

MASEEHUDEEN
v.
RETURNING OFFICER AND OTHERS

COURT OF APPEAL
GUNAWARDANA, J. (P/CA)
CA NO. 556/99
JULY 02, 2001

Local Authorities Elections Ordinance, s. 10A (1) – Expulsion of councillor from Independent Group – Does he the automatically forfeit his seat as a member in the Municipal Council? – Constitution Article 99 (13).

Held:

- (1) Members of a Local Authority belonging to a recognised political party are specifically mentioned in s. 10A (1) as those who will forfeit their seats in the Council but mention of those members belonging to an independent group is omitted.
- (2) The Parliament intended to perpetrate the legal position that a member of a local authority will still retain his seat in the Local Council notwithstanding the fact that he had ceased to belong to the Independent Group, which nominated him to contest the election.

APPLICATION for a writ of *Mandamus*.

A. P. Niles with D. W. Johnthasan for the petitioner.

Y. Wijetileke, DSG with M. R. Ameen, SC for the respondents.

Kanishka Withana for the 2nd respondent.

Cur. adv. vult.

August 07, 2001

GUNAWARDANA, J. (P/CA)

The petitioner has made this application seeking an order of *Mandamus* ¹ to compel the 1st respondent (the Returning Officer) to remove the 2nd respondent from the membership of the Colombo Municipal Council

and appoint the 3rd respondent to fill the resulting vacancy. The petitioner is the leader of the Independent Group No. 3 and at the election to the Colombo Municipal Council held on 21. 03. 1997, the said Independent Group secured one seat. It was the 2nd respondent who obtained the highest number of preferential votes and he was declared elected as a member of the Colombo Municipal Council. He took the oath of office as a member on 15. 04. 1997. 10

There had been a prior agreement dated 06. 04. 1997 between the petitioner and the 2nd respondent whereby the latter had undertaken to vacate his office or resign from the membership of the council within two years of the date of taking the oath as a member which undertaking had been breached by the 2nd respondent. Thereupon, the 2nd respondent had been expelled by the aforesaid Independent Group No. 3 – as a candidate of which party he had contested the election – he having been nominated by the said Independent Group.

The question that demands consideration is as to whether in ²⁰ consequence of or as a sequel to the expulsion from the Independent Group the 2nd respondent automatically forfeits his seat as a member in the municipal council. The answer to this question would depend on the construction to be placed on section 10A (1) Local Authorities Elections Ordinance, the relevant excerpt of which is as follows: "If the elections officer of the district in which a local authority is situated is satisfied that any person whose name has been included as a candidate for election as a member of a local authority, in the nomination paper of a recognised political party has ceased to be a member of that party, the elections officer shall, subject to the provisions of ³⁰ subsection (2) by notice published in the *Government Gazette* declare that such person –

- (a) has vacated his office of member, if he had been elected as a member of that local authority; or
- (b) has forfeited his rights to have his name retained in the nomination paper of that recognised political party for filling any casual vacancy, and thereupon such person shall vacate his office as a member of that local authority . . ."

The section reproduced above is conspicuous by the absence therein of a provision to the effect that a person who had been elected as a member on the nomination of an Independent Group will also forfeit his office if the member ceases to belong to the Independent Group upon expulsion therefrom. The section 10A (1) (the relevant excerpt of which is reproduced above) has in contemplation only a situation in which a person who belongs to a "recognised political party" had been expelled from that party or had ceased to be a member thereof. If not for section 10A (1) even, persons ceasing to be members of recognised political party would not suffer the consequence, spelt out in section 10 (a) and (b) reproduced above: that is, they would not be held to have vacated office of member; nor would they forfeit their right to have their names retained in the nomination paper of that recognised political party for filling any casual vacancies that may arise.

I think this is eminently a situation wherein the maxim of interpretation, viz "*expressio unius est exclusio alterius*" should apply. This means that expression or mention of one thing means the exclusion of the other or others not mentioned. Members of a local authority belonging to a recognised political party are specifically mentioned in section 10A (1) as those who will forfeit their seats in the council, but mention of those members belonging to an Independent Group is omitted. From this an intention to exclude all others not specifically mentioned in the law may be inferred.

In this context it is germane and of interest to observe that under Article 99 (13) of the Constitution (1978) a person belonging to a recognised political party who ceased to be a member of that party lost his seat in Parliament as also a member of Parliament who belonged to an Independent Group. The omission to introduce a similar provision in the Local Authorities Elections Ordinance, – which operated to unseat a member of a local authority (belonging to an Independent Group) who had ceased to be a member of the said group – lends countenance to the view that such omission was deliberate, and that Parliament intended to perpetuate the legal position that member of a local authority will still retain his seat in the local council notwithstanding the fact that he had ceased to belong to the Independent Group which nominated him to contest the election.

Application refused.