

BANDARANAIKE
v.
DE ALWIS AND OTHERS

SUPREME COURT
SAMARAKOON, C.J., WIMALARATNE, J., AND COLIN-THOMÉ, J.
S.C. 1/82
SEPTEMBER 1, 1982.

Charge of personal misconduct of Judge - State seeking to intervene - Interests of justice - Third party seeking to be added - No charge against him - Constitution, Article 134(3) - Court's power to hear necessary party.

The petitioner alleged that the Special Presidential Commission had issued a Notice under Section 16 of the Special Presidential Commission Law informing

A.H.M. Fowzie that he was a person whose conduct should be the subject of inquiry and requiring him to file a statement if he challenged the allegations in the evidence led at the inquiry.

The petitioner further alleged that while Fowzie continued to be subject to the jurisdiction of the Commission of which the 1st respondent was a member he knowingly engaged in financial transactions with Fowzie and thereby was guilty of misconduct and corruption and compromised his position and not qualified to act as a Member of the Special Presidential Commission.

The Attorney General in the interests of justice and Fowzie because insinuations had been made against him sought to intervene under Article 134 of the Constitution.

Held -

- 1) That the allegations involved the personal conduct of the 1st respondent in his private dealings in which the State was in no way involved and therefore it was not necessary to hear the Attorney-General.
- 2) That conduct of the 1st respondent in entering into a common legal transaction when he was a member of the Commission which had assumed jurisdiction over Fowzie was the question and not the conduct or corruption of Fowzie.

Cases referred to:

- (1) *The 'United India Fire' and 'General Insurance Co. Ltd. v. Weinman* (1958) 59 NLR 495.
- (2) *The Chartered Bank v. De Silva* (1964) 67 NLR 135.

APPLICATION to intervene in writ proceedings.

G.F. Sethukavaler, S.A., with *Lakshman de Alwis* instructed by *Mrs. P.K. Nanayakkara* for applicant.

K.M.M.B. Kulatunge, acting S.G. with *Suri Ratnapala, S.C.* instructed by *T.G. Gooneratne*, State Attorney for Attorney-General.

P. Navaratnarajah, Q.C., with *Dr. M.L.S. Jayasekera, Kanag-Iswaran* and *K. Sivaranthan* instructed by *Messrs Srinivasan, Amaratunge* and *Pararajasingham* for 1st respondent.

Cur. adv. vult.

September 20, 1982

SAMARAKOON, C.J.

The petitioner has made an application for Writs of Quo Warranto and Prohibition in terms of the proviso to Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 18A of the Special Presidential Commission (Special Provisions) Act No. 4 of 1978 seeking an order that 1st respondent

has become "unable to act, and is disentitled to hold office of and to function as a Member of the Special Presidential Commission of Inquiry" and for a further order restraining and preventing him from continuing to exercise or to function in the said office. The petitioner alleges that the Special Presidential Commission acting under the provisions of Section 16 of the Special Presidential Commission of Inquiry Law No. 7 of 1978 had issued a notice on A.H.M. Fowzie informing him that he was a person whose conduct should be the subject of inquiry and requiring him to file a statement if he challenged any allegations contained in the evidence led at the preliminary inquiry. The petitioner further alleges that while the said Fowzie continued to be subject to the notice and thereby subject to the jurisdiction of the Commission the 1st respondent knowingly engaged in financial dealings with the said Fowzie. The dealings comprise a land transaction, the details of which are not relevant for this application. By so doing, the petitioner states, the 1st respondent has -

- (a) committed an act of grave misconduct,
- (b) vitiated his integrity, and thereby shown himself to be corrupt, and guilty of corruption, and thereby
- (c) compromised his position as a Judge of the Court of Appeal, by his misbehaviour, and
- (d) become 'unable to act' as a Member of the Special Presidential Commission of Inquiry, under section 3(1) of the said Law No. 7 of 1978."

Two applications have now been filed seeking permission to intervene in these proceedings. One is by the State Attorney who seems to have been alerted by copies of notices and documents served on the Attorney-General from time to time. The State Attorney moves that the Attorney-General be granted a hearing because "it appears from the material filed so far that it would be in the interests of justice that the Attorney-General appears on behalf of the State at the hearing of the above application." An unusual kind of application. He is not seeking to be added as a party for the reason that the interests of the State would be adversely affected by any order that will be finally made. It is simply on the basis that the interests of justice would be served if the Attorney-General is heard on behalf of the State. The gravamen of the allegations involves the personal conduct of the 1st respondent in his private dealings in which the State is in no way involved. If in the course of the proceedings this Court considers it necessary to hear the Attorney-General he will certainly be noticed as *amicus curiae*. Such a stage has not been reached. I therefore refuse the application of the State Attorney.

The other application is one made by the said A.H.M. Fowzie. He has filed an affidavit and moves that he be allowed to take part in these proceedings and be heard. He states that the "imputations and insinuations of impropriety and suspicion relating to the conduct and dealings between the 1st respondent" and himself and allegations of corruption, misconduct and scandal touch on him also. He further states that an adverse finding against the 1st respondent would have serious consequences on his integrity and expose him to the jeopardy of the law's processes. He pleads that he is a businessman, a social worker, a politician and that he once held office as Mayor of Colombo. Counsel appearing for him sought to justify this application under the provisions of Article 134(3) of the Constitution of 1978 which reads as follows:-

"134(3) The Supreme Court may in its discretion grant to any other person or his legal representative such hearing as may appear to the Court to be necessary in the exercise of its jurisdiction under this Chapter."

The Attorney-General has of right to be heard in the seven instances set out in Article 134(1). A party to a proceeding has a similar right of being heard in person or by representative in such proceedings [Article 134 (2)]. Any other person will be heard if the Supreme Court thinks that such person should be heard. The provisions of Article 134(3) give the Court an unlimited discretion. The petitioner cited two decisions of the Supreme Court. The first is the case of *The United India Fire and General Insurance Co. Ltd. Vs. Weinman* (1). That was a case arising from a motor collision resulting in injuries to the plaintiff. The plaintiff claimed damages against the owner of the motor vehicle and his driver. The Insurance Company sought to be added stating that it was a necessary party because, as the insurer of the motor vehicle, the Company would eventually be liable to honour any decree entered against the owner of the motor vehicle. The Supreme Court rejected this argument on the ground that any order against the owner would not affect the Company's legal rights and in any event no liability would arise until and unless a decree is entered against the insured as provided in Section 105(1) of the Motor Traffic Act.

The next case cited by the petitioner is the case of *The Chartered Bank Vs. De Silva* (2). This was a case in which the Bank sought to be added as a party under the provisions of Section 18 of the Civil Procedure Code. It was held that the Bank was only a material

witness and its presence was therefore not necessary in order to completely and effectually decide the questions involved in the action.

The words of Article 134(3) are of wider import than Section 18 of the Civil Procedure Code. The word necessary in this Article is not restricted to a hearing for the purpose of exercising the jurisdiction conferred by Chapter XVI of the Constitution. It goes way beyond such limits. It gives the Court the discretion to hear any person if it considers that the interests of justice require that he be heard.

In that view of the provisions of Article 134(3) the question I ask myself is whether it is necessary to hear the said Fowzie to decide the allegations against the 1st respondent. The transaction of sale and purchase is a common legal transaction. It is not the transaction that is impugned. It is the conduct of the 1st respondent in entering into such transaction at a time when he was a Member of the Commission which had assumed jurisdiction over the said Fowzie in terms of section 16 of the Law No. 7 of 1978; that is now in question. This court need not, and indeed is not called on to, decide any allegations of misconduct or corruption against Fowzie. Though no doubt, if such a development takes place in the course of the hearing this Court might then consider the necessity of hearing Fowzie. I therefore refuse this application too. I make no order for payment of costs against either the Attorney-General or Fowzie.

WIMALARATNE, J. — I agree.

COLIN-THOMÉ, J. — I agree.

Application refused.