

**ARULSAMY  
VS.  
UPCOUNTRY PEOPLES FRONT AND OTHERS**

COURT OF APPEAL,  
SRIPAVAN J.  
RANJIT SILVA J.  
SISIRA DE ABREW J.  
CA 1102/2006 (SPL/Expulsion)  
August 30,31,2006 September 4, 12, 19,2006.

*Elected to Provincial Council as a nominee of a recognized party-  
Disciplinary action taken by party- Expelled- Challenged on the basis that*

*he was not a member of the Party- Necessary parties objection not taken in this statement of objections - Bias alleged- Provincial Councils Election Act, No. 2 of 1968- Section 2, 563 - fatal.*

The petitioner was elected as a member of the Central Provincial Council. The petitioner agreed to a proposal made by the 1st respondent party to have the name entered in the nomination paper of its party, for the purpose of contesting the said election. Thereafter, he was disciplinary dealt with by the 1<sup>st</sup> respondent party and expelled. The petitioner refused to attend the inquiry, as it was his position that he is not a member of the 1<sup>st</sup> respondent party.

A writ of Certiorari was sought to quash the said decision.

It was contended by the respondents that —

- (1) the Members of the Disciplinary Committee have not been made parties to the application.
- (2) the members of the Central Committee of the 1st respondent party have not been named.
- (3) there is no valid affidavit and the application should be dismissed *in limine*.

**HELD:**

- (1) The expelling body was the Central Committee of the 1<sup>st</sup> respondent party. The Disciplinary Committee has the power to make a recommendation to the Central Committee for suitable action.
- (2) The final decision with regard to a suitable action is taken by the Central Committee.
- (3) The Central Committee is a body having legal authority to determine disputed matters involving expulsion which affects rights and interests of the petitioner.
- (4) The failure to make the members of the Central Committee as parties is fatal.

*Per Sripavan, J.*

"When *mala fides* are alleged against the purported expulsion, the

members of a Central Committee who took the decision must necessarily be made parties. It is not only mandatory but fairness too requires *prima facie* that the members of the Central Committee be made respondents, an opportunity be given to explain, controvert or mitigate the case against them and the right to making submissions\*.

*Per Sripavan, J*

"I hold that conduct of the respondents do not disentitle them from taking the objection relating to necessary parties even though it was not specifically pleaded in the statement of objection"

#### **APPLICATION for a Writ of Certiorari/Mandamus**

#### **Cases referred to :**

1. *Gamini Dissanayake vs. M.C.M. Kaleel and Others* 1993 2 Sri LR 135 at 179
2. *Cooper vs. Wandsworth Board of Works* 1863 14 CBNS 180
3. *Mersey Docks and Harbour Board Trustees vs. Gibbs* 1866 LR 1 HL 93
4. *Muthusamy Gnanasambanthan vs. Chairman, REPIA and Others* 1998 3 Sri LR 169
5. *Schmidt vs. Secretary of State for Home Affairs* 1969 2CL 149 at 170

*Wijedasa Rajapakshe PC with Kuwera de Zoysa , Kapila Liyanagamage, Nilantha Kumarage, Gamini Hettiarachchi for petitioner.*

*Romesh de Silva PC with K.S. Ratnavale, Maithree Wickremasinghe, Sugath Caldera and Eraj de Silva for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents ...*

*Anusha Nawaratne DSG for 4-5 respondents*

*Cur. adv. vult.*

September 27, 2006

**SRIPAVAN, J.**

The petitioner was elected as a member of the Central Provincial Council at the Provincial Councils Election held on 10.07.2004. The Petitioner was thereafter appointed as a Minister of Industries, Sports, Womens Affairs, Estate Infrastructure, Hindu Cultural Affairs and Education (Tamil) of the Central Provincial Council. The petitioner agreed to a proposal made by the 2nd respondent to have his name entered in the nomination paper of the 1st Respondent party for the Nuwara Eliya District for the purpose of contesting the said election. The petitioner was thereafter duly elected as a member of the Central Provincial Council as a nominee of the 1st respondent which is a recognized political party as evidenced by the Gazette Notification published by the 4th respondent marked P1.

The Petitioner alleges that he received a letter dated 20.09.2005 marked P6 from the 3rd respondent requesting him to show cause within 14 days on certain charges levelled against him. On receipt of the said letter annexing the charges the Petitioner forwarded a letter dated 30.09.2005 marked P8 to the 3rd respondent stating specifically that the question of disciplinary proceedings could not arise against him in terms of the party constitution since he was not a member of the 1st respondent party. Therefore, the 3rd respondent by letter dated 05.12.2005 marked P9 requested the petitioner to be present for an inquiry to be held on 21.12.2005. The proceedings dated 25.12.2005 marked R3 shows that the petitioner at the inquiry took up the position that he was not a member of the 1st respondent party and as such no charges could be levelled against him. Again, by letter dated 27.02.2006 marked P12 the petitioner informed the 3rd respondent that he was not a member of the 1st respondent party; therefore the 3rd respondent had no authority whatsoever to inquire into the alleged charges framed against the petitioner by letter dated 20.09.2005. The petitioner thereafter refused to participate at the inquiry fixed for 03.03.2006. However, on 16.06.2006 the petitioner received a letter dated 12.06.2006 marked P13 informing that on the recommendation made by the Disciplinary Commission, the Central Committee has forfeited the petitioner's membership and expelled the petitioner from the 1st respondent party. The petitioner states that since he was not a member of the 1st respondent party, he has not ceased to be a member of the

Central Provincial Council and his seat in the Council has not become vacant by reason of the purported expulsion contained in the letter marked P13. The letter dated 14.06.2006 marked P14 also states that the Central Committee of the 1st respondent party has directed the 3rd respondent to inform the 5th respondent that the petitioner had been expelled from the 1st respondent party.

At the hearing before us the learned President's Counsel appearing for the 1st, 2nd and 3rd Respondents took up the following three preliminary objections :

1. That the members of the Disciplinary Commission have not been made parties to this application.
2. The members of the Central Committee who made the impugned decision to expel the petitioner from the 1st respondent party have not been made parties to this application; and
3. The petitioner has failed to file valid affidavits known to the law.

The petitioner in paragraph 27 of the petition challenges the purported expulsion contained in P 13 and P 14 on the following grounds, *inter-alia* (I) The purported expulsion was in gross violation of the principles of natural justice (II) The purported expulsion was in violation of the petitioner's legitimate expectation to a fair hearing. (III) The purported expulsion was unreasonable or arbitrary. (IV) The purported expulsion was done *mala fide*. (V) The purported expulsion was without any merit.

Thus, this Court is called upon to determine whether the expulsion of the petitioner from the membership of the recognized political party was valid or not. This Court while exercising its jurisdiction in terms of Section 63 of the Provincial Councils Election Act, No. 2 of 1988 should inquire whether the expelling body has acted (I) within its jurisdiction ; (II) followed the procedure laid down in the constitution of the party ; (III) acted in compliance with the principles of natural justice before making the impugned decision to expel the petitioner; and (IV) whether the impugned expulsion was done with a bad intention (*mala fide*).

The expelling body as reflected in documents marked P 13 and P 14 was the Central Committee of the 1st respondent party. In terms of clause 16:3 of the constitution of the 1<sup>st</sup> respondent party, The Disciplinary Commission after an inquiry into a complaint made against a member has the power to make recommendation to the Central Committee for suitable action. The recommendation made by the Disciplinary Commission may or may not be accepted by the Central Committee. However, the final decision with regard to a suitable action is taken by the Central Committee. Thus, the Central Committee is a body having legal authority to determine disputed matters involving the expulsion which affects rights and interests of the petitioner. Therefore a fundamental question arises as to whether this Court could revise the findings of the Central Committee without giving the members of such committee a hearing.

*"The two principles which, pre-eminently, are generally thought to be necessary to guarantee that the law, or any body of rules, is applied impartially and objectively = and hence justly = are that no man should be judged without a hearing and that every judge must be free from bias, or, as they are often cited in the form of latin tags, audi alteram partem and nemo iudex in re sua. It is not possible to produce an exhaustive list of the rules of natural justice in this formal sense, or of the requirements of the rules, because the rules of natural justice are means to an end and not an end in themselves."* (Natural Justice by Paul Jackson - page 6)

As Fernando J. observed in *Gamini Dissanayake vs. M. C.M. Kaleel and Others* <sup>(1)</sup> at 179 "The most fundamental principle of natural justice is the audi alteram partem rule, which is an obvious principle of justice applicable in all judicial proceedings. Natural justice is not now considered to be part of some fundamental and immutable law, constituting a fetter on the legislative power; today the courts presume, unless the contrary appears, that the legislature intended that powers conferred by it be exercised fairly for "although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature" (*Cooper vs. Wandsworth Board Of Works* <sup>(2)</sup> *Mersey Docks and Harbour Board Trustees vs. Gibb* <sup>(3)</sup>) The duty to give a fair hearing is as much a cannon of good administration and good

*legal judicial procedure”.*

In *Muthusamy Gnanasambanthan vs. Chairman REPIA and Others* <sup>(4)</sup>, the Supreme Court considered whether an authority whose order was assailed must be made a party and held that the failure to make REPIA a party was a fatal irregularity that would lead to the dismissal of the application. In *Schmidt vs. Secretary of State for Home Affairs* <sup>(5)</sup> at 170 Lord Denning MR suggested that the ambit of natural justice extended not merely to protect rights but any legitimate expectation of which it would not be fair to deprive (a person) without hearing what he has to say.

This court also takes the view that when *mala fides* are alleged against the purported expulsion, the members of the Central Committee who took the decision must necessarily be made parties to this application. Since the preliminary objection raised by the learned President's Counsel is of a fundamental nature which strikes at the heart of the jurisdiction of this Court, I hold that the conduct of the respondents do not disentitle them from taking the objection relating to “necessary parties” even though it was not specifically pleaded in their statement of objections. In my view, it is not only mandatory but fairness too requires *prima facie* that the members of the Central Committee be made respondents, an opportunity be given to explain, controvert or mitigate the case against them and the right to make submissions.

For the reasons set out above, I hold that the failure to make the members of the Central Committee as parties to this application is fatal and this application therefore fails. In view of the conclusion reached, the Court did not consider the other preliminary objection raised by the learned counsel for the respondents that the petitioner has failed to file valid affidavits known to the law.

**RANJITH SILVA, J.** — I agree.

**SISIRA DE ABREW, J.** — I agree.

*Application dismissed.*