

RAMAMOORTHY AND RAMESHWARAN
v.
DOUGLAS DEVANANDA AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, C.J.,
WIJETUNGE, J. AND
DR. BANDARANAYAKE, J.
S.C. SPL. NO. (E) 1 AND 2/97
JULY 24 AND AUGUST 01, 1997.

Expulsion from political party – Article 99 (13) (a) of the Constitution – Charges and the audi alteram partem rule – Failure to serve charge – sheet and call for explanation – Termination of membership of Independent Group 2 in Parliament.

Held:

Expulsion from political party (EPDP) and termination of membership of the Independent Group 2 of Parliament were invalid as there was failure to comply with the *audi alteram partem* rule. There was no charge – sheet served and no explanation for alleged acts of misconduct was called for. A request by telephone to come for an inquiry is totally inadequate.

The pledge given by members (of Independent Group 2) is a contract between the parties for the purpose of the association to ensure conformity with party policies. Yet a fair hearing was a precondition to deprivation of rights or to the imposition of penalties and disabilities being an implied term of such contract.

Cases referred to:

1. *Durayappah v. Fernando* 69 NLR 265.
2. *Amaradasa v. The Land Reform Commission* 79 (1) NLR 505, 544.
3. *John v. Rees* (1970) Ch 345, 402.
4. *Dissanayake v. Kaleel* (1993) 2 Sri LR 135, 182, 234.
5. *Cooper v. Wandsworth Board of Works* (1863) 14 CB (NS) 180.

APPLICATIONS against expulsion from political party and termination of membership of Parliamentary Group.

D. W. Abeykoon, PC with *Chandrika Morawake* and *A. Rajeswary* for petitioners.

E. D. Wickremanayake for 1st, 2nd and 15th respondents.

U. Abdul Najeem for 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 14th respondents.

Dharmapala Senaratne for the 13th respondent.

Cur. adv. vult.

August 21, 1997

G. P. S. DE SILVA, CJ.

Applications Nos. (E) 1 and 2 of 1997 were heard together as the material facts are almost identical. The petitioner in application No.1 (Mr. Ramamoorthy) is an elected Member of Parliament representing the electoral district of Jaffna as a candidate of the Independent Group No. 2 at the election held on 16.8.94. The petitioner in application No. 2 (Mr. Rameshwaran) is also a Member of Parliament representing the electoral district of Jaffna as a candidate of the Independent Group No. 2; he, however, came into Parliament upon the resignation of another elected member of Parliament from the Independent Group No. 2. The petitioners are brothers and they are members of the recognised political party known as the Eelam People's Democratic Party (EPDP). They have invoked the jurisdiction of this court in terms of Article 99 (13) (a) of the Constitution seeking *inter alia* that their "expulsion" from the EPDP and the "termination" of their membership of the Independent Group No. 2 are "null and void".

Admittedly, the 1st respondent who is a Member of Parliament, the Secretary-General of the EPDP and the leader of the Independent Group No. 2 addressed the letter P8 to the petitioners informing them that they have been expelled from the EPDP with effect from 6.6.97. Similarly the 1st respondent by P9 dated 9.6.97 informed the petitioners that he has terminated their membership of the Independent Group No. 2 of the electoral district of Jaffna.

P8 dated 6.6.97 reads as follows:

"1. On allegations and complaints received from members of the public, particularly from the people of the Islands of Jaffna against you, I, in my capacity as Secretary-General of the EPDP and Leader of Independent Group No. 2 of the Electoral District of Jaffna, constituted a Committee of Inquiry consisting of Hon. M. Chandrakumar, MP, Hon. S. Thangavel MP and Hon. S. Sivathasan MP to inquire into these allegations and complaints and submit a report to me.

The Committee of Inquiry has found you guilty of 3 out of 4 charges. The charges on which you have been found guilty are annexed hereto separately.

2. You have made disparaging remarks about our Party and its policy and about me in my role as Secretary-General of the EPDP and Leader of Independent Group No. 2. Your remarks have been reported in the undermentioned news papers and television.

"The Island" of 6th May, 1997

"Divaina" of 6th May, 1997

"The Midweek Mirror" of 7th May, 1997

"Dinamina" of 7th May, 1997

"Yukthiya" of 11th May, 1997

"Lakbima" of 11th May, 1997

"Divaina" of 13th May, 1997

"The Island" of 13th May, 1997

"Virakesari" of 14th May, 1997

"Daily News" of 26th May, 1997

"Sarinigar" of 22nd May, 4th June, 1997

Interview given to "MTV" Television on 7th May, 1997

Despite the wide publicity given to the publications referred to above, you have not denied making the said remarks either to the said newspapers, the "MTV" television or to the party. In these circumstances there can be no doubt whatsoever that in fact the contents of the newspaper articles and the interview given to "MTV" television correctly published your remarks.

The Central Committee of the EPDP which met to discuss your remarks referred to above, has found you guilty of violating party discipline.

3. In these circumstances the Central Committee of EPDP has directed me to inform you that you have been expelled from the EPDP with effect from the date of this letter.

Yours truly,

Sgd.

K. N. Douglas Devananda, MP.,
Secretary-General, EPDP.

- Copy to: 1. Secretary-General of Parliament
 2. Commissioner of Elections."

P8A sets out the charges referred to in P8. The charges against the petitioner in application No. 1 read as follows:

"The charges on which Hon. Rajendram Ramamoorthy, MP *alias* Seelan had been found guilty"

1. On the explicit directions given by the Hon. Rajendram Rameshwaran, MP and the Hon. Rajendram Ramamoorthy, MP, some of the party cadres were compelled to work for Rajendram Ramanathan *alias* Raghu, brother of both Hon. Rameshwaran and Hon. Ramamoorthy, their parents and their family members, attending to the following household activities and private business activities of Raghu:

- cooking for the household of Raghu and parents
- shallow water fishing
- salting and drying of fish
- drying of *breehe de mer*
- cleaning of fishing boats

Party members who questioned regarding these arrangements were told by Hon. Rameshwaran and Hon. Ramamoorthy that the fishing business was being undertaken by them to generate funds for the EPDP. Party members who refused to carry out such tasks were physically assaulted or otherwise punished by Hon. Rameshwaran and Hon. Ramamoorthy, on false charges of violating party rules. Several members of the party were kept in solitary confinement in a dark room for a varying number of days. Hon. Ramamoorthy thus misused his position as an EPDP Member of Parliament.

2. Hon. Rajendram Ramamoorthy, MP *alias* Seelan and Nicholas *alias* Lingam, driver of Hon. Ramamoorthy, during the period June/ July, 1995, had in the name of the EPDP, ordered fishermen of Analaitivu and Eluvaitivu, that they should henceforth sell all their catch of crabs, prawns, lobsters, *breech de mer* and fish only to Rajendram Ramanathan *alias* Raghu, brother of Hon. Ramamoorthy at prices fixed by Rajendram Ramanathan *alias* Raghu, these prices being much lower than market prices. The fishermen were thus

compelled to sell their catch at low prices for more than one year. Thus, Hon. R. Ramamoorthy, while being a Member of Parliament belonging to the EPDP misused his public position and deprived the fishermen of Analaitivu and Eluvaitivu of part of their legitimate earnings.

3. Hon. R. Rameshwaran, in September 1996, in his capacity as Member of Parliament and EPDP Organiser for the Islands had offered to transport to Colombo free of charge, packages of high quality seasoned tobacco belonging to individuals in Analaitivu, and deliver to business establishments in Colombo specified by the owners. After Hon. R. Rameshwaran accepting the packages of tobacco in Analaitivu and transporting them out of Analaitivu, the owners heard nothing about their produce for some months. When they contacted Hon. R. Rameshwaran, he directed them to contact his brother Hon. R. Ramamoorthy in Colombo who was described by Hon. R. Rameshwaran as the person in charge of delivery in Colombo. When the individuals contacted Hon. R. Ramamoorthy in Colombo, he directed them to go over to an establishment, other than those specified by the owners, and to collect their dues. When the owners of the tobacco went over to that establishment, they were asked to pay a transportation charge of Rs. 800 per package as against the normal charge of Rs. 300 per package. Furthermore, they found that their high quality tobacco had been replaced with low quality tobacco in the packages. Everyone of the owners suffered financial loss.

This is a case of intentional cheating of innocent tobacco farmers by both Hon. R. Rameshwaran and Hon. R. Ramamoorthy, resulting in tarnishing the reputation of the EPDP".

The petitioner in application No. 2 was found guilty of 8 charges. Some of these charges were the same as the charges against the petitioner in application No. 1. There is little doubt that the charges against both petitioners were of a serious nature. As submitted by Mr. Wikramanayake, for the 1st, 2nd and 15th respondents, the expulsion from the EPDP was for two reasons. Firstly, the petitioners were found guilty of charges set out in P8A. Secondly, the petitioners were guilty of making "disparaging remarks" concerning the 1st respondent and the EPDP in newspapers and at an interview to the MTV.

The position of both the petitioners is that they were totally unaware of the charges and the reasons for their expulsion from the EPDP until they received P8. The principal submission of Mr. Abeykoon for the petitioners is that the expulsion from the EPDP and the termination of the membership of the Independent Group No. 2 are invalid for want of compliance with the *audi alteram partem* rule. It seems to me that this is the crucial issue that arises for consideration in both applications.

Mr. Wikremanayake strenuously contended in his oral and written submissions that there was no violation of the *audi alteram partem* rule. Counsel urged that the petitioners were aware "not only of the allegations being made against them but also the nature and volume of the evidence that was available". Mr. Wikremanayake referred us in particular to the following averments in the affidavit of the 1st respondent (paragraphs 31, 32 and 33) filed in application No. 2:

"31. by the beginning of May, 1997, it was clear from the investigations of the committee that the allegations against the petitioner and his brother were serious and that there was a volume of evidence against them. I state that thereafter on the 2nd May, 1997 I telephoned the petitioner and his brother Ramamoorthy who live in adjoining houses at Madiwela and informed them that it was the suggestion of the committee that a formal inquiry be held. I did suggest to the petitioner and brother that in order to avoid embarrassment to themselves and the party they should consider whether they should resign their membership in Parliament. I told them that if they did not wish to resign, they should come to my office at Layards Road, Colombo 5, on the following day so that steps necessary could be taken to initiate and conduct a formal inquiry.

32. I state that thereafter the petitioner and his brother Ramamoorthy divorced themselves completely from the party. From 3rd May onwards, the two brothers did not attend the party's office, gave several interviews to the media including a television interview making serious allegations against me, stating that I was dictatorial, stating that they were going to function as 'Independents' in Parliament supporting those who helped them in their legal problems, alleging that anyone who opposed me would be eliminated, suggesting that their own lives were in danger because of me,

that the EPDP had a killer squad which was opposed by them, claiming that they were opposed to the party policy of seeking a Tamil-speaking regiment and that they would state without fear that I was a racist even more cruel than Prabaharan. I annex hereto marked 1R17 to 1R27 newspapers relating to the said matters and translations 1R25-A and 1R27-A. A cassette recording of the television interview is also available for examination by Your Lordships Court.

33. When it was realised that the petitioner and his brother would not attend the party office for the purpose of a formal inquiry being commenced, I asked the members of the Inquiring Committee to submit a written report. That report, dated 20th May, 1997, was submitted for consideration to the members of the Central Committee who were available. Of the 21 surviving members, there were (excluding the petitioner) 15 members who considered the report and the conduct of the petitioner and his brother and unanimously decided that he should be expelled from the party. I was then directed by the Central Committee to inform the petitioner and his brother Ramamoorthy that they had been expelled from the party. I did this by the letter dated 6th June, 1997, which has been marked as P8. I herewith annex 5 affidavits from the Central Committee Members and marked as 1R28-B, 1R28-C, 1R28-D and 1R28-E".

Mr. Wikremanayake submitted that if this court accepts the position as set out above, it follows that the petitioners were afforded an opportunity of "being heard" but that they had refused to avail themselves of that opportunity. In the circumstances, there was nothing more that the 1st respondent could have done and there was sufficient compliance with the *audi alteram partem* principle.

However, it is not disputed that no charge-sheet was served on the petitioners. No explanation in regard to their alleged acts of misconduct was called for. As rightly submitted by Mr. Abeykoon, if the 1st respondent was in a position to have sent the petitioners P8 and P9, what was the difficulty in serving a charge-sheet and calling for an explanation? The question of holding a formal inquiry would arise only thereafter. A request to the petitioners on the telephone to come for a "formal inquiry" is totally inadequate. It was far too serious a matter to be dealt with in that informal manner. The fact that the petitioners were duly elected Members of Parliament and that

they were the elected representatives of the people is a very relevant consideration. What is more, the consequences of expulsion from the EPDP and the termination of membership of the Independent Group No. 2 are, "as complete as could be imagined", to use the words of the Privy Council in *Durayappah v. Fernando*, 69 NLR 265.⁽¹⁾ As observed by Sharvananda, J. (as he then was) in *Amaradasa v. The Land Reform Commission*, 79 NLR (volume 1) 505 at 544⁽²⁾ "It is of the utmost importance to uphold the right and indeed the duty of the courts to ensure that powers are not exercised in breach or the principles of natural justice when the exercise of such powers impinges on the basic rights of citizens".

I now turn to the second ground of expulsion from the EPDP referred to above. Mr. Wikremanayake strongly urged that there is no dispute in regard to the "disparaging" remarks made by the petitioners concerning the 1st respondent and the EPDP in the newspapers and in an interview to the MTV. The petitioners, however, have not admitted all the "news items" attributed to them. In any event, the authenticity, the correctness and the accuracy of the "news items" can be ascertained, and findings reached thereon, only at a fair inquiry after adequate notice of the allegations has been given to the petitioners. H. W. R. Wade in his work on Administrative Law (6th edition at page 535) emphasizes the "basic principle" that "fair procedure comes first and it is only after hearing both sides that the merits can be properly considered". In this connection, it is well to bear in mind the "dangers" expressed by Megarry, J. in *John v. Rees* (1970 ch. 345 at 402)⁽³⁾. "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change". Having regard to these principles, I hold that there has been a failure to afford a fair opportunity to the petitioners to correct or explain or contradict the alleged "disparaging remarks" concerning the 1st respondent and the EPDP.

Apart from P8, the other document which is challenged in these proceedings is P9. The contents of P9 read as follows:

"121, Park Road,
Colombo 6,
09.06.1997.

You have been duly informed that the EPDP of which you were member has now expelled you from the party.

You contested the Parliamentary Election as a candidate of the Independent Group No. 2 of the Electoral District of Jaffna of which I was the leader. You would also recall that you gave an undertaking at the time of submission of nomination papers that you will conduct yourself in accordance with all the stipulations in a pledge signed by you. A copy of that pledge is annexed hereto for your easy reference.

In view of the fact that you have been expelled from the EPDP and have violated the pledge given by you, your conduct has left me with no alternative but to terminate your membership of the Independent Group No. 2 of the Electoral District of Jaffna.

In view of the consequences that must necessarily flow, I am forwarding a copy of this letter to the Secretary-General of Parliament for necessary action.

Yours truly,

Sgd.

K. N. Doulgas Devananda, MP.,
Secretary-General, EPDP
Leader, Independent Group No. 2
Electoral District of Jaffna".

Copy to: 1. Secretary-General of Parliament
2. Commissioner of Elections."

On a reading of P9 it would appear that there were two reasons for the termination of membership of the Independent Group No. 2. The first is the expulsion from the EPDP and the second reason is the violation of the "pledge" given by the petitioners. I have already considered the validity of the expulsion from the EPDP. I agree with the submission of Mr. Wikremanayake that just as much as the party

constitution is an agreement or contract between persons for the purpose of "association", the "pledge" is a contract between the parties intended to ensure conformity with party policies. Fernando, J. in *Dissanayake v. Kaleel* (1993) 2 SLR 135 at 182⁽⁴⁾ exhaustively reviewed the cases and stated: "Although the rights in question arose essentially from contract, a fair hearing was a precondition to deprivation of rights or to the imposition of penalties and disabilities being an implied term of such contract. "In the words of Willes, J. in *Cooper v. Wandsworth Board of Works* (1863) 14 CB(NS) 180⁽⁵⁾ ". . . the rule is of *universal application*, and founded upon the plainest principles of justice". I accordingly hold that the termination of membership of the petitioners of the Independent Group No. 2 on the ground of alleged violation of the "pledge" is subject to the *audi alteram partem* rule, and there has been a failure to comply with it.

Mr. Wikremanayake relied strongly on the judgment of Kulatunga, J. in *Dissanayake's case (supra)* – The learned Judge, however, in the course of his judgment clearly stated: "The right of a MP to relief under Article 99 (13) (a) is a legal right and forms part of his constitutional rights as a MP. If his complaint is that he has been expelled from the membership of his party in breach of the rules of natural justice, *he will ordinarily be entitled to relief*; and this court may not determine such expulsion to be valid *unless there are overwhelming reasons warranting such decision*. Such decision would be competent only in the *most exceptional circumstances permitted by law and in furtherance of the public good the need for which should be beyond doubt.*" at page 234 (The emphasis is mine). In considering the campaign carried on by the petitioners in that case between 28.08.91 and 6.9.91 Kulatunga, J. took the view that it amounted to a threat to stable government in the country, a campaign that was "likely to confuse or inflame the public mind against the Head of the State, the government and the party in power. "The learned Judge added" . . . this case involves the interests of a party which has been voted into power by the electors and above all the interests of the public who are often the victims of such indisciplined controversy. "No such weighty considerations are present in the applications before us. I accordingly hold that strict compliance with the *audi alteram partem* rule was a precondition to a valid expulsion from the party (EPDP) as well as the termination of the membership of the Independent Group No. 2 of the electoral district of Jaffna. This the respondents have failed to do.

For the reasons set out above, I determine that both P8 and P9 are of no force or avail in law and that they are *invalid*.

In all the circumstances, I make no order as to costs of these proceedings.

WIJETUNGA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Expulsion from party and termination of membership declared invalid.
