

FAROOK
v.
SIRIWARDENA (RETURNING OFFICER)

COURT OF APPEAL
ISMAIL, J.
C. A.826/94
MAY 04, 1995.

Local Authorities Elections Ordinance S. 27A (1) S. 28(2), S. 10(A) (1), (2), S. 10A (3) – Nomination Paper – Recognised Political Party – Election of Members to Local Authorities – Expulsion from Membership – Mala Fides – Natural Justice – Satisfied – Procedure followed – Duty cast on the Election Officer.

The Petitioner's name was included in the Nomination paper submitted by the Sri Lanka Muslim Congress, a recognised political party as a candidate for election as a member of the Colombo Municipal Council at the local elections held in 1991, in terms of S. 28(2) of the Local Authorities Elections Ordinance. The Petitioner was declared elected as a member of the Colombo Municipal Council.

Sometime later the General Secretary of the Party the 2nd Respondent informed the Petitioner with a copy to the Returning Officer – 1st Respondent, that he has been expelled from the Party. Upon receipt of this letter, the 1st Respondent gave the Petitioner notice by registered letter that in terms of S.10A (2) of the Local Authorities Elections Ordinance that he would be taking steps after the expiry of 21 days to publish a Notice in the Gazette declaring that he has vacated his office as a Member.

The Petitioner sought a Writ of Certiorari to quash the decision of the 1st Respondent.

Held:

S. 10(a) 3 of the Local Authorities Elections Ordinance provides that whenever any person whose name has been included in the Nomination paper of a recognised Party ceases to be a member of such Party, the Secretary of the Party should furnish such information to the relevant Elections Officer.

S. 10(a) 1 states that, if the Elections Officer is satisfied that any person whose name has been included as a candidate for election as a member of that Local Authority in the Nomination Paper of a recognised Political Party, has ceased to be a member of that Party, the Elections Officer should, after Notice to such person and such recognised Political Party and after the expiry of 21 days from the date of such Notice published in the gazette declare that such person has vacated his office and forfeited his right to have his name retained in the Nomination Paper.

- (i) There's nothing in the above provisions to indicate that the Elections Officer should himself take steps to ascertain whether the member has been lawfully removed from the Party.
- (ii) The Elections Officer has a ministerial duty to perform on receipt of the said information.
- (iii) There is no further duty cast on the Elections Officer other than to give Notice under S. 10(a) 2 and declare by publishing in the gazette that such person has vacated his office.

APPLICATION for Writs of Certiorari and Prohibition.

A. P. Niles with *U. A. Mowjooth* for Petitioner.

S. Sri Skanda Rajah S.S.C. for 1st Respondent.

Jayantha Liyanage with *Miss Dulani Tiskumara* and *V. Mihindukulasuriya* for 2nd Respondent

May 11, 1995.

ISMAIL, J.

The Sri Lanka Muslim Congress is deemed to be a recognized political party in terms of Section 27A (1) of the Local Authorities Elections Ordinance for the purpose of local elections. The petitioner's name was included in the nomination paper submitted by the said party as a candidate for election as a member of the Colombo Municipal Council at the local elections held in 1991.

Section 28(2) of the Local Authorities Elections Ordinance provides that any recognized political party may for the purpose of election as members of any local authority submit one nomination paper setting out the names, in order of priority, of such number of candidates as is equivalent to the number of members including the Mayor and Deputy Mayor to be elected for that local authority increased by one third of such number of members. The written consent of each candidate to be nominated by a recognized political party is required to be endorsed on the nomination paper. The secretary of a recognized political party has also to perform certain

statutory duties prescribed in this section. He has also to sign the nomination paper and has to deliver it within the nomination period. If there is any omission or clerical error in the nomination paper submitted then it is he who has to make an application within the nomination period to correct such omission or error.

The petitioner was declared elected as a member of the Colombo Municipal Council at the elections held in 1991 and continues to be a member of the said Council

The 2nd respondent who is the General Secretary of the party informed the petitioner by letter dated 14.9.94 (A2), with a copy to the 1st respondent that he has been expelled from the party with immediate effect. Upon receipt of this letter the 1st respondent who is the elections officer of the District gave the petitioner notice by registered letter dated 20.10.94 (XI) in terms of section 10(A) (2) of the Local Authorities Elections Ordinance that he would be taking steps after the expiry of 21 days to publish a notice in the Gazette declaring that he has vacated his office as a member of the Colombo Municipal Council.

The petitioner obtained an interim order on 15.11.94 in C.A. Application No. 785/94 restraining the 1st respondent from taking further steps as indicated in the said letter. However, the 1st respondent has explained in his affidavit that on 14.11.94 he prepared the notice under section 10A (1) (a) of the Local Authorities Election Ordinance for publication in the Gazette to the effect that the petitioner has vacated his office of member of the Colombo Municipal Council as he has ceased to be a member of the Sri Lanka Muslim Congress party. The said notice was immediately sent for publication and was published in the Gazette Extraordinary No. 845/6 dated 15.11.94 (1R3).

The petitioner has sought a writ of certiorari to quash the decision of the 1st respondent taken to remove him from the membership of the Colombo Municipal Council. He has stated that he has also instituted an action bearing No. 4170/SPL in the District Court of Colombo against the 2nd respondent seeking a declaration that his purported expulsion from the membership of the party is null and

void and that he remains a member of the party. When the present application was supported an interim order was issued restraining the respondents from implementing the decision or taking any further steps to remove the petitioner from the membership of the Council until the determination of this application.

The position of the petitioner as explained by him in his letter dated 23.9.94 (A3) to the General Secretary of the party is that he did not receive the letter of 13.7.94 referred to the letter of expulsion (A2). The letter of 13.7.94 was a letter sent by the General Secretary of the party to the petitioner calling upon him to submit his explanation to the charges contained therein. The petitioner has now stated that if he was given any opportunity he would have explained his position in relation to the charges or that he would have tendered an apology to the party.

The General Secretary of the party has stated in his affidavit that the politbureau of the Sri Lanka Muslim Congress decided at an emergency meeting held on 10.7.94 to call for an explanation from the petitioner for several acts of misconduct committed by him. It was thereafter that the letter dated 13.7.94 was despatched to the petitioner. A copy of the said letter by which an explanation was called for from the petitioner is annexed to the objections of the 2nd respondent as R1 together with the registered article receipt as R1a. However this letter was returned undelivered with the remarks "refused to accept" written in sinhalese on the envelope. A copy of the same letter was despatched again to the petitioner on 28.8.94 and this letter too was returned undelivered with the remarks "refused to accept". The envelopes on which these remarks have been written have been produced by the 2nd respondent marked as R2 and R3. The General Secretary has also made another attempt to have the said letter containing the charges delivered to the petitioner through the Secretary of the Municipal Council. It appears from the letter dated 28.8.94 (R4) that the Secretary of the Municipal Council has forwarded the said letter received from the General Secretary to the petitioner by registered post. The petitioner has not specifically denied these averments in his counter affidavit but has merely stated that he is unaware of them.

The petitioner has communicated with the General Secretary of the party only on 23.9.94 (A3) after he received the letter dated 14.9.94 (A2) expelling him from the party.

Learned Counsel for the petitioner submitted that the purported expulsion of the petitioner from the membership of the political party is *mala fide*, unreasonable and in breach of natural justice. The petitioner cannot and does not in these proceedings seek to have the legality or otherwise of his expulsion from the party determined. He contended that a misrepresentation was made to the elections officer and that the 1st respondent was misled into taking steps to remove the petitioner from the membership of the party. The main submission on the law was that the elections officer could not have under section 10A of the Local Authorities Election Ordinance proceeded to act solely on the letter of the secretary of the recognized political party without himself having made further inquiries and being reasonably satisfied, adopting the test of a reasonable man, that the petitioner has been expelled from the party.

Section 10A (3) of the Local Authorities Elections Ordinance provides that whenever any person whose name has been included in the nomination paper of a recognized political party ceases to be a member of such party the secretary of that party should furnish such information to the relevant elections officer.

Section 10A (1) and (2) provides for the vacation of office on ceasing to be a member of a recognized political party. Its provisions are as follows:

10A (1) "If the elections officer of the district in which a local authority area is situated, is satisfied that any person whose name has been included as a candidate for election as a member of that local authority, in the nomination paper of a recognized political party, has ceased to be a member of that party, the elections officer shall, subject to the provisions of subsection (2), by notice published in the gazette declare that such person –

- a) has vacated his office of member, if he had been elected as a member of the local authority; or

b) has forfeited his rights to have his name retained in the nomination paper of that recognized political party for filling any casual vacancy,

and thereupon, such person shall vacate his office as member of that local authority or the name of such person shall be expunged from the nomination paper of that recognized political party, as the case may be, as from the date on which such declaration is published in the Gazette.

(2) The elections officer shall not publish the notice referred to in subsection (1) except after—

- (a) notice to such person and such recognized political party; and
- (b) expiry of a period of twenty-one days from the date of such notice.

Every such notice shall be sent by registered post."

There is nothing in the above provisions to indicate that the elections officer should himself take any further steps to ascertain whether the member has been lawfully removed from the party, quite apart from the information furnished by the secretary under section 10A (3) of the Ordinance. The elections officer has a ministerial duty to perform on receipt of the information from the secretary in strict obedience to the provisions contained in section 10A (1) and (2) of the Local Authorities Election Ordinance.

Jain and Jain in *The principles of Administrative Law* (1988) 4th Ed. at page 325 state as follows:

"Functions dischargeable by the administration may either be ministerial or discretionary. A ministerial function is one where the relevant law prescribes the duty to be performed by the concerned authority in certain and specific terms leaving nothing to the discretion or judgment of the authority. It does not involve investigation into disputed facts or making of choices.

The authority concerned acts in strict obedience to the law which imposes on it a simple and definite duty in respect of which it has no choice."

I am of the view that there is no further duty cast on the elections officer on receipt of information received from the secretary of the party that a member has ceased to be a member of the party other than to firstly, give notice under section 10A (2), and on the expiry of 21 days from the date of such notice to proceed under section 10A (1) to declare by publishing in the Gazette that such person has vacated his office as member of the local authority. The 1st respondent has in this case strictly observed the provisions contained in section 10A of the Local Authorities Elections Ordinance. The petitioner cannot therefore succeed in this application.

The application is dismissed. The 1st and 2nd respondents are each be entitled to costs fixed at Rs. 1500/-.

Application dismissed.