

GALAPPATHTHI
v.
BULEGODA AND ANOTHER

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

RAMANATHAN, J. AND

– WIJETUNGA, J.

S.C. NO. (SPL.) 248/96.

FEBRUARY 3, 5, 6 AND 7, 1997.

Expulsion of a member of a recognized political party – Article 99(13) (a) of the Constitution – Audi alteram partem rule.

By a letter dated 30.11.96 Sri Lanka Pragathisheeli Peramune (SLPF) a recognized political party which party is represented in Parliament by the petitioner purported to expel the petitioner from the party and sought to nominate another member of the party as member of Parliament. The said expulsion was a sequel to an allegation that the petitioner had ceased to be a member of the party by reason of his failure to obtain party membership for 1996. The respondents claimed that the petitioner forfeited his membership by refusing to pay the membership fee for that year. The allegation was denied by the petitioner but the party proceeded to expel him without holding an inquiry into the dispute. It was argued that the petitioner was never expelled from the party but ceased to be a member of the SLPF; hence he is not entitled to invoke the jurisdiction of the Court under Article 99(13) (a).

Held:

1. The relevant document constitute *ex facie* a purported expulsion of the petitioner from the SLPF; hence the court has jurisdiction to entertain his application.
2. The respondents failed to establish that the petitioner ceased to be a member of the SLPF by reason of the failure to obtain party membership for 1996. This apart, there has been a violation of the *audi alteram partem* rule by the failure of the respondents to hold an inquiry and to give an opportunity to the petitioner to meet the case against him. Hence, the expulsion of the petitioner was invalid.

Case referred to:

1. *Gamini Dissanayake v. M.C.M. Kaleel and Others.* (1993) 2 Sri L.R. 135, 185.

APPLICATION under and in terms of Article 99(13) (a) of the Constitution challenging the expulsion of the petitioner from the S.L.P.F.

D. S. Wijesinghe, P.C., with *J. C. Weliamune* and *Miss. Lilanthi de Silva* for petitioner.

W. P. Gunatilake with *J. A. J. Udawatte* and *Upul Gunaratne* for 1st, 2nd and 3rd respondents.

M. B. Ratnayake with *Sunil Watagoda* for 4th respondent.
5th, 6th and 7th respondents absent and unrepresented.

Cur. adv. vult.

February 19, 1997.

G. P. S. DE SILVA, C.J.

The petitioner is a Member of Parliament for the Hambantota Electoral District nominated by the 3rd respondent, the Sri Lanka Pragathisheeli Peramuna (S.L.P.F.), a recognised political party. By this application the petitioner invokes the jurisdiction of this Court in terms of Article 99(13)(a) of the Constitution seeking *inter alia*, a declaration that his "purported expulsion" from the S.L.P.F. is invalid. The 1st respondent is the President of the S.L.P.F. The 2nd respondent functions as the Secretary of the S.L.P.F. The 4th respondent is the Janatha Vimukthi Peramuna (J.V.P.), a recognised political party. The 5th respondent (Jathiya Galawaganeema Peramuna) is also a political party. According to the petitioner the 5th respondent is a "coalition" of the 3rd and 4th respondent parties.

At the General Elections held in August 1994 the S.L.P.F. became entitled to one parliamentary seat for the Hambantota electoral district. The petitioner was nominated as the Member of Parliament for the electoral district of Hambantota by the S.L.P.F. He took his oaths on 6.1.95 and he continued to sit in Parliament till 13.12.96, that is, till the end of session in 1996. However, on or about 26.9.96 he received a letter dated 16.9.96 (marked P21) signed by the 1st and 2nd respondents informing him that he has failed to obtain "valid

party membership for the year 1996". P21 (as translated) reads as follows:

"Sri Lanka Progressive Front

7th Lane,
Pagoda Road,
Nugegoda,
Sri Lanka
16.9.1996

Mr. Galapatti Arachchige Nihal,
Mutumala Mawatha, Pallikkudawa,
Tangalla.

Notice of Termination of Membership

Sir ,

It has been revealed that you, Galappaththi Arachchige Nihal who was nominated and appointed as a Member of Parliament of the Sri Lanka Progressive Front for the Electoral District No. 9 Hambantota at the Parliamentary Elections 1994, for the vacancy of Member of Parliament for the Party have not obtained Party Membership, valid for 1996.

Therefore the decision of the Central Committee dated 7.9.96 to consider having vacated the Membership with effect from 1.5.96 has been approved by the Politburo that met on 13.9.96. You may submit an appeal by registered post if you wish to give an explanation within 14 days from date hereof.

Yours faithfully,

Sgd. Ariya Bulegoda
Chairman
Sri Lanka Progressive Front

Sgd. Dr. Kamal Karunadasa
Chief Secretary (seal)

Dr. Kamal Karunadasa
Secretary
Sri Lanka Progressive Front

copies: 1. Commissioner of Elections
2. Secretary General of Parliament"

By R10 dated 27.9.96 (addressed to the 1st respondent) and P23 dated 1.10.96 (addressed to the 2nd respondent) the petitioner strongly protested against the contents of the letter P21. In R10 and P23 he clearly asserted, *inter alia*, (a) that he has duly obtained membership in the S.L.P.F., (b) that he has not ceased to be a member of the S.L.P.F., (c) that he continues to be a member of the S.L.P.F. (d) that the Constitution of the S.L.P.F. does not require a member to pay membership fees and in fact no member was required to pay membership fees.

The petitioner's complaint to this court does not by any means rest with the letter P21 for he received copies of two letters addressed to the Secretary General of Parliament and to the Commissioner of Elections. Both letters were signed by the 1st and 2nd respondents and were dated 30.11.96. The letter addressed to the Secretary General of Parliament has been marked as P52A while the letter addressed to the Commissioner of Elections has been marked as P27. Both letters are in identical terms and (as translated) they read as follows:

"Notice of Cessation of Party Membership

It is hereby notified that at the party Convention of the Sri Lanka Progressive Front held on 30.11.96 it was unanimously decided to expel Mr. Galappaththi Arachchige Nihal who was nominated by our Party as a Member of Parliament for the Electoral District No. 9, Hambantota to represent Sri Lanka Progressive Front and that therefore he has ceased to be a member of our Party.

It is most respectfully requested to give us the opportunity to nominate another member of our Party to fill the vacancy in his place.

Yours faithfully,

Sgd. Ariya Bulegoda
Chairman
S.L.P.F.

Sgd. Dr. Kamal Karunadasa
(seal)

- copies: 1. Mr. Galappaththi Arachchige Nihal,
Mutumala Mawatha,
Pallikkudawa, Tangalla
2. Hon. Ratnasiri Wickremanayake
Minister of Parliamentary Affairs."

The petitioner, relying on P52A and P27, contends that the respondents purported to expel him from the S.L.P.F. and he is therefore entitled to invoke the jurisdiction of this court in terms of the proviso to Articles 99(13) (a) of the Constitution. On the other hand, the case for the 1st to 3rd respondents (hereinafter referred to as the respondents) is that the petitioner was never expelled from the S.L.P.F. but that he **ceased to be a member of the S.L.P.F.** by reason of not having "obtained party membership valid for 1996." The respondents rely on P21, on R6 (the minutes of the S.L.P.F. Central Committee meeting held on 7.9.96), on R9 (the report of the S.L.P.F. politburo meeting held on 13.9.96) and R12 (the Party Convention held on 30.11.96) in support of their case.

Upon the case as presented on behalf of the respondents, the first question that arises for decision is the date of the cessation of the petitioner's membership of the party. It seems to me that the evidence on this crucial point is not only unclear but is also of a contradictory nature. In R6 and in P21 the date given is 1st May 1996. In paragraph 61 of the objections filed on behalf of the respondents the date is given as 7th September 1996 while in paragraph 68 of the objections the date specified is 16th September 1996. In paragraph 34 of the written submissions of the respondents the date is stated to be 31st December 1995.

As seen from paragraph 67 of the objections of the respondents the gravamen of the charge against the petitioner is that he has ceased to be a member of the S.L.P.F. by his "**refusal to pay the membership for the year 1996 ...**". There is no evidence whatever that the petitioner was called upon to pay the membership subscription for 1996 and that he refused to do so. Nor is there evidence as to the precise amount of the subscription fee for membership for the year 1996 and the date on which payment

became due for 1996. The affidavit of the Treasurer of the S.L.P.F. (R14) does not throw any light on these crucial matters. What is more, neither the party Constitution (P17) nor any rule, regulation or resolution **validly** passed in terms of the party Constitution makes any provision for the cessation of membership by reason only of non-payment of the subscription fee for one year. It is relevant to bear in mind that the petitioner is not an office-bearer but an ordinary member of the party. Any rule of resolution passed by the Central Committee or other body must be shown to be binding on the petitioner and that it has been brought to his notice. There is no evidence at all to establish that the petitioner was aware of the contents of R6 and R9. In short, the respondents have failed to establish the all-important fact, namely that the payment of an annual subscription fee is a condition precedent to the petitioner continuing to remain a member of the SLPF. In this regard, R4 is of no relevance as it is only an application for membership of the party made by the petitioner.

On a consideration of the matters set out above and the material on record, I hold that the respondents have failed to establish that the petitioner has ceased to be a member of the S.L.P.F. by reason of the failure to obtain "party membership for 1996" (*vide* P21).

This apart, the other cogent ground upon which the petitioner assailed the "purported expulsion" is that there had been a clear violation of the *audi alteram partem* rule. It seems to me that this contention advanced on behalf of the petitioner is well founded. Upon receipt of P21, the petitioner wrote R10 (dated 27.9.96) and P23 (dated 1.10.96). While R10 was addressed to the 1st respondent, P23 was addressed to Secretary of the party. In R10 the petitioner specifically took up the position that he has duly obtained membership of the S.L.P.F., that he has not ceased to be a member of the party and that he continues to remain a member of the party. In substance P23 was to the same effect. Once the petitioner denied the claim of the respondents that he had ceased to be a member of the S.L.P.F., it was incumbent upon the respondents to have held an inquiry and to have given an opportunity to the petitioner "to explain, controvert or mitigate the case against (him)" per Fernando, J., in *Gamini Dissanayake v. M. C. M. Kaleel and Others*⁽¹⁾. This, the

respondents failed to do, and the consequence is that the "purported expulsion" is void.

It was further submitted as a matter of law, on behalf of the respondents, that there was no "expulsion" of the petitioner from the S.L.P.F. and therefore this court has no jurisdiction to entertain the petitioner's application. With this submission, I am afraid, I cannot agree. The contention that there was no "expulsion" of the petitioner from the S.L.P.F. is in the teeth of the express statements made in both P52A and P27. To my mind, there is no doubt that P27 and P52A constitute *ex facie* a purported expulsion of the petitioner from the S.L.P.F.

Finally, it was contended that this application which was filed on 30.12.96 is time barred. The reasoning is that the petitioner ceased to be a member of the S.L.P.F. on "the date on which P21 becomes effective, that is either 14 days from the date of the letter (16.9.96) or 14 days after the arrival of the petitioner from abroad, that is 14 days from 26.9.96" (*vide* paragraph 10 of the written submissions dated 10.2.97 filed on behalf of the respondents). It is clear that on the respondent's own showing there is no certainty at all in regard to the operative date of P21. What is worse, P21 in express terms has a retrospective effect; the cessation of membership from the party is from 1.5.96. How then is the period of one month to be calculated? I hold that the objection based on time bar is untenable and that this court has jurisdiction to entertain the petitioner's application in view of P27 and P52A.

For the reasons set out above, I determine that the "purported expulsion" of the petitioner is of no force or avail in law and that it is **invalid**. The 1st, 2nd and 3rd respondents must jointly pay the petitioner a sum of Rs. 5000/- (Five Thousand Rupees) as costs of these proceedings.

RAMANATHAN, J. – I agree.

WIJETUNGA, J. – I agree.

Expulsion determined invalid.