

ATUKORALE AND OTHERS
V.
T.P.F. DE SILVA - I.G.P. AND OTHERS

SUPREME COURT.
AMERASINGHE, J.
DHEERARATNE, J. AND
WADUGODAPITIYA, J.
S.C. APPLICATION NO. 137/95(F/R).
29 FEBRUARY AND 02 MAY 1996.

Fundamental Rights - Constitution Articles 12(1), 12(2), 14(1) (a) and 14(1) (b) - Police Ordinance sections 77(1), 77(3), 78(1) - Refusal to allow U.N.P. May Day rally at the Kandy Central Bus Stand - Discrimination.

The Petitioners' request to use the Kandy Bus Stand which means the Central Bus Stand, and for a procession to be conducted from the Mahaiyawa Playground along Trinco Street, Ward Street, Clock Tower and upto the venue of the meeting for their U.N.P. May Day rally was refused by the 1st Respondent on the ground of security, logistical and administrative and imperative constraints. The 1st Respondent failed to explain what was implied by the grounds stated. The 1st Respondent offered the Colombo Galle Face Green and the Bogambara Car Park as alternative venues which the Petitioners refused to accept. At the same time, permission to four other political parties which are constituent parties of the Peoples Alliance (PA) to hold processions and meetings on May Day of the same year was granted, the Ceylon Workers Congress led by S. Thondaman, Minister of Rural Development in Bandarawela, the Ceylon National Workers Congress led by Mr. M.S. Sellasamy Chairman, Silk and Allied Products Authority in Hatton, the Kandurata Janatha Peramuna led by Mr. P. Chandrasekaram, Deputy Minister of Housing and Public Utilities in Nuwara-Eliya and the Red Flag Organisation of the Communist Party in Matara. This was alleged to be discriminative of the U.N.P. which was the major opposition party to the P.A.

The 1st Respondent however offered the "parking area" of the Bogambara Grounds (not the Bogambara Grounds) but he was silent as to why the security situation and logistical problems had no application to the parking area of the Bogambara Grounds. Further it appeared that 1st Respondent was saying that the governing criteria in permitting the four other parties the use of Bandarawela, Hatton, Nuwara-Eliya and Matara were most certainly not security or logistical or administrative imperatives, but as "they had done so for a long period of time and these celebrations had a virtual geographical base over the years, whereas the major political parties with larger

followings always had their May Day celebrations in the "City" (presumably Colombo).

Held:

(1) In terms of section 77(1) of the Police Ordinance what is required is that at least six hours notice must be given of a proposed procession. Contrary to what 1st Respondent says the law does not require any formal application to be made to anyone. And in fact an application or what amounts to it had been made.

(2) In terms of section 77(3) of the Police Ordinance the 1st Respondent could have prohibited the procession "in the interests of the preservation of public order" but no such ground was urged by the 1st Respondent.

(3) Section 78(1) of the Police Ordinance empowers the Police as occasion requires to direct the conduct of assemblies and processions in any public place and to prescribe the routes such processions should take. There is no occasion for the police to offer alternative venues for such meetings.

(4) There has been a violation of the Petitioners right to equality before the law (Article 12(1) of the Constitution) and they have been discriminated against on the ground of their political opinion (Article 12(2) of the Constitution).

(5) Inasmuch as the Petitioners were unreasonably and without valid grounds refused permission to hold their meeting and procession in Kandy, thus preventing the petitioners from holding their May Day meeting and procession on 1.5.95, there has thus been a violation of the Petitioners' entitlement to the freedom of speech and expression (Article 14(1) (a) and also a violation of their entitlement to the freedom of peaceful assembly (Article 14(1) (b) of the Constitution).

APPLICATION for relief for violation of Fundamental Rights.

L.C. Seneviratne P.C. with Paul Perera P.C. , Daya Pelpola, D.H.N. Jayamaha, and Ronald Perera for the Petitioners.

Upawansa Yapa P.C. Additional Solicitor-General with Miss. H. Jayasundera S.C. for the Respondents.

August 01, 1996.

WADUGODAPITIYA, J.

The 1st Petitioner in this case is, *inter alia*, the General Secretary of the United National Party (UNP) which is a recognised political party; the 2nd Petitioner is the General Secretary of the Jathika Sevaka Sangamaya (JSS); the 3rd Petitioner is the Administrative Secretary of the Lanka Jathika Estate Workers Union (LJEWU), and the 4th Petitioner is the Secretary of the National Public Services Trade Union Federation (NPSTUF).

They allege violations of fundamental rights enshrined in Articles 12(1), 12(2), 14(1) (a) and 14(1) (b) of the Constitution.

Leave to proceed has been granted to the petitioners as prayed for, but only in their capacities as persons and/or citizens of Sri Lanka.

The Petitioners state that the Working Committee of the United National Party (hereinafter referred to as the UNP) decided to hold its May Day Procession and Meeting for the year 1995 in Kandy, and that in consequence of such decision, the Coordinating Secretary to the Chairman of the UNP, by letter dated 17.3.95 (P1) invited the 3rd Respondent the Deputy Inspector General of Police, Kandy, to a meeting on 25.3.95 to discuss the necessary arrangements. The 3rd Respondent did not attend. Thereafter by letter dated 30.3.95(P2), addressed to the 1st Respondent, the Inspector General of Police, the Secretary of the U.N.P. Kandy District Organisation requested permission to hold the UNP May Day Celebration in Kandy. The letter also intimated to the 1st Respondent the fact that the large crowd which was expected would be proceeding to the venue of the meeting in processions. The exact details would be intimated later. By letter dated 3.4.95(P3), the 1st Petitioner informed the 1st Respondent that the venue for the 1995 UNP May Day celebrations was to be the Kandy Town Bus Stand and that the Kandy Municipal Council had unanimously decided to make the bus stand available for the said purpose. The 1st Petitioner wanted this fact conveyed to the 3rd Respondent and also the fact that he was applying for the necessary permit for the use of a loud speaker. On the same day, a second letter (P4) was sent by the 1st Petitioner to the 1st Respondent stating that a meeting of the UNP May Day Organisa-

tion Committee was scheduled for 8.4.95 at 10.00 a.m. and requesting the 1st Respondent to direct the 3rd Respondent or his representative to be present for the reason that "police participation and advice in relation to security arrangements and traffic arrangements" were important. The 1st Respondent replied by letter dated 5.4.95 (P5) referring to the application to hold the 1995 May Day Rally in Kandy and refusing permission stating that, "It is regretted that approval cannot be given to this application. As a matter of practice, over the years, with very few exceptions, May Day Rallies have been confined to the Colombo area for all political parties. The reasons are security, logistical, and administrative imperatives.

I shall be thankful therefore if this matter can be discussed with D.I.G. Colombo to arrange for a suitable venue for the UNP May Day Rally to be held in Colombo."

On 18.4.95, the 1st Respondent again wrote to the 1st Petitioner (letter P7) referring to his letter refusing permission (marked P5) and requesting that the holding of the May Day Rally in Colombo be discussed with the D.I.G., Colombo in order to finalise arrangements for the holding of the Rally in Colombo. On the following day (19.4.95) the Secretary (Legal) of the UNP replied to the 1st Respondent by letter marked P8 stating that in consequence of what transpired in the course of a debate in Parliament, the UNP was "going ahead with preparations for holding the May Day Celebrations, consisting of a meeting and procession in Kandy", and requesting an opportunity to discuss the details as early as possible.

In reply to P8, the 1st Respondent wrote to the 1st Petitioner on 20.4.95 (P9) stating: "It is possible to consider a reduced scale of May Day Celebrations, confined to only a public meeting, without demonstrations etc.. to be held in Kandy." This letter P9 further requests the 1st Petitioner to work out the details with the Senior Superintendent of Police, Kandy.

Thereafter, the 1st Respondent again wrote to the 1st Petitioner letter dated 25.4.95 (P10) referring to a meeting held that very morning attended by the 1st Petitioner, the 3rd Respondent, SSP Kandy, and SP Kandy. It appears that the 1st Respondent chaired the meeting.

The letter sets out that, "From the discussion we had today, it is clear that your specific application is for the following :-

1. a public meeting at the Kandy Bus Stand which means Central Bus Stand,
2. for a procession to be conducted from Mahaiyawa Playground, along Trinco Street, Ward Street, Clock Tower and the venue of the meeting."

The letter goes on to say that, "our position would be clearly, having regard to the above considerations (viz. the security situation and other logistical problems) to permit the holding of a public meeting on May Day at Bogambara Grounds in the parking area. A Municipal permit is available for this purpose. No Municipal Permit has been tendered in respect of the proposed meeting at Kandy Central Bus Stand I regret that no procession permit can be granted I would wish to inform you that a meeting for May Day to be held at Colombo Galle Face Green, with a procession to commence from Sugathadasa Stadium, proceeding on the route taken in earlier years could yet be offered, if you agree."

This letter P10, is the final communication by the 1st Respondent on the matter; the position according to which is as follows :-

- (i) that the "specific application" of the Petitioners was :
 - (a) to hold a public meeting at the Kandy Central Bus Stand, and
 - (b) to conduct a procession along the stated route;
- (ii) that permission for both these requests was refused by the 1st Respondent;
- (iii) that as an alternative the 1st Respondent would permit only the holding of a public meeting in the parking area at the Bogambara Grounds, for which purpose a Municipal permit was available (i.e. without a procession); and

(iv) that the 1st Respondent was still offering an alternative venue, viz: Galle Face Green, Colombo, with the procession, as in former years, commencing from the Sugathadasa Stadium.

The Petitioners have countered the several matters set out above in the following way :- Meeting the allegation of the lack of a Municipal Permit, the petitioners state that the Kandy Municipal Council after its unanimous decision on 31.3.95 (P11) had in fact given permission by its letter dated 4.4.95 (P12) for the use of the Kandy Bus Stand for the meeting. Secondly the Petitioners aver that there are no grounds to suggest that the security situation in Kandy was serious and state further that although the 1st Respondent offered Colombo as an alternate venue, the fact was that, at the relevant time a state of emergency had been declared in respect of Colombo, but not in respect of Kandy or any other part of the country. The Petitioners have produced marked P13(a) to P13 (i), copies of newspaper articles from 20.4.95 to 26.4.95, which speak of security alerts in Colombo and proposed plans of terrorists to attack May Day rallies in the city of Colombo. They also aver that the route for the UNP procession offered by the 1st Respondent was the selfsame one where a former President of Sri Lanka was assassinated by a terrorist bomb whilst leading the UNP May Day procession in 1993, and also, that in October 1994, the Presidential Candidate of the UNP was himself killed, also by a terrorist bomb at a spot not far away. They state therefore that, by all accounts, Kandy was a safer place than Colombo, and that in fact, fewer police officers would have been required to man the route in Kandy as proposed by them, than would be required to man the route in Colombo as suggested by the 1st Respondent.

The Petitioners next make the accusation that the 1st Respondent has in fact given permission to four other political parties, which are constituent parties of the Peoples Alliance, to hold processions and meetings on May Day of the same year, as follows :

(i) the Ceylon Workers Congress led by Mr. S.Thondaman, Minister of Rural Development - in Bandarawela;

(ii) the Ceylon National Workers Congress led by Mr. M.S. Sellasamy, Chairman, Silk and Allied Products Authority in Hatton;

(iii) the Kandurata Janatha Peramuna led by Mr. P. Chandrasekera, Deputy Minister of Housing and Public Utilities - in Nuwara Eliya, and

(iv) the Red Flag Organisation of the Communist Party - in Matara.

In conclusion, the Petitioners state that the order of the 1st Respondent contained in letter P10, referred to above, was arbitrary, capricious, malicious and discriminatory and was designed to prevent the petitioners and/or the UNP and its affiliated Trade Unions from exercising their legitimate political and fundamental rights.

Learned President's Counsel for the Petitioners strenuously urged that, although the 1st Respondent was constantly referring to security, logistical and administrative constraints and imperatives as reasons for refusing permission, he had nowhere explained as to what those words implied; nor has he given any indication of what they actually constituted in relation to the Petitioners' request, and that, therefore, this court had no opportunity of examining them and arriving at a decision in regard to their reasonableness or otherwise. Learned Counsel also urged, that the fact that others were given permission to hold their May Day processions and meetings in outstation towns like Bandarawela, Hatton, Nuwara Eliya and Matara as aforesaid, whilst the Petitioners were refused such permission in respect of Kandy, constituted a serious act of discrimination against the Petitioners.

Learned Counsel for the Petitioners further complains that by offering permission to use the car park of the Bogambara Grounds, Kandy for their May Day Rally, the 1st Respondent ensured that the UNP rally will not be held in Kandy, as he knew full well that such car park was wholly unsuitable for the purpose and would therefore be rejected as a possible venue.

The Petitioners say that as a result, the fundamental rights guaranteed to them under Articles 12(1), 12(2), 14(1)(a) and 14(1)(b) of the Constitution have been violated.

The 2nd Respondent has been added as a party to these proceedings as he made certain comments with reference to this matter in the

course of a debate in Parliament. Although the 2nd Respondent is the Deputy Minister of Defence, under whose purview the Police Department comes, he plays no part in either granting or refusing permission under the provisions of the Police Ordinance, for the holding of public processions. In any event he has filed an affidavit stating, *inter alia*, that the speech he made in Parliament was "for the purpose of inviting the Petitioners for further discussions on the question of the venue for the proposed 1995 UNP May Day Celebrations."

In these circumstances, Learned President's Counsel for the Petitioners did not press his case as against the 2nd Respondent, but strenuously urged that the 1st Respondent had been guilty of violating the fundamental rights of the Petitioners.

The 1st Respondent has filed a detailed affidavit replying to the several averments of the Petitioners, and the 3rd Respondent has followed suit with an affidavit generally supportive of that of the 1st Respondent.

The chief points urged by the 1st Respondent are :

- i) that no formal application was made by the UNP for permission;
- ii) that permission was refused for security, logistical and administrative imperatives;
- iii) that he (the 1st Respondent) offered the Petitioners the city of Colombo as an alternative venue to Kandy, for both the meeting and the procession;
- iv) that, in any event, he offered the Bogambara Grounds, Kandy, as an alternative venue to the Kandy Central Bus Stand, if such UNP meeting would be held on a reduced scale, confined only to a public meeting without demonstrations, and
- v) that the other four rallies were allowed to be held in Bandarawela, Hatton, Nuwara Eliya and Matara because they had acquired a virtual geographical base over the years.

It may be useful at this point to consider the provisions of the Police Ordinance (Cap.65) in terms of which the permission sought would be granted.

Section 77(1) states:

"No procession shall be taken out or held in any public place in any urban area, unless notice of such procession has, at least six hours before the time of the commencement of such procession, been given to the Officer-in-charge of the police station nearest to the place at which the procession is to commence.

Section 77(3) states:

"Notwithstanding anything in any other law, an officer of police of a rank not below the grade of Assistant Superintendent, if he considers it expedient so to do **in the interests of the preservation of public order**, may give directions (whether orally or in writing) prohibiting the taking out of any procession, or imposing upon the person or persons organising or taking part in the procession such conditions as appear to him to be necessary, including conditions prohibiting or restricting the display of flags, banners or emblems."

Section 78(1) states:

"Officers of Police not below the grade of Sub-Inspector may, as occasion requires, **direct the conduct of all assemblies and processions in any public place, prescribe the routes by which and the times at which such processions may pass**, and direct all crowds of twelve or more persons to disperse when they have reason to apprehend any breach of the peace"

It appears therefore that in terms of section 77(1) of the Police Ordinance, what is required is that at least six hours notice must be given of a proposed procession. Contrary to what the 1st Respondent says, the law does not require any "formal application" to be made to anyone. In any event, it seems evident that the several requests made by the Petitioners have been accepted and acknowledged by the 1st

Respondent as constituting an application and that the 1st Respondent has himself proceeded on that footing in dealing with the Petitioners. This is amply illustrated by the correspondence referred to above. Even in his letter to the Secretary, Ministry of Defence dated 31.3.95 produced by him marked 1R3, the 1st Respondent says, "I attach hereto an application made by the United National Party to hold their annual May Day Celebrations including the conduct of a procession at Kandy," "In any event, if the 1st Respondent felt that there was no compliance with any supposed legal requirement of a formal application, he had only to say so, instead of acting as he did and even going to the extent of offering an alternative venue. I feel therefore that not only is this a mere afterthought, but is a requirement imposed by the 1st Respondent which is not warranted by law.

Secondly, in terms of section 77(3), the 1st Respondent could have prohibited the procession "in the interests of the preservation of public order." No such ground is urged by the 1st Respondent for refusing permission. Instead, his position is that permission was refused for security, logistical and administrative imperatives. As submitted by learned President's Counsel for the Petitioners, no one knows what they are, and the 1st Respondent has made no attempt to either say what they are, or give any particulars of what they constitute or entail. On the contrary, in paragraph 19(c) of his affidavit, the 1st Respondent calls them "obvious security, logistical and administrative constraints." The Petitioners quite rightly say that it is the 1st Respondent who has full knowledge of what they are and it is upto him to give all necessary details to enable this court to determine whether there was sufficient material to justify the 1st Respondent's refusal. They further state that the only conclusion that can be arrived at from the 1st Respondent's failure to explain himself, is that his action was arbitrary, capricious and *mala fide*. The Petitioners add that the 1st Respondent's refusal to allow the procession on such grounds, *sans* explanation, amounted to his abusing his powers. In any event, it was in Colombo and not in Kandy that a state of emergency had been declared.

Thirdly, section 78(1) empowers the Police as occasion requires, to direct the conduct of assemblies and processions in any public place and to prescribe the routes such processions should take. There is no occasion for the police to offer alternate venues for such meetings.

This notwithstanding the 1st Respondent says that he offered the Petitioners an alternative venue, viz - Galle Face Green, Colombo, and also offered the former route used by the UNP commencing from Sugathadasa Stadium, for the procession. I have already dealt with the submissions of the Petitioners in this regard. The Petitioners' submit further that the 1st Respondent "cannot dictate to political parties where they should have their political rallies or meetings," nor suggest that they should hold them on a "reduced scale". They say that these suggestions were not done *bona fide* but with an ulterior motive. In any event, for some unexplained reason, the 1st Respondent says in his affidavit, "Considering the logistical, security and administrative constraints in relation to a full scale May Day rally in an area other than in Colombo as contemplated by the UNP, I was of the view that such an event, if held, anywhere else other than in the metropolis would pose a security threat particularly under the situation prevailing then in the country."

No substantiation of this is given by the 1st Respondent in the teeth of the Petitioners' position that Kandy was safer than Colombo.

Whilst on this point it may be enlightening to refer to letter marked 1R3 produced by the 1st Respondent himself. Letter 1R3 was written by the 1st Respondent to the Secretary, Ministry of Defence. The first paragraph of this letter has been referred to already. The second paragraph reads thus :

2. "**As a matter of policy** these festivities (i.e. May Day Celebrations) have been confined to Colombo. The reasons are security and logistics. Exceptions have been made rarely over the years. It is therefore necessary to have a **policy directive** for the conduct of May Day Festivities including processions. The regulation of their venue need to be determined.

3. An appropriate directive may please be issued."

This letter speaks for itself, and needless to say, did not attract a reply. Learned Counsel for the Petitioners merely submitted that 1R3 revealed the 1st Respondent's thinking.

Fourthly, the 1st Respondent pleads in his affidavit that as the Petitioners wanted Kandy as their venue, he offered them the Bogambara Grounds as an alternative to the Kandy Central Bus Stand to hold their meeting. This, as the Petitioners rightly point out, is not the truth. What the 1st Respondent offered by his letter P10, referred to above, was not the Bogambara Grounds but the "parking area" of the Bogambara Grounds. Further, the 1st Respondent says in his affidavit that this he did "having regard to the security situation and logistical problems." Besides there being no particulars of what these terms constitute, the 1st Respondent is silent as to why the "security situation and logistical problems" have no application to the parking area of the Bogambara Grounds. In any event, the Petitioners state that the car park was offered knowing that it will not be accepted.

Lastly, the 1st Respondent pleads that he did not discriminate against the Petitioners. In paragraph 19(e) of his affidavit he says :

"Specifically denying the allegation of discrimination, I emphatically state that at the meeting I had with the petitioners on 25.4.1995, I explained to them the position as regards the Ceylon Workers Congress, the Ceylon National Workers Congress, the Kandurata Janatha Peramuna and the Red Flag Organisation of the Communist Party and their being permitted to hold their May Day celebrations in the provinces, as they has done so for a long period of time and these celebrations had acquired a virtual geographical base over the years whilst the major political parties in the country which had a larger following had always had their May Day Celebrations in the city wherein the requisite security, logistical and administrative infrastructure was available. In the circumstances, I state that permitting these smaller parties to continue to have their May Day Celebrations in the provinces did not constitute unequal treatment of the Petitioners."

Going further, the 1st Respondent states in paragraph 21 of his affidavit :

"I categorically deny the averments that the Petitioners are similarly circumstanced as the Ceylon Workers Congress, the Ceylon National Workers Congress, the Kandurata Janatha Peramuna and the Red Flag Organisation of the Communist Party."

Besides merely so stating, the 1st Respondent does not go on to explain why and how. The 1st Respondent does not explain where the dissimilarities, if any, lay. No facts or figures are given to substantiate his position. On the contrary it appears that "security, logistical and administrative imperatives" played no part in Bandarawela, Hatton, Nuwara Eliya and Matara. Whereas they were of paramount importance in Kandy. Further, what the 1st Respondent seems to say is that, whereas the governing criteria in refusing Kandy as the venue were security, logistical and administrative imperatives, the governing criteria in permitting the four other parties the use of Bandarawela, Hatton, Nuwara Eliya and Matara as venues were most certainly not security, or logistical or administrative imperatives, but, (i) as "they had done so for a long period of time" and (ii) as "these celebrations had acquired a virtual geographical base over the years," whereas the major political parties with larger followings always had their May Day Celebrations in the "city" (presumably Colombo).

By a strange process of reasoning the 1st Respondent states that in the circumstances, "permitting these smaller parties to continue to have their May Day Celebrations in the provinces did not constitute unequal treatment of the Petitioners."

It is not possible to agree with either the reasoning or the conclusion of the 1st Respondent. On the other hand, it is clear that there has been discrimination and unequal treatment. The Petitioners urge that the reason for such discrimination was political, inasmuch as the four parties which were given permission to hold their meetings and processions in the provinces were all constituent parties of the Peoples Alliance, whilst they (the Petitioners) belonged to the UNP which constituted the opposition.

Upon a careful consideration of all the facts of this case, I hold that there has been a violation of the Petitioners' right to equality before the law (Article 12(1) of the Constitution) and that they have been discriminated against on the ground of their political opinion (Article 12(2) of the Constitution).

I further hold that, inasmuch as the Petitioners were unreasonably and without valid grounds refused permission to hold their meeting and

procession in Kandy; thus preventing the petitioners from holding their May Day meeting and procession on 1.5.95, there has been a violation of the Petitioners entitlement to the freedom of speech and expression (Article 14(1) (a) and also a violation of their entitlement to the freedom of peaceful assembly (Article 14(1) (b) of the Constitution).

Since it appears that the 2nd and 3rd Respondents did not have a direct hand in the above violations, no findings are made against them. I however hold that the 1st Respondent is responsible for all the violations abovementioned.

I therefore hold and declare that the 1st Respondent has violated the fundamental rights of the Petitioners enshrined in Articles 12(1), 12(2), 14(1) (a) and 14(1) (b) of the Constitution, and accordingly quash the determination and/or order made by the 1st Respondent on 25.4.95 refusing the Petitioners permission to hold their 1995 May Day meeting and procession in Kandy as requested by them.

I also make order that each of the four Petitioners be paid a sum of Rs.5000/- as costs by the State.

AMERASINGHE, J. - I agree.

DHEERARATNE, J.- I agree.

Relief granted.