

EKANAYAKE
v.
GUNATILLEKE, SUPERINTENDENT OF POLICE,
MAHO AND OTHERS

SUPREME COURT.
AMERASINGHE, J.
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
S. C. APPLICATION NO. 1007/92.
SEPTEMBER 24, 1993.

Fundamental rights – Arrest – No reason given – Detention Order – Freedom of Association – Articles 13 (1) & (2) and 14 (1) (c) of the Constitution.

On account of political activities in support of the SLFP, the 1st respondent caused the arrest and detention of the petitioner. No reason for the arrest are given and the detention order was not served on him. He was threatened and obstructed from carrying on his political activities by the 1st respondent.

Held :

1. The arrest and detention of the petitioner were in violation of Article 13 (1) & (2) of the Constitution as no reason was given for the arrest and the Detention Order was not served on him. He was prevented from working for the SLFP and thus there was an infringement of his freedom of association by the conduct of the 1st respondent.

Per Wijetunga, J.

° A citizens right to join any political party of his choice, which is a necessary concomitant of the freedom of association guaranteed by Article 14 (1) (c), would be meaningless unless he has the freedom to participate fully in the lawful activities of such political party °.

APPLICATION for relief for infringement of Fundamental Rights.

S. L. *Gunasekera*, for the petitioner.

A. *Meddegoda*, S.S.C. for 2nd respondent.

Cur. adv. vult.

November 16, 1993.

WIJETUNGA, J.

The petitioner has since February, 1988 been the Organizer of the Sri Lanka Freedom Party (SLFP) for the electoral division of Yapahuwa. He was a candidate of the said party for the electoral district of Kurunegala at the Parliamentary General Election of 1989. He states that at the Presidential Election of 1988, the majority of voters of the electoral division of Yapahuwa voted for the SLFP candidate, Mrs. Sirimavo R. D. Bandaranaike. The 1st respondent has been the Assistant Superintendent of Police, Maho, from January, 1989 and, since early 1992, the Superintendent of Police, Maho. The electoral division of Yapahuwa is situated within the police division of Maho, which is under the direction and control of the 1st respondent.

On 30.8.92, at about 4 p.m., the petitioner was travelling in a jeep from Wariyapola towards Kurunegala in the company of one Ivor Malagama, the Organizer of the SLFP for the electoral division of Hiriyaala, after attending a meeting of the SLFP at Wariyapola. The jeep was stopped at Hanhamuna Junction by Sub Inspector Rupasinghe of the Maho police station, together with some other police officers, who allegedly were acting on the instruction of the 1st respondent and the petitioner was arrested by the said Sub Inspector without a warrant and detained at the Maho police station. The petitioner claims that though he was informed by Sub Inspector Rupasinghe that he was arrested on the instructions of the 1st respondent, he was not informed of the reason for his arrest. About 10 minutes after the petitioner was brought to the Maho police station, the 1st respondent arrived there and told the petitioner that he had won the Yapahuwa seat at the Presidential Election of 1988 by the use of thuggery, while the 1st respondent was at Negombo, that even after the 1st respondent assumed duties at Maho, the petitioner was holding meetings and thumbing his nose at him ('koka pennanawa'),

that he would not permit him to continue his political activities, that his political activities were over and that he would initially sign a detention order for 30 days and thereafter send the petitioner to Boosa. The petitioner was thereafter locked up in the cell at the Maho police station on the orders of the 1st respondent but he was neither issued with nor shown any detention order. About 30 days later, the petitioner was taken before the Magistrate, Maho, who informed him that he was being returned to police custody. He was thus detained at the Maho police station until 19.11.92, when he was once again taken before the Magistrate, Maho and released unconditionally.

The petitioner has not been charged with the commission of any offence under any law even as at the date of this application. He states that he has never committed, nor attempted nor prepared to commit any offence nor been in any way concerned in the commission, attempted commission or preparation to commit any offence under the Emergency Regulations or any other law and that there did not exist any lawful reason for his aforesaid arrest and/or detention.

The petitioner alleges that the 1st respondent is, and has been at all times material to this case, a strong supporter of the United National Party (UNP) which has always been strongly opposed to the SLFP. Shortly after the 1st respondent was appointed Assistant Superintendent of Police, Maho, in January, 1989, he summoned the petitioner to a meeting, but the petitioner was unable to attend the said meeting as he was busy with the Parliamentary General Election scheduled to be held on 15th February, 1989. He, therefore, sent Rev. Hammillewe Saranapala Thero, the Secretary of the Bhikku Organization and H. M. S. Mawathagama, the Secretary of the Central Organization of the SLFP for the electoral division of Yapahuwa to represent him. At the said meeting, the 1st respondent threatened the said Rev. Saranapala Thero and Mawathagama and told them that all political activities being conducted from Jayanthi Vihara (the temple of Saranapala Thero) should cease and that if such activities did not cease, the temple will become a graveyard and be reduced to ashes, that the hoisting of blue flags, the pasting of notices and the propaganda activities of the SLFP were forbidden, that if even a stone was flung at a flag, poster or office of the UNP, the temple would be destroyed, that he did not expect to see any political activities being conducted 'above' those of the UNP and that if any such activities were carried out, there would be disappearances.

Rev. Saranapala Thero and Mawathagama reported the aforesaid threats made by the 1st respondent to the petitioner and Mawathagama made a complaint in that regard to the DIG of the North Western Province by letter dated 26.1.89, consequent to which the Senior Superintendent of Police, Kurunegala, by letter dated 3.2.89 summoned Mawathagama for an inquiry on 8.2.89. Mawathagama and Rev. Saranapala Thero attended the said inquiry at which their statements were recorded but nothing further was heard by them or the petitioner about the said inquiry. The petitioner has produced copies of the said letters dated 26.1.89 and 3.2.89 marked P1 and P2, respectively. He has also produced an affidavit from Mawathagama marked P3.

The petitioner states that notwithstanding the aforesaid threats held out by the 1st respondent, he continued to hold propaganda meetings and to engage in other lawful political activities to advance the cause of the SLFP within and outside the electoral division of Yapahuwa. In the aforesaid circumstances, the petitioner claims that his arrest and detention were illegal and mala fide and states that he was so arrested and detained only because of his association with the other members of the SLFP and his political affiliation to and the lawful activities on behalf of the SLFP.

At the time of the petitioner's arrest on 30.8.92, he was due to get married to a Miss Ranjani Ketawala of Kurunegala at Hotel Situmadura on 9.9.92, and the invitations for the wedding had already been sent out. He has produced one such invitation as a specimen marked P4. Consequent to the petitioner's arrest and detention, the wedding had to be postponed sine die and the petitioner and his family as well as Miss Ranjani Ketawala and her family suffered much pain of mind and humiliation in consequence thereof.

The petitioner seeks a declaration that his fundamental rights guaranteed by Articles 13(1), 13(2) and 14(1) (c) of the Constitution have been infringed by executive or administrative action and claims compensation in respect thereof.

When this matter was taken up for hearing on 5.7.93, learned counsel for the petitioner raised a preliminary objection in regard to non-compliance by the 1st respondent with the Rules of the Supreme Court. By our order dated 26.7.93, we upheld the said objection and made order rejecting the documents filed by the 1st respondent and holding that he was not entitled to be heard in these proceedings.

The resulting position, therefore, is that there is no material placed by the 1st respondent before this Court in opposition to the application of the petitioner.

What the Court has consequently to determine is whether the material furnished by the petitioner establishes that his arrest was in violation of Article 13 (1), his custody and detention were in violation of Article 13 (2) and whether there was a violation of the petitioner's fundamental right of the freedom of association guaranteed by Article 14 (1) (c) of the Constitution ; and whether such infringements were by the action of the 1st respondent.

That the petitioner was arrested on the instructions of the 1st respondent is established by the conduct of the 1st respondent in arriving at the Maho police station within about 10 minutes of the petitioner being brought there under arrest and more particularly, by what he told the petitioner immediately thereafter (already referred to above).

It is the petitioner's position that Sub Inspector Rupasinghe arrested him without a warrant and gave him no reason for such arrest. The petitioner further states that he was released unconditionally by the Magistrate on 19.11.92 and that he has not been charged with the commission of any offence. The petitioner has emphatically denied that he has committed or attempted to commit or prepared to commit or been in any way concerned in the commission, attempted commission or preparation to commit any offence under the Emergency Regulations or any other law. In the absence of material to the contrary justifying the arrest of the petitioner in the manner aforesaid, his arrest is violative of Article 13 (1).

The petitioner states that he was locked up in the cell at the Maho police station on the orders of the 1st respondent, who by then had told him that he would initially sign a detention order for 30 days, but no such detention order was issued or shown to him. The fact of his being produced before the Magistrate after 30 days and being further detained thereafter does not in any event validate the initial detention which is unsupported before this Court by a valid detention order. His detention too, therefore, infringes Article 12 (2).

The petitioner further alleges that there had been an infringement of his freedom of association by the conduct of the 1st respondent. A citizen's right to join any political party of his choice, which is a necessary concomitant of the freedom of association guaranteed to him by Article 14 (1) (c), would be meaningless unless he has the

freedom to participate fully in the lawful activities of such political party. The petitioner states that the 1st respondent had in no uncertain terms told him that he would not permit him to continue his legitimate political activities. The letters (P1) and (P2), together with the affidavit of Mawathagama (P3), support the petitioner's allegation that the 1st respondent, even when he was Assistant Superintendent of Police, Maho, had threatened the petitioner's representatives, against conducting the political activities of the SLFP in that area. He had categorically spelt out the dire consequences that would follow if they did not refrain from conducting such political activities. But, the petitioner states that he continued to hold propaganda meetings and engage in other lawful political activities to advance the cause of the SLFP. The arrest of the petitioner on the day in question was while he was returning from a meeting of the SLFP at Wariyapola, in the company of the Organizer of the SLFP for the electoral division of Hiriyala. The petitioner further claims that the 1st respondent, who arrived at the Maho police station within about 10 minutes of his being brought there under arrest, threatened him against continuing his political activities by holding meetings, etc. That it was no idle threat is amply demonstrated by what followed. There was thus a clear violation by the 1st respondent of the petitioner's freedom of association guaranteed by Article 14 (1) (c) of the Constitution.

On the question of compensation, one cannot ignore that, by reason of the petitioner's arrest and detention, his marriage, for which invitations had already been sent out and the necessary arrangements for the reception made, had to be postponed sine die. He quite justifiably complains of the pain of mind suffered by him and his family, as well as the bride-to-be and her family.

The period of detention too had been over 80 days, at the end of which the petitioner states he was released unconditionally. Why he was so detained remains unexplained.

Hence, in respect of the infringement of the fundamental rights of the petitioner under Articles 13 (1), 13 (2) and 14 (1) (c) as aforesaid, I award him compensation in a sum of Rs. 65,000/-, of which a sum of Rs. 15,000/- is payable by the 1st respondent and the balance sum of Rs. 50,000/- payable by the State. The petitioner will also be entitled to a sum of Rs. 5,000/- as costs from the State.

AMERASINGHE, J. – I agree.

WADUGODAPITIYA, J. – agree.

Relief granted.

Compensation Ordered.