

FAROOK  
v.  
SIRIWARDENA, ELECTION OFFICER AND OTHERS

SUPREME COURT.  
AMERASINGHE, J.,  
KULATUNGA, J. AND  
WADUGODAPITIYA, J.  
S.C. APPEAL NO. 81/95  
C.A. APPLICATION NO. 826/94  
OCTOBER 5, 1995.

*Writ of Certiorari – Member of Local Authority – Vacation of office on expulsion from membership of recognized political party – Notice by Election Officer declaring vacancy – Local Authorities Elections Ordinance, Sections 10A and 65A (2).*

The appellant was a member of the Colombo Municipal Council. After calling for his explanation, the recognized Political Party to which he belonged expelled him from the membership of the Party by writing. A copy of the Communication addressed to the appellant was sent to the Election Officer who gazetted the requisite notice of vacancy in the membership of the Council, in terms of Section 10A (1) (a) of the Local Authorities Election Ordinance. Consequently, the recognized political Party nominated a new member in terms of Section 65A(2) of the Ordinance.

**Held:**

(1) There was no duty on the Election Officer to hold an inquiry before he published the vacancy in the Gazette.

(2) The failure to make the new member a party to the application is fatal to the validity of the application.

**APPEAL** from the judgment of the Court of Appeal.\*

*A. P. Niles* with *U. A. Mawjooth* for appellant.

*S. Sri Skandarajah, S.S.C.* for 1st respondent.

*M. J. Waffir* for 2nd respondent.

*N. R. G. Samarsinghe* for 4th respondent.

*Cur. adv. vult.*

October 05, 1995

**KULATUNGA, J.,**

This is an appeal from the judgment of the Court of Appeal dated 11.05.95. By that judgment, the Court of Appeal dismissed the application made by the appellant who had been a member of the Municipal Council, Colombo to quash a notice published by the 1st respondent (Election Officer for the Colombo, Municipal Council) declaring that a vacancy had arisen in the membership of the Council by reason of the cessation of the membership of the appellant in the Sri Lanka Muslim Congress (a recognized political party) to which he belonged.

Briefly, the facts are that on 13.07.94 the 2nd respondent who is the General Secretary of the Sri Lanka Muslim Congress, addressed a letter to the appellant calling upon him to show cause why he should not be expelled from the membership of the Party on the grounds set out in that letter which has been produced marked R1. It would appear that R1 was sent under registered cover to the appellant's address and has been returned undelivered with the remark "refused to accept". It was dispatched again by registered post on which occasion also, the letter was returned undelivered with the same remark. The relevant envelopes have been produced marked R2 and R3. Besides, there was a further effort by the Secretary to the Party on 28.08.94 to have a copy of the letter R1 communicated to the appellant. On that occasion, it has been

forwarded to the appellant through the Colombo Municipal Council. The covering letter of the Secretary of Council is marked R4. However, the appellant takes up the position that the fact of the said communication has not been proved by admissible evidence.

In the end, by his letter dated 14.09.94 – A2 signed by the 2nd respondent on behalf of the Party the appellant was informed that in view of his conduct and failure to respond to the charge sheet, he has been expelled from the membership of the Party. This communication (A2) was copied to the Election Officer – the 1st respondent whereupon the 1st respondent by his letter dated 20.10.94 addressed in terms of Section 10A(2) of the Local Authorities Elections Ordinance informed the appellant that upon the expiry of 21 days specified in that section, he would take steps to publish in the Gazette a notice declaring that a vacancy had arisen in the membership of the Council. The said letter has been produced marked 1R1. Next on 14.11.94 the 1st respondent made the requisite notice under Section 10A(1) (a) of the Ordinance – (1R2). It was then gazetted in the Gazette No. 8456 dated 15.11.94 – (1R3). At the same time, further action was taken by the 1st respondent by his letter dated 16.11.94 (R5) to call upon the 2nd respondent to nominate a member in place of the appellant. On 16.11.94, the 2nd respondent nominated one T. K. Azoor as the new member, in terms of Section 65A(2) of the Ordinance. The 2nd respondent by his letter dated 16.11.94 (R6) forwarded to the 1st respondent the nomination together with the requisite oaths under Article 157A and Article 165 of the Constitution, signed by the new member.

The submission of the appellant is that in the circumstance of this case, the 1st respondent had no power under Section 10A(1) (a) of the Ordinance to have published the notice declaring that a vacancy in the membership of the Municipal Council had arisen without first holding an inquiry as to whether the appellant had been validly removed. The question of the validity of the appellant's expulsion is presently before the District Court of Colombo, in D.C. Colombo case No. 4170/Spl, which the appellant has filed, challenging his removal from the membership of the Party.

We are of the opinion that whilst there may be circumstances e.g. where it is alleged that the letter of expulsion is a forgery or that it

was fraudulently procured in which event the Election Officer may come under a duty to make a decision regarding such allegation, in the circumstances of the case before us, there was no duty on the part of the 1st respondent to have acted otherwise than as he has done namely, to publish the vacancy in the Gazette.

There is another point, although it had not been previously raised namely, that T.K. Azoor who had been nominated by the Party as its new Member of the Municipal Council and whose rights are affected in these proceedings, had at no stage been made a party to the application made to the Court of Appeal. This itself is fatal to the validity of the application.

For the foregoing reasons, we see no reasons to interfere with the judgment of the Court of Appeal. We accordingly dismiss the appeal and affirm the judgment of the Court of Appeal, but without costs.

**AMERASINGHE, J.** – I agree.

**WADUGODAPITIYA, J.** – I agree

*Appeal dismissed.*

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