen party composition in the House for the duration of Parliament and made provision for vacation of seats where a Member of Parliament ceases by resignation, expulsion or otherwise to be a member of the recognized political party or independent group on whose nomination paper his name appeared at the time of his election to Parliament. It is not our function to examine the wisdom of these provisions the object of which, I believe, is to achieve stability of government. Group action, party discipline and the Whip system are

complimentary. If we declare these arrangements to be invalid we would be making the Constitution unworkable and as Sir John Donaldson MR observed in Waltham Forest case (Supra) " We should..... be criticising the system operating in Parliament itself."

This does not mean that a M.P. may never complain of interference with his rights by unlawful action or direction. As a matter of principle occasion for such complaint can arise ; but what those occasions are and how a M.P. may assert his rights need not be gone into here because each case will depend on its own facts and circumstances. The rights of a M.P. are not incompatible with his obligations to the party the object of which is to ensure cohesion and conjoint action ; in that sense he may be described as a cog in the party machine ; but he is not a life-less cog liable to be subjected to unlawful or capricious orders or directions without remedy.

Mr. de Silva strenuously contends that paragraph 5 of the Working Committee resolution contains a distinct ground of expulsion based on the mere signing of the resolution for the removal of the President. I cannot agree. That paragraph should be read in the light of paragraphs 7 and 11. Paragraph 5 states that the signing of the resolution together with several members of the opposition in Parliament is an act of betrayal of the party membership and the confidence placed by the people in the party and its leadership at successive elections. Paragraph 6 relates to the vote of confidence in the President. Paragraph 7 reads –

> " And Whereas the aforesaid eight members have signed the said Notice of Resolution without any prior intimation to the party or raising or discussing the same within the Party Organizations or the Government Parliamentary Group."

Paragraphs 8, 9 and 10 relate to the campaign against the Executive Presidential System. Paragraph 11 is as follows :–

> " And Whereas the aforesaid acts have all been done by the eight members without first raising the said issues within the Party Organizations or the Government Parliamentary Group as is required by the Party Constitution and conventions "

It would be seen that paragraphs 5 and 7 are narrative of the facts and the actual charge with reference to the resolution is contained in paragraph 11 which alone cites the provision which the petitioners have breached namely, the Party Constitution and Conventions. I am, therefore, satisfied that the ground of expulsion is the signing of the resolution without first raising it within the Party Organizations or the Government Parliamentary Group. This is put beyond doubt by the minutes of the Working Committee meeting R1 at which the 2nd respondent stated that at no time had any of these members informed the party that they intended moving through Parliament to remove the Leader of Party from the Office of President. Nor had they made any charges against the President.

For the above reasons, I hold that the grounds on which disciplinary action has been taken against the petitioners are valid. The question whether their expulsion is lawful and whether such punishment is justified in respect of all of them will be considered later in this judgment.

BREACH OF THE RULES OF NATURAL JUSTICE

I have now reached the most difficult question in these proceedings. Numerous decisions and authorities have been cited none of which is exactly in point because the combination of events with which we are here concerned is unique. This is no ordinary expulsion of members of a voluntary association the like of which is covered by precedent but an expulsion of the petitioners in the context of a resolution for removing the President from his Office coupled with a sustained public campaign by the petitioners against the Executive Presidential System in the course of which they have attacked the President and the Government. An attempt by the petitioners to obtain an injunction from the District Couirt to restrain the UNP from taking disciplinary action failed whereupon the party moved swiftly and expelled them.

In their petition they complain that they have been expelled without any charges being served on them and without a hearing in breach of the party guidelines for conducting disciplinary inquiries (P9) ; that the said expulsion is vitiated by bias in that the President who is the accuser and complainant presided over the deliberations of the Disciplinary Committee and the Working Committee ; and that the

expulsion is mala fide in that (a) no disciplinary proceedings have been taken against the other members of the party who signed the resolution and (b) it is calculated to prevent them from taking judicial proceedings in the District Court and Higher Courts for the vindication of their rights. During the argument, Mr. H. L. de Silva, P.C. submitted that according to the proceedings of the Working Committee (R1), the Disciplinary Committee which recommended action against the petitioners subsequently participated in the deliberations of the Working Committee which decided to expel the petitioners, which is further evidence of bias ; and that the expulsion was a move by the supporters of the President to scuttle the impeachment motion, which is further evidence of mala fides.

In their objections the respondents have averred that the actions and conduct of the petitioners were so manifestly and flagrantly in violation of party discipline and policy and the Constitution of the Party as to justify immediate expulsion. They further state that the guidelines P9 have been issued for use by panels appointed by the Working Committee for the purpose of conducting disciplinary inquiries where such inquiries become necessary and for the general guidance of such panels conducting investigations into matters of disputed facts arising upon complaints the truth of which has to verified. The respondents deny the alleged violation of the rules of natural justice and the allegation of mala fides.

Mr. de Silva cited many cases relating to social clubs, trade unions and voluntary associations in which decisions for the expulsion of members have been struck down for want of a fair hearing. He submitted that none of the exceptions to the audi alteram partem rule would apply to the petitioners. The rule that no man should be condemned without a fair hearing is too well settled and requires no discussion. As such it will be unnecessary to discuss the cases cited by learned Counsel. However, it would be relevant to quote a passage from the judgment in *John v. Rees* [77] cited by Mr. de Silva. This was a case in which a resolution of the Labour Party, inter alia, suspending the activities of the Pembrokcshire Constituency Labour Party was challenged. Megarry J. quoting from his own judgment in *Fountaine v. Chesterton* (unreported) said (p. 1332) –

" 'The ideas of natural justice' said Iredell J. 'are regulated by no fixed standard ; the ablest and the purest men have differed on the subject' : *Calder v. Bull* [113]. In *Ridge v. Baldwin* [114] Lord Hodson referred to a 'certain vagueness' in the term but rejected the view that because the requirements of natural justice depended upon the circumstances of the case, this made natural justice so vague as to be inapplicable. He added : 'no one, I think, disputes that three features of natural justice stand out – (1) the right to be heard by an unbiased tribunal ; (2) the right to have notice of charges of misconduct ; (3) the right to be heard in answer to those charges'. I do not think I shall go far wrong if I regard ..... these three features as constituting in all ordinary circumstances an irreducible minimum of the requirements of natural justice.....".

On the question whether a case is one in which the principles of natural justice apply Megarry J. said in *Gaiman v. National Association for Mental Health* [86]. " It may be that there is no simple test, but that there is a tendancy for the Court to apply the principles to all powers of decision unless the circumstances suffice to exclude them."

AUDI ALTERAM PARTEM

Mr. Choksy submits the following propositions :

1. All the decisions cited by Mr. de Silva in which the Court has set aside decisions for the failure to give a hearing are cases where there were disputed questions of fact. In each such case the petitioner placed before Court or indicated additional relevant facts which were not known to the tribunal and, which he could have placed before the tribunal had he been given a hearing.

2. The right to a hearing is not an inveterate rule and depends on the facts and circumstances of the case and the grounds on which disciplinary action has been taken.

3. If the matter which the petitioner says he could have placed before the tribunal for consideration is a question of law or interpretation of statute or a rule or contract, all such matters

are questions which the Court must decide. Therefore, the lack of hearing does not vitiate the decision because the Court is in a position to decide it.

Mr. Choksy referred to the following cases in support of the proposition at (1) above.

Innes Wylie (44)
Queen v. Saddler's Company ex p. Dinsdale (50)
Fisher v. Keane (46)
Labouchere v. Earl of Wharancliffe (47)
D'Arcy v. Adamson (52)
Graham v. Sinclair (53)
Lee v. Showmen's Guild (40)
Annamunthodo v. Oilfield Workers Trade Union (42)
Taylor v. National Union of Seamen (41)

I have examined these cases and the other cases cited by Mr. de Silva and find that Mr. Choksy's proposition is justified.
Counsel then proceeded to make submissions which may be summarised thus –

(a) that a lack of hearing will not vitiate the expulsion because–
  (i) a hearing was a useless formality ;
  (ii) the petitioner had no legitimate expectation of a hearing;
  (iii) the Working Committee was under a duty to act speedily in the interest of the party and was not fettered by natural justice in taking disciplinary action against the petitioners.

(b) that in any event the issues involved being questions of law resting on admitted facts, the Supreme Court will decide those issues in the exercise of its jurisdiction under the proviso to Article 99 (13) (a) of the Constitution. This would adequately compensate for the lack of a hearing by the Working Committee.

Before I consider the above submissions, it would be appropriate to consider the nature and scope of our jurisdiction under the proviso to Article 99 (13) (a) and the nature of the right invoked by the petitioners. In terms of Article 99 (13) (a) a Member of Parliament does not vacate his seat until after the expiry of one month from

the date of his ceasing to be a member of the political party to which he belongs, by reason of his expulsion from the party. In this context, I think, the word 'ceasing' connotes de facto and not de jure cessation of the membership of his party. He, therefore, continues to retain his status as M.P. on behalf of his party for the prescribed period notwithstanding the expulsion. If he fails to apply to this Court within one month from the expulsion, he vacates his seat. If he applies and the Court determines the expulsion to be invalid the seat does not become vacant in which event he would continue to hold office without a break either in his status as a M.P. or as a member of his party. If, however, the Court determines the expulsion to be valid, then, the seat becomes vacant but from the date of the determination, and not earlier.

The right of a M.P. to relief under Article 99 (13) (a) is a legal right and forms part of his constitutional rights as a M.P.. If his complaint is that he has been expelled from the 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 furtherence of the public good the need for which should be beyond doubt. As Megarry J. said in *Fountaine v. Chesterton* (Supra) "..... if there is any doubt, the applicability of the principles of natural justice will be given the benefit of that doubt " (cited by Megarry J. in *John v. Rees* and the expulsion will be struck down.

Rule 8(3) of the UNP Constitution inter alia confers on the NEC the power to take disciplinary action against any member " in a manner suitable in the circumstances of each case " and to impose appropriate punishment. In terms of the delegation R2, the power is exercised by the Working Committee. The rule permits the tribunal to adopt the procedure which is appropriate to each case ; but natural justice cannot be excluded in determining such procedure. It is evident from the party guidelines for the conduct of disciplinary inquiries (P9) that the UNP itself had understood the need to conform to the rules of natural justice. The party cannot, even if it wished to, stipulate for a power to condemn a man unheard *Lee v. Showmen's Guild* [40].

It is common ground that the petitioners have been expelled without informing them of the charge or giving them an opportunity of being heard. The question then is, can such a procedure be justified? Mr. Choksy addressed us at length on this question. He relied on certain grounds of justification based on the subject matter of the proceedings. He also submitted that in the circumstances of this case the hearing by this Court is in substance the right to antecedent hearing and hence the petitioners cannot seek relief on the ground that the Working Committee had not given them a hearing.

In *R. v. Secretary of State for Environment ex p. Brent London Borough Council* [79] Ackner LJ said –

> " It is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as to their scope and extent. Everything depends on the subject matter."

The Court held that the Minister had acted wrongly in reducing Brent's entitlement to a grant without giving them a hearing. The Court declined to hold that had a hearing been given the same decision would have been inevitable. In any event the Court was not prepared in the particular circumstances of the case to say that a hearing would have been a useless formality. The test to be applied in such cases " is not whether there has been a breach of the rules of natural justice but whether the procedure followed was unfair to the applicant. If it was unfair, then it cannot be argued that the decision should not be struck down on the ground that it must have been the same ". 'Administrative Law' David Foulkes 7th Ed. 302.

Glynn v. Keele University [65] illustrates how the Court's approach is affected by the subject matter. The Vice Chancellor found an undergraduate guilty of being seen naked in the campus with other students and fined him 510/- and excluded him from residence on the campus for the remaining part of the academic year. No hearing was given. The Court held that he had been denied natural justice but refused relief exercising its discretion against the grant of an injunction. The student did not deny his involvement in the incident. The Court observed that no question of fact was involved, that the punishment on him was a proper one and he had suffered no injustice despite the loss of an opportunity to mitigate the offence.

In the instant case, if we hold that natural justice has been denied, we have no discretion to deny relief, unless we can do so on the analogy of the Common Law principle applicable to actions that the Court does not act in vain (*Malloch v. Aberdeen Corporation* [84]. The remedy here being a constitutional right, I doubt whether this Court can exercise a discretion in granting relief and hence prefer to decide this case on the assumption that there is no such discretion.

Malloch's case (Supra) concerned a teacher who was dismissed without a hearing. The House of Lords held that even though his claims were those of strict legal entitlement relating to the validity or the interpretation of the regulations in terms of which he was dismissed, he had an arguable case and hence the requirement of a hearing was not a useless formality. Prof. Wade (Administrative Law 6th Ed. p. 535) puts it thus –

> " ..... in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified ".

Refering to this approach Lord Denning *(Cinnamond v. British Airports Authority* [83] said –

> " But it only applies when there is a legitimate expectation of being heard. In cases where there is no legitimate expectation there is no call for a hearing ".

Cinnamond's case relates to six mini-cab drivers. They had been prosecuted on numerous occasions for loitering at the Airport and touting for passengers. They persistently refused to pay fines and continued to loiter and tout for fares. The Airport Authority acting in the exercise of statutory power prohibited them access to the Airport until further notice. It was held that there was no breach of the rules of natural justice because they had no legitimate expectation of a hearing. Lord Denning observed that if they were ready to comply with the rules they could have made representations immediately on receiving the prohibition ; but they did not do so and concluded thus :

" The simple duty of the Airport Authority was to act fairly and reasonably. It seems to me that it has acted fairly and reasonably ".

Shaw LJ observed that in view of the long history of contraventions at the Airport the only way of dealing with the situation was by excluding them altogether.

I shall now consider a case involving the expulsion of members of an association where the Court found that the body exercising that power was under a duty to act with great speed and was not fettered by the rules of natural justice. *Gaiman v. National Association for Mental Health* [86]. The association was a company limited by guarantee. Some of its members were also members of the church of Scientology who did not believe in psychiatry for curing mental patients. For several years, there was a state of hostility between the Scientologists and the Association. In their campaign the Scientologists published articles and held demonstrations. They described the psyshiatrists as brutal, a terror, involved in personal gain, intolerant and fascist ; one of them was described as the new Hitler in England ; psychiatrist clinics were described as " Death Camps." The Scientologists then made a bid for power in the Association, to make their voice heard within the Association and to " make a splash." On 7th November they submitted nomination papers for election to office at an Annual General Meeting scheduled for the 12th of that month. On the 10th the Council decided to terminate the membership of 302 members " known or reasonably suspected of being Scientologists " by requesting them to resign under Article 7(B) whereupon subject to a right of appeal they ceased to be members of the Association. They sought declarations and injunctions against the expulsion.

Megarry J. said that he was not concerned with the merits of the views held by psychiatrists or scientologists and added –

" I am concerned with an entirely different and much narrower question, namely, the right of the Council of the Association to use Article 7(B) to exclude from the Association those who are known or reasonably suspected of being Scientologists. It is beyond question that Scientologists have for long been attacking the Association in a variety of ways. The attacks have been

virulent, and like the sentiments, the language, I think, speaks for itself. I need say no more about it than that much of it cannot be described as moderate and reasoned argument designed to convert those who hold what are conceived to be erroneous views " (p. 374).

He held that, in the circumstances, Article 7 (B) excludes natural justice ; the Council was under a duty to exercise their powers in what they bona fide believe to be in the interest of the Corporation ; this includes a duty to act with great speed unfettered by natural justice. He observed that a member had no absolute right of membership but that it was subject to bona fide termination. If he were wrong, in that view he thought that the injunctions should be refused as a matter of discretion.

Mr. Choksy's final submission on this part of the case relates to the possibility of excluding the need for a hearing, in limited cases, where there is statutory provision for subsequent review. The proposition is that a statutory right for an administrative appeal or even full judicial review on the merits is sufficient to negative the implied duty to hear before the original decision is made, provided that there is no serious detriment to the person affected or there is also a paramount need for prompt action ; this is not meant to be adopted as a general rule ; but if in particular the initial decision is provisional in the sense that it does not take effect until the expiry of a prescribed period for objections, the opportunity thus afforded to an aggrived person is in substance a right to an antecedent hearing. De Smith's Judicial Review of Administrative Action 4th Ed. 193–194.

Mr. de Silva contends that this Court should not lightly assume that hearing was a useless formality or speculate on how the Working Committee might have acted if they heard the petitioners ; and that if the respondents acted fairly they would not have resorted to summary expulsion of the petitioners. He urged us to bear in mind that by reason of the procedure adopted, the petitioners have been deprived of an irreplaceable right. He cited the following passage from *John v. Rees* [77] (1969) 2 WLR 1294, 1335 Megarry J. said :

"..... the path of the law is strewn with examples of open and shut cases which, somehow, were not ; of answerable charges which, in any event, were completely answered ; of inexplicable

conduct which was fully explained ; of fixed and unalterable determinations that, by discussions, suffered a change."

I appreciate that it is not possible to come to a finding on the contentions advanced before us on a piece-meal approach with reference to this authority or the other. In my view our decision rests on an application of more then one principle, cumulatively, to the facts and circumstances of this case bearing also in mind the legal safeguards to which the petitioners are entitled. In this respect, Mr. Choksy drew our attention to the averments contained in the petition and contended that all the grounds of challenge to the expulsion are legal grounds based on the provisions of the Constitution or statute law and the intepretation of the UNP Constitution and the determination of the contractual obligations of the petitioners to the party ; that the basic facts of signing the resolution and conducting a campaign against the Executive Presidential System are admitted ; that their expulsion has not taken effect and its validity is yet to be decided by this Court ; and that the conduct of the petitioners established by the evidence including the documentary evidence before this Court completely justifies the decision to expel them from the party without a hearing. This brings me to an examination of the evidence relating to the conduct of the petitioners.

The Speaker's communication of the notice of the resolution to the President on 28.08.91 was the beginning of a serious crisis in the government. In R6, the Leader of the Opposition is reported to have told the press that she had secret talks with UNP M.P.s over a period of time about the resolution ; petitioners deny this and hence R6 cannot be held against them even if they had failed to publish a contradiction thereof in the press. However, the resolution itself could not have come about suddenly without some secret planning by the petitioners while they remained as fully committed members of the party. Even after the resolution had been delivered to the Speaker, the petitioners Nos. 5 and 8 were secretive and pretended to join the other members of the Cabinet in passing a vote of confidence in the President. No explanation acceptable to this Court has been adduced justifying such conduct and I agree with Mr. Choksy that these two petitioners are thereby guilty of gross misconduct. The two Ministers then resigned from the Cabinet. The petitioners Nos. 6 and 7 followed suit having resigned from the posts of State Minister

and Project Minister respectively. Thereafter all the petitioners launched a joint public campaign.

R3A to R3G and R4A to R4L clearly show the campaign carried on between 28.08.91 and 06.09.91, prior to the impugned expulsion. As stated earlier in this judgment, during this period the petitioners not only campaigned against the Executive Presidential System but also discussed in public the various allegations contained in the resolution against the President. There is no constitutional provision which permits such a procedure. In America, The House Judiciary Committee recommends impeachment by the House and trial by the Senate on charges supported by " clear and convincing " evidence. 'American Constitutional Law' 2nd Ed. Laurence H. Tribe p. 292. Under our law the proper procedure is for Parliament to first pass the resolution by a two third majority after which the Speaker refers it to this Court for inquiry and report. In the circumstances, the conduct of the petitioners including senior Parliamentarians in disclosing in public the serious allegations contained in the resolution cannot be construed as being bona fide, and gives credence to the allegation that they used the resolution as a cover to cause insult and injury to the character, integrity and ability of the Leader of the Party in his capacity as President of the country. Such contumacious conduct constitutes indiscipline in the party unrelated to the exercise of constitutional rights. One does not look into the Party Constitution to see whether it is covered by express provision.

There were daily Press Conferences conducted by the petitioners led by petitioners Nos. 4, 5 and 8. Some of them have been attended by all the petitioners. There was also regular statements issued to the media. Almost daily they assured the public that they had 47 UNP M.P.s with them. On 31.08.91 at a news conference attended by all the petitioners, petitioner No. 4 spoke of the " degeneration of the UNP and democracy " while the petitioner No. 8 charged that the telephones of Ministers were being unlawfully tapped by the government (R3F) ; on the same day the petitioner No. 8 alleged that the President was suffering from " dictatorship mania " and exhorted the people to save democracy (R4B) ; on 01.09.91 the petitioner No. 4 in a media statement said that the President was running a " one man show " (an allegation which has been repeated regularly) and at a news conference the petitioners Nos. 5 and 8

compared the President to the Emperor without cloths who wished every-body else to say that he was in fine garments, meaning that the President lived on flattery ; the petitioner No. 4 referred to the " autocratic dictatorial " rule under Premadasa (R3A, R3B) ; on 02.09.91 when the petitioner No.8 visited the Education Ministry after resignation, he told the officials that the President was undermining the Ministers using Secretaries as spies (R4E) ; on 03.09.91 there was a news conference at which the petitioner No. 4 alleged that the IPKF had been sent back to placate the LTTE after giving arms and money to the LTTE to attack the IPKF ; also that when there is a war there is a grand Gam Udawa Celebration ; the petitioner No. 5 suggested that the government encouraged gambling and that Cabinet Ministers had been close associates of Jo Sim and displayed photographs said to be of some Cabinet Ministers posing with Jo Sim (R3C and R4G) ; on 05.09.91 the petitioner No. 4 made a speech at a temple religious ceremony and said that the President pretended to govern justly (R4L).

As Megarry J. observed in Gaiman's case (Supra) I am myself not concerned with " the merits of the views " held by the UNP and the petitioners, (described in the Press as "rebels"). I am concerned with the right of the Working Committee to have proceeded against the petitioners without a hearing. As in Gaiman's case here too the attacks have been " virulent " and " much of it cannot be described as being moderate and reasoned argument designed to convert those who hold what are conceived to be erroneous views." Mr. Choksy submitted that in Gaiman's case the Scientologists had been making representations for several years ; here they launched a campaign without any prior discussion within the party. I would add that in Gaiman's case there was no threat to stable government in the country; nor was there any campaign which was likely to confuse or inflame the public mind against the Head of a State, the government and the party in power. The interests involved in that case were those of the Mental Health Association whereas this case involves the interests of a party which has been voted into power by the electors and above all the interests of the public who are often the victims of such indisciplined controversy.

Well before the impugned expulsion, 116 UNP M.P.s had informed the speaker that they would not support the resolution (R15) and expressed confidence in the President (R16). Some of them

complained that their signatures had been obtained on the notice of resolution by deceipt and misrepresentation. The petitioners allege that undue influence had been brought to bear on M.P.s to prevent them from voting for the resolution. I am not concerned with the merits of these allegations. What is relevant is that by 03.09.91 it was known that the division in the party was 8 against 116. Undaunted by it, the petitioners had informed the media that they would hold public meetings throughout the country commencing on 05.09.91 (R3C–R3F).

On 05.09.91 the petitioners filed actions in the District Court praying, inter alia, for an injunction to restrain the Working Committee and/or the NEC from taking disciplinary action against them as members of the party (P4). Mr. Choksy submits that thereby they hoped to tie the hands of the party and be free to continue with their campaign unfettered by disciplinary action. The District Court declined relief whereupon the Working Committee expelled them. I am satisfied that the Working Committee, acting in the interests of the party, had no choice but to act with speed and take disciplinary action against the petitioners without giving them a hearing. From all the circumstances, it does not appear that the petitioners had any serious intention of appearing before the Working Committee or the NEC for the purpose of explaining their conduct. On the other hand their object was to legally restrain those bodies pending a judicial determination of the dispute. I do not mean to blame them for seeking such relief. The point I make is that if the petitioners themselves were not prepared to submit to the party councils, then, there is no force in their complaint that the Working Committee had failed to give them a hearing. I hold that the Working Committee acted fairly and reasonably in taking disciplinary proceedings against the petitioners in the way it did.

I am also of the view that the petitioners' rights were not materially affected by the order of expulsion. I have earlier explained the state of their rights pending the determination of this Court. All the issues here relate to legal matters arising upon admitted facts. In the circumstances, the subsequent hearing by this Court is in substance the right to an antecedent hearing. Mr. de Silva submitted that had a hearing been given, the petitioners could have explained to the Working Committee why they failed to first raise the issues before the Party Organizations ; their explanation to this Court is that they

were not free to discuss matters within the party ; but this is bald statement and I see no injustice caused to the petitioners in being deprived of an opportunity to give an explanation before the working Committee, in the particular circumstances of this case. I hold that there has been no violation of the rules of natural justice.

BIAS AND MALA FIDES

There is a wealth of authority on the traditional concept of 'bias'; as such it is unnecessary to discuss the many decisions cited by Counsel. Suffice it to observe that these decisions relate to Courts and other tribunals exercising judicial or quasi judicial power examples of the latter being licensing justices in local bodies and authorities in public institutions or trade unions vested with quasi judicial power. The situations in which 'bias' arises may be summed up as follows:–

(a) Licensing justices : bias results where particular justices having functioned as a Committee thereafter display an obvious interest in the making of the final decision e.g. by retaining Counsel to oppose the application on their behalf. They also either sit as Judges or are present with the Judges at the final hearing.

(b) The presence of an interested person with the tribunal e.g. accuser, the person who made the original decision coming up for consideration by the tribunal or the Solicitor who conducted the case. Such situations may arise in connection with a dismissal, suspension of office or other punishment of a statutory employee or the removal of the authority to engage in a trade e.g. supplying milk to a statutory board.

(c) The Judge having some interest or connection with a party or the subject matter which affects his impartiality or detachment. Examples of orders vitiated by such bias are a conviction of an accused by a Court or a fair rent order in respect of a house made by the Rent Assessment Committee.

The two broad tests of 'bias' are (a) the real likelihood of bias (often arising by a breach of the rule 'nemo judex in causa sua' and (b) reasonable suspicion of bias (arising by a breach of the principle 'Justice should manifestly be seen to be done'). Lord Widgery CJ said–

" Those two tests are often overlapping, and it may be that one is appropriate to one situation and another is appropriate to another situation."

R. v. Altrincham Justices ex p Pennington [106].

Mr. de Silva sees no room for relaxing the above rules in their application to the case before us and submits that the decision of the Working Committee is vitiated by reason of the presence of the President who is the accuser and the participation of the Disciplinary Committee in the final decision. Mr. Choksy submits that these rules cannot be generally applied to all quasi judicial bodies with the same rigour and that a distinction should be made between professional disciplinary tribunals which bear a closer resemblance to Courts and other bodies. In *R. v. Leicestershire Fire Authority ex p Thompson* [100] Griffiths J. said –

" Clearly, when one is dealing with a quasi judicial body, there has to be some degree of flexibility and there may be exceptional circumstances in which it will not be right to apply the rule in its full rigour."

There are certain forms of conduct which do not necessarily constitute bias. Examples are (a) mere general interest in the object to be pursued by a tribunal e.g. in the case of a business association. (b) the interest which a tribunal may have in the discharge of its functions having regard to the object or purpose of the body e.g. the interest of the Medical Council in dealing with improper conduct in the profession. Judicial Review of Administrative Tribunals in South Africa L.A. Rose Innes 176, 177. S. A. de Smith (Judicial Review of Administrative Action 4th Ed.) refers to the element of personal hostility or friction which may form the history of the expulsion of a member of a voluntary association and states –

" The ground of expulsion may be opposition to the declared policies of the association. The rules of the association permit the committee to act, in a sense, as Judges in their own cause. The expelled member will not, therefore, succeed in having the decision set aside by the Courts merely by demonstrating that the committee were not, or were not likely to be, impartial towards him " (p. 264).

Dealing with special problems in the administration of internal discipline in certain bodies and associations de Smith observes that the decision makers can hardly insulate themselves from the general ethos of their organization ; they are likely to have firm views about their affairs and will often be familiar with the issues before they enter upon adjudication. He therefore suggests that the rule as to bias must be tempered with realism for instance by requiring evidence of actual bias rather than mere likelihood of bias before a decision is set aside by a Court (p. 256).

Mr. Choksy submits that one of the objects of the UNP under Rule 4(a) of its Constitution is to gain power at elections ; that this includes remaining in power for carrying out its programme of work ; and that the interest for maintaining cohesion in the party and the interest in party policy including the continuance of the Executive Presidential System is not bias ; the members of the Party Councils including the 2nd respondent are entitled to such interests ; that there was nothing wrong in the members of the Disciplinary Committee in participating in the deliberations of the Working Committee ; that at the meetings they did not go into the merits of the resolution but expelled the petitioners on account their actions without first raising the issues within the party ; and that the presence of the President without participation does not violate the decision of the Working Committee.

On the alleged mala fides, Mr. Choksy submits that there was nothing wrong in taking proceedings against the petitioners soon after the order of the District Judge as it was necessary to act urgently in the interest of the party and to prevent confusion which the petitioners sought to create in the country in breach of their party obligations. Replying to the complaint that disciplinary action has been taken only against the petitioners, the respondents state that no action was necessary after joint action was taken by 116 M.P.s in R15 and R16. However, the allegations against three of them have been referred to the Disciplinary Committee for consideration and recommendation to the Working Committee.

Having considered the submissions of Counsel for the parties in the light of authorities and the evidence, I hold that the decision of the Working Committee (P1A) is not vitiated by bias or mala fides.

EXPULSION; IS IT WARRANTED?

Mr. Choksy submits that the conduct of the petitioners subsequent to their expulsion confirms the view that their conduct prior to that constitutes gross misconduct. In the statement of facts, I have referred to the fact that as from 10.09.91 they proceeded to hold public meetings in the major towns in the country. I shall refer to some of these meetings for another purpose. On the question of the appropriateness of the expulsion, I am of the view that it is justified solely on the ground of their conduct prior to the expulsion.

I have indicated earlier that the duty of the party should be construed not in the narrow sense of its political interests but in the context of its larger duty to the people as their repository of their mandate to ensure stable government in the country irrespective of any differences of opinion which may exist in a democratic set up. It is the people who have to bear brunt of all upheavals, economic, social and political. Left to themselves they are perhaps content to await the next election to resolve issues such as the Executive Presidential System. Even if members of the party wish to raise such issues prematurely they should do so peacefully as has been in fact done when the Sri Lanka Freedom Party met the President in 1989 (P16) and subsequently in the deliberations of the All Party Conference. These petitioners have engaged the public on the issues in breach of party obligations and in a manner likely to disrupt normalcy in the country. There is nothing to mitigate their conduct and the order of expulsion is logical and justified. It seems to me that the petitioners are attempting to do the impossible i.e. to revolt against the party and the government as non members may do and yet to retain their seats as M.P. s under the party label. That was possible prior to 1978 when members were free to cross the floor but not under the present Constitution. On the facts of this case, I am of the view that the remedy of expulsion befits the mischief unleashed by the petitioners.

The evidence shows that all the petitioners have acted conjointly each of them playing a vital role, whatever be its magnitude. All of them have attended joint press conferences and provided moral support to their leadership. None of them has urged any reason for treating him more leniently and I see none ; I hold that the expulsion of each petitioner is justified.

The subsequent conduct of the petitioners not only affirms their guilt but also establishes mala fides on their part. They have a constitutional remedy against their expulsion. Whilst availing of that remedy they went round the country. During their campaign they were generally not adducing facts or arguments but hurling accusations or insults.

As a meeting on 10.09.91 the petitioner No. 5 said that they had brought down the President from his throne to the steps of the old Parliament (R10C). On 22.09.91 the petitioner No. 4 alleged that the LTTE had been given anti aircraft guns without Cabinet sanction (R10G). On 29.09.91 the same petitioners compared the President to 'Bokassa' said to be a dictator in Central Africa (R10I). On 27.10.91 he said that the UNP is shattered and the country is facing a terror worse than the JVP (R20). At a meeting on 29.10.91 the petitioner No. 5 announced the formation of a new party (R20A).

In their petition, the petitioners made serious allegations of a personal nature against the District Judge of Colombo arising from the judicial order (P6) whereby the petitioners' applications for injunctive relief were refused. At the hearing, this Court pointed out to the fact that these are not allegations within our purview ; also that the District Judge is not a party to these proceedings and hence not in a position to defend himself. Having consulted the petitioner, Mr. de Silva very properly agreed to withdraw these allegations but without prejudice to the position taken by the petitioners. I agree with the order proposed by my brother Fernando J. for expunging the offending passages in the averments from these proceedings.

CONCLUSION

For the foregoing reasons, I determine that the expulsion of each of the eight petitioners in these applications (Special) Nos. 4–11/91 was valid. In the result I dismiss their applications. These proceedings have raised constitutional questions of public or general importance for the resolution of which the parties have contributed. In the circumstances, I make no order as to costs ; each party will bear his costs.

WADUGODAPITIYA J.

I have had the benefit of reading the judgments of my brothers Mark Fernando J. and Kulatunga J. They have narrated in quite some detail, the facts pertaining to these eight applications and the events that led up to the filing of these applications. In both judgments the narration is comprehensive and accurate, and I must say that I have nothing to add.

I have also considered very carefully, the reasoning and the conclusions in both judgments and would agree with those of my brother Kulatunga J. In the result, I would determine that, upon a consideration of all the material presented before us, the expulsion of the petitioners S.C. (Special) Nos : 4/91, 5/91, 6/91, 7/91, 8/91, 9/91, 10/91 and 11/91 was valid. I accordingly dismiss all eight applications.

There is no other matter that needs to be mentioned. That is the fact that all eight petitioners referred to above made very serious allegations in their petitions against the District Judge of Colombo in connection with the unsuccessful actions filed in the District Court of Colombo on 5.9.91. At the hearing, Learned President's Counsel appearing for the petitioners was informed by Court that the allegations of partiality made by the petitioners against the District Judge of Colombo were obviously irrelevant to these proceedings ; that this Court is not called upon to make a determination in that respect, and that, in any event, the District Judge of Colombo has not been made a party to these proceedings. After consulting the petitioners Learned President's Counsel agreed to withdraw the offending passages in the pleadings without prejudice to the rights of the petitioners to persue the matter elsewhere. I am in entire agreement with what has been stated on this matter by my brothers Mark Fernando J. and Kulatunga J. and would myself direct the Registrar to expunge the offending passages from the record.

I make no order as to costs. Each party will bear his own costs.

Expulsion of all eight petitioners upheld.