

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under section 63(1)
of the Provincial Council Election Act No.2 of 1988.

R.G.Samaranayake

No. 08, Pallegama,

Makkanigama

C.A. Application No: EXP 260/2015

Petitioner

Vs.

01. A.D.Susil Premajyantha,

General Secretary,

United People's Freedom Alliance,

3001 T.B.Jaya Mawatha,

Colombo 10.

02. Anura Priyadarshana Yapa

General Secretary

Sri Lanka Freedom Party,

301, T.B.Jayah Mawatha,

Colombo 10.

03. United people's Freedom Alliance,

301, T.B.Jayah Mawatha,

Colombo 10.

04. Sri Lanka Freedom Party

301, T.B.Jayah Mawatha,

Colombo 10.

05. Council Secretary

Central Provincial Council
Pallekelle, Kundasale.

06. Commissioner of Elections

Elections Secretariat
Rajagiriya.

07. Prof. Wishwa Warnapala

General Secretary (Newly Appointed)
United People's Freedom Alliance,
301, T.B. Jayah Mawatha,
Colombo 10. (Dead)

7A. Mahinda Amaraweera

General Secretary (Newly Appointed)
United People's Freedom Alliance,
301, T.B. Jayah Mawatha, Colombo 10.
(Substituted Respondent)

08. Duminda Dissanayake

General Secretary (Newly Appointed)
United People's Freedom Alliance,
301, T.B. Jayah Mawatha,
Colombo 10.

Respondents

Before: E.A.G.R. Amarasekere J.

A.L. Shiran Gooneratne J.

Janak De Silva J.

Counsel:

J.C. Weliamuna P.C. with S. Abeyratne for Petitioner

Manohara Jayasinghe State Counsel for 5th and 6th Respondents

Argued on: 2nd April 2018

Decided on: 6th June 2018

Janak De Silva J.

This is an application made under section 63(1) of the Provincial Councils Election Act No. 2 of 1988 as amended (Act) by the Petitioner seeking a determination from this Court that his purported expulsion from the United Peoples Freedom Alliance (UPFA) is invalid.

The Petitioner claims that he is a member of the Sri Lanka Freedom Party (SLFP) which is a recognized political party by the Commissioner of Elections. He submits that the UPFA is an alliance of several political parties, of which the SLFP is one, which has aligned together to contest elections under a common name and symbol and is registered as a political party with the Commissioner of Elections for the purpose of contesting elections.

It is his position that the constituent parties of the UPFA retains their separate identities and organizations while entering into arrangements to contest elections and continues to function as an alliance on matters on which there is consensus between the constituent parties.

The Petitioner states that he contested the Provincial Councils Elections held for the election of members to the Central Provincial Council on 21st September 2013 as a candidate of the UPFA having been nominated by the SLFP. The Petitioner was elected to the Central Provincial Council having polled the 6th highest preferential votes on the UPFA list.

The Petitioner received a letter dated 20th May 2015 from the 3rd Respondent, the General Secretary of the UPFA, by which he was informed that he had been removed from the membership of the UPFA from the date of the said letter for the reasons set out therein and that with his removal from the membership of the UPFA, he ceases to be a member of the Central Provincial Council.

The Petitioner seeks a determination that his purported expulsion by letter dated 20th May 2015 is invalid and a determination that the said letter is null and void.

The 1st to 4th, 7th and 8th Respondents did not take part in these proceedings although noticed by Court.

The learned Presidents Counsel for the Petitioner submitted that the Petitioner is only a member of the SLFP and not the UPFA and as such the question of his expulsion from the UPFA does not arise. He relied heavily upon clauses (06).01 and (06). 02 of the constitution of the UPFA which provides for membership of the UPFA to be applied and obtained by recognized political parties and organizations. It is his submission that the UPFA constitution does not envisage individual membership but only membership of recognized political parties and organizations. I am unable to accede to this argument.

Clause (06).05 of the UPFA constitution allows the UPFA to take disciplinary action against any candidate named by a constituent party who contested from the UPFA list and got elected even after the constituent party leaves the UPFA. Clause (10).02 therein states that **all members of the constituent parties of the UPFA are deemed to be members of the UPFA for all purposes**. This is a deeming provision. The meaning of the word “deemed” was considered and explained by Ranasinghe, J. (as he then was) in *Jinawathie v. Emalin*¹ in the following words:

"In statutes, the expression deemed is commonly used for the purpose of creating a statutory function so that a meaning of a term is extended to a subject-matter which it properly does not designate. . . Thus, where a person is deemed to be something it only

¹ (1986) 2 Sri.L.R. 121 at 130,131

means that whereas he is not in reality that something, the Act of Parliament requires him to be treated as if he were”.

Ranasinghe, J. went onto explain the legal effect and consequences of such a legal fiction in the following terms:

"Thus, where in pursuance of a statutory direction a thing has to be treated as something which in reality it is not or an imaginary state of affairs is to be treated as real, then not only will it have to be treated so during the entire course of the proceedings in which such assumption is made but all attendant consequences and incidents, which if the imagined state of affairs had existed would inevitably have flowed from it have also to be imagined or treated as real".²

I am of the view that this principle of interpretation is applicable to the constitution of the UPFA which creates legal rights between the UPFA, its constituent parties and members. Accordingly, the Petitioner was at all material times a member of the UPFA and was subject to its disciplinary control as set out in its constitution.

This issue is put beyond any doubt upon a consideration of clause (10).03 of the UPFA constitution which states that where the UPFA membership of a Member of Parliament, Member of Provincial Council or Member of a Local Authority who got elected on the nomination paper of the UPFA is cancelled on disciplinary grounds, it is the duty of the Secretary of the UPFA to inform of the said cancellation to the Commissioner of Elections, Elections Commission, Secretary General of Parliament, Secretary of the Provincial Council or the Secretary of the relevant Local Authority.

I will now examine the decisions in *Basheer Segu Dawood v. Ferial Ashraff and others*³ and *Mohamed v. Jayaratne*⁴ relied on by the learned Presidents Counsel for the Petitioner to fortify his submission that the Petitioner is not a member of the UPFA.

² *Ibid.* page 130

³ (2002) 1 Sri.L.R. 26

⁴ (2002) 3 Sri.L.R. 181

In *Basheer Segu Dawood v. Ferial Ashraff and others*⁵ the question was whether Basheer Segu Dawood was a member of the National Unity Alliance (NUA) which purportedly expelled him from membership of the NUA. Amerasinghe J. took the view that the structure known as the NUA had constituent parts consisting of political parties but did not accommodate individuals as members. Accordingly, it was held that the NUA could not have expelled him as he was not a member of the NUA. However, in the instant case, the UPFA constitution does provide for individual membership and the Petitioner was deemed to be a member of the UPFA. Therefore, the facts in *Basheer Segu Dawood v. Ferial Ashraff and others*⁶ are different from the instant case.

In *Mohamed v. Jayaratne*⁷ the question was whether Mohamed was a member of the People's Alliance (PA) which purportedly expelled him from membership of the PA. Amaratunga J. was of the view that apart from the fictional deeming membership conferred on the petitioner by the PA constitution, the petitioner is not a member of the PA in the true sense of the word. He held that the constitution of the PA did not provide for the expulsion of the petitioner either by the PA or by the Central Executive Committee of the PA or by the leader of the PA or by the Secretary of the PA.

The only commonality in that case and the instant case is the deeming membership. However, the "deeming member" status in *Mohamed v. Jayaratne*⁸ was limited to the purposes spelt out in section iii Rule (3) of the PA constitution and did not extend to disciplinary control of such member by the PA. But in the instant case, Clause (06).05 of the UPFA constitution allows the UPFA to take disciplinary action against any candidate named by a constituent party who contested from the UPFA list and got elected even after the constituent party leaves the UPFA and Clause (10).03 of the UPFA constitution states that where the UPFA membership of a Member of Parliament, Member of Provincial Council or Member of a Local Authority who got elected on the nomination paper of the UPFA is cancelled on disciplinary grounds, it is the duty of the Secretary of the UPFA to inform of the said cancellation to the Commissioner of Elections,

⁵ (2002) 1 Sri.L.R. 26

⁶ Ibid.

⁷ (2002) 3 Sri.L.R. 181

⁸ Ibid.

Elections Commission, Secretary General of Parliament, Secretary of the Provincial Council or the Secretary of the relevant Local Authority. Importantly, Clause (10).02 therein states that **all members of the constituent parties of the UPFA are deemed to be members of the UPFA for all purposes**.

Accordingly, I am of the view that the decisions in *Basheer Segu Dawood v. Ferial Ashraff and others*⁹ and *Mohamed v. Jayaratne*¹⁰ is of no assistance to the cause of the Petitioner in deciding whether he was a member of the UPFA and subject to its disciplinary control.

The fact that the Petitioner continues to be a member of the SLFP as submitted by the learned Presidents Counsel for the Petitioner is immaterial to test the validity of his expulsion from the UPFA. Admittedly his name appeared on the nomination list of the UPFA. Section 63(1) of the Act states that:

“Where a member of a Provincial Council ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper his name appeared at the time of his becoming such member, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member” (emphasis added)

The Petitioner been a member of the UPFA was subject to its disciplinary control. However, such disciplinary control must be exercised in accordance with the party rules or its constitution and adherence to principles of natural justice. In *Gooneratne and others v. Premachandra and others*¹¹ the Court of Appeal explained the rationale for such due process in the following terms:

“Procedural rules govern the conduct of bodies exercising authority in how they exercise their powers. A democratic form of government presupposes that electors are free to form political parties. They are therefore by nature, voluntary organisations. Membership will be dependent on a set of rules or constitution. In other words, a person joining a political party will be entering into a contract with the party to be governed by the party

⁹ (2002) 1 Sri.L.R. 26

¹⁰ (2002) 3 Sri.L.R. 181

¹¹ (1994) 2 Sri.L.R. 137

rules or constitution. He will continue to be a member so long as he adheres to the rules or constitution. Thus, where rules are laid down governing their expulsion, they have a right to demand that those rules be followed. Failure to follow rules laid down, will render the expulsion invalid.”

The learned Presidents Counsel for the Petitioner submitted that his expulsion was done in clear violation of the principles of natural justice. The inviolability of the principles of natural justice in expelling members from political parties has consistently been recognized by our superior courts.

In *Gamini Dissanayake v. M.C.M. Kaleel and others*¹² Kulatunga J., in delivering the majority judgement of the Supreme Court observed as follows:

“The right of a M.P. to relief under Article 99 (13) (a). is a legal right and forms part of his constitutional rights as a M.P. 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. As Megarry J. said in *Fountain v. Chesterton* (Supra) "..... if there is any doubt, the applicability of the principles of natural justice will be given the benefit of that doubt " (cited by Megarry J. in *John v. Rees*) and the expulsion will be struck down.”¹³

The same principle has been applied in determining the validity of expulsions under the Act. In *Gooneratne and others v. Premachandra and others*¹⁴ the Court of Appeal held that in exercising the jurisdiction conferred on it by section 63 of the Act, Court should inquire whether the expelling body had (i) acted 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 taking the decision to expel the petitioners, and whether (iv) the grounds adduced for expelling

¹² (1993) 2 Sri.L.R. 135

¹³ Ibid. page 234

¹⁴ (1994) 2 Sri.L.R. 137

the petitioners could be sustained, and (v) the alleged misconduct if proved, merited the extreme punishment meted out.

In the instant case, the purported expulsion of the Petitioner was done with one letter dated 20th May 2015. No inquiry was held where he could have refuted the allegations made against him. He was charged and condemned at a stroke of a pen without an iota of a fair hearing. Accordingly, I have no hesitation in concluding that the purported expulsion of the Petitioner from membership of the UPFA was done in barefaced breach of the principles of natural justice and is therefore null and void and no force or avail in law.

I therefore declare the expulsion of the Petitioner from membership of the UPFA to be invalid.

The application of the Petitioner is allowed with costs.

Judge of the Court of Appeal

E.A.G.R. Amarasekere J.

I agree.

Judge of the Court of Appeal

A.L.Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal