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

S.C. (FR) Application
No. 56/2008

1. M. Deepthi Kumara Gunaratne,
   9/5, R.S. Fernando Mawatha,
   Panadura.

2. W.M.N.B. Wijesooriya,
   197/7, Hiressagala Road,
   Kandy.

3. T.A.C. Fernando,
   104/1, Pirivena Road,
   Sirimal Uyana,
   Ratmalana.

Petitioners

Vs.

1. Dayananda Dissanayake,
   Commissioner of Elections,
   Election Secretariat,
   Sarana Road,
   Rajagiriya.

2. Hon. The Attorney-General,
   Attorney General's Department,
   Colombo 12.

Respondents

BEFORE : Shirani A. Bandaranayake, J.
N.G. Amaratunga, J. &
Saleem Marsoof, J.

COUNSEL : J.C. Weliamuna with M. Rathnayake for Petitioners

Ms. Viveka Siriwardena De Silva, SSC, for Respondents

ARGUED ON: 11.11.2008

WRITTEN SUBMISSIONS
TENDERED ON: Petitioners : 27.11.2008
Respondents : 23.12.2008

DECIDED ON: 19.03.2009

Shirani A. Bandaranayake, J.

The petitioners, being the founder, the General Secretary and an office bearer of the *Sri Lanka Peratugami Pakshaya* (hereinafter referred to as the Party) complained that the refusal and/or failure on the part of the 1st respondent Commissioner to recognize and register the aforementioned Party and the refusal and/or failure to thereby grant the said Party the status of a recognized political party had infringed their fundamental rights guaranteed in terms of Articles 12(1), 12(2), 14(1)a) and 14(1)(c) of the Constitution for which this Court had granted leave to proceed.

The facts of the petitioners' case, as submitted by them, *albeit* brief are as follows:

The petitioners had formed the Party with an objective in entering the main political stream and gaining political power in order to achieve the following:

a) to promote political education and political, social, economic and cultural morality of the public;
b) to defend the people's sovereignty and the fundamental human rights;
c) to promote social, economic and cultural equality and equal opportunities.

In or about 1997, a new political party called 'X Group' was formed by a group of politically active young men and women from different segments of the society, who were sharing a common political ideology. The petitioners, in particular the 1st petitioner, being the founder, had played a significant role in the function of the Party known as 'X Group'. The Party X

Group as an ideological movement, had been a critique of the existing institutions and the individual, and concerned with bringing about changes through political reforms.

In September 1997, the Party X Group had taken over the 'Mathota' monthly magazine in which the political ideology of the Party X Group was discussed in the context of a variety of social issues. The 'Mathota' magazine continued until June 2000 and a total of 36 issues had been published (P2). In January 2001, the Party X Group started a new magazine called 'London', a bi-monthly publication. This continued until October 2004 (P3). Furthermore, the Party X Group had as part of their political activities, published several books (P4) and had conducted hundreds of public meetings on different social and political issues (P5).

Around December 2004 some members of the Party X Group broke away as a result of ideological differences. The said break away group however continued to use the original name of the Party X Group. This break away group however, is presently defunct. Accordingly in or around early 2005, the name of the Party was changed to 'X Party' and it continued its political activities on the lines of the core objectives of the original Party X Group.

The X Party had published two books and had conducted several public meetings and seminars as part of their political propaganda (P6 and P7).

In January 2006, at a Special General Meeting of the X Party it was unanimously decided to change the name of the Party to *Sri Lanka Peratugami Pakshaya* (The Sri Lanka Vanguard Party).

The Party is organized in a way that it is run by a core group of the Party members and currently the Party has a large number of followers at different levels. There are 304 card holding members of the Party and the Party had received a number of applications for membership. It has over 10,000 followers and is growing. The Party has an active cultural movement known as '*Peradiga Sulang* ' and several publications, which have been well received by different segments of the society including university students, academics, professionals and the rural youth.

The Party fund consists of income from four main sources; viz., proceeds from the sale of publications of the Party, proceeds from the sale of Bookmarks (under the Bookmark campaign) membership fee (Rs. 300/- per year) and donations from well-wishers (P12a and P12b – Audited accounts dated 31.03.2006 – 31.03.2007).

As the membership of the Party grew and its activities expanded, the Party had felt the necessity to contest elections in the future with a view to secure representation at representative institutions at all levels including Local Authorities, Provincial Councils and Parliament. It was also observed that a recognized political party enjoys certain privileges under the Parliamentary Elections Act (as amended), Local Government Elections Act (as amended), Provincial Councils Elections Act (as amended), Presidential Election Act (as amended), the Police Ordinance (as amended) and the Regulations made under the Public Security Ordinance. It was also observed that a recognized political party facilitates a political party's day to day political activities and its interaction with public institutions. As a result of their continuous presence in Sri Lankan politics since 1997, the Party is fully organized to contest any election under the election laws of the country and the Party has all the attributes of a political party.

In January 2008, the Party had made an application to the 1st respondent Commissioner seeking registration of the Party as a recognized political party. By letter dated 07.01.2008 the petitioners were called on behalf of the Party for an inquiry to be held on 17.01.2008 regarding the Party's application for registration (P14). On 17.01.2008, the petitioners had represented the Party at the inquiry held by the 1st respondent Commissioner. At the inquiry, the 1st respondent had questioned about the Party structure, financial details including financial management, membership recruitment criteria, political activities, Office Bearers and publications of the Party. The petitioners were also questioned on the Party's political ideology, which specific reference to the ethnic issue. The petitioners had given all the relevant information pertaining to the aforementioned inquiry.

By letter dated 21.01.2008, the 1st respondent Commissioner had rejected the application made by the Party for registration (P16). Consequent to the said rejection of their application for registration, the Party had written to the 1st respondent Commissioner asking for reasons for the purported rejection (P17). The petitioners submitted that in January 2008, at or about

the time the petitioners had made their application on behalf of the Party, the 1st respondent Commissioner had accepted and had registered five (5) new political parties, namely,

1. *Okkoma Wasiyo Okkoma Rajawaru Sanvidanaya;*
2. *Thamil Makkal Viduthialai Pulikal;*
3. *Nawa Sihala Urumaya;*
4. *Pathmanabha Eelam Revolutionary Liberation Front;*
5. *Muslim Liberation Front (P18).*

The aforesaid parties, according to the petitioners, had never existed as political parties prior to the registration and had never been actively engaged in political activities and the political vision and the leadership of the aforesaid five (5) parties were not known to the public. By contrast the petitioners' Party had been in active politics as a political movement and a Party for nearly 11 years.

The petitioners therefore specifically stated that by denying the Party the status of a recognized political party while accepting and registering five (5) new political parties is unfair, arbitrary and discriminatory and in frustration of the legitimate expectation of the Party to acquire the status of a recognized political party.

Since the right to engage in political activities includes forming of political parties in Sri Lanka, the formation of political parties and contesting elections is a necessary corollary for a working democracy guaranteed under Articles 3 and 4 of the Constitution of Sri Lanka. Accordingly the petitioners claim that the refusal and/or failure on the part of the 1st respondent Commissioner to recognize and register the Party, thereby granting the Party the status of a recognized political party is unreasonable, irrational, arbitrary, illegal and constitutes an infringement of Articles 12(1), 12(2), 14(1)a and 14(1)c of the Constitution for the reasons that,

1. the 1st respondent had acted contrary to the provisions of the Parliamentary Elections Act (as amended) and the purported decision of the 1st respondent has no legal basis;
2. the 1st respondent had failed to give reasons for his purported decision and there do not exist any valid reasons for the purported decision;

3. there are no disclosed criteria for the purpose of recognizing political parties;
4. the 1st respondent appears to have been influenced by extraneous factors;
5. the decision of the 1st respondent is in frustration of the petitioners' legitimate expectations;
6. the purported decision of the 1st respondent is discriminatory, and
7. the purported decision of the 1st respondent is obnoxious to the concept of franchise as judicially interpreted.

The respondents' contention in support of the rejection of the petitioners' application was mainly two fold;

a) the application of the petitioners' party 'Sri Lanka *Peratugami Pakshaya* is void *ab initio*; and
b) 'Sri Lanka *Peratugami Pakshaya*' did not meet the criteria to be eligible to be treated as a recognized political party.

The respondents in support of their 1st contention, referred to section 7 of the Parliamentary Elections Act, No. 1 of 1981, which stated that in terms of section 7(4)(b) of the Act, the Secretary of a political party should, at the time an application is made, furnish to the Commissioner a copy of the Constitution of such party and a list of office bearers of such party. Since the word 'shall' is used in section 7(4)(b) of the Parliamentary Elections Act, the respondents contended that the requirement stated in section 7(4)(b) is mandatory and not discretionary.

Learned Senior State Counsel for the respondents submitted that the petitioners had failed to comply with the said mandatory requirement as they had not tendered the Constitution of the Party at the time of making the application.

The contention of the learned Senior State Counsel for the respondents is that the Secretary of the Party had tendered only a 'proposed Constitution' and this had been stated in the covering letter sent along with the application (R1). The said document had stated that,

"එසේම යෝජිත පක්ෂ ව්‍යවස්ථාවේ පිටපත් තුනක්දල පක්ෂයේ නිළධාරී මණ්ඩලයේ ලැයිස්තුවක්ද, පක්ෂයේ මහා සභා සම්මේලන දෙකක වාර්තාද, මේ සමඟ ඉදිරිපත් කර ඇත."

Learned Senior State Counsel for the respondents took up the position that what was submitted was a 'proposed Constitution' of the Party as the word 'fhdacs;' amply demonstrates that it refers to a proposed Constitution and furnishing a proposed Constitution is not sufficient to fulfill the mandatory requirements specified in section 7(4)(b) of the Parliamentary Elections Act.

Also it was contended that since the letter of the petitioners dated 01.01.2008 (R1) refers to a 'proposed Constitution' that the party did not possess a Constitution and accordingly that the application of the party to be treated as a recognized political party is void *ab initio*.

Secondly, learned Senior State Counsel for the respondents contended that the eligibility criteria to be treated as a recognized political party are set out in section 7(5) of the Parliament Elections Act and in terms of the said provision, for a party to be entitled to be treated as a recognized political party it should satisfy that the said party is a political party and is organized to contest any election under the Act.

The contention of the learned Senior State Counsel for the respondents was that considering the material presented at the inquiry by the Commissioner of Elections in its totality, he had been of the opinion that the petitioners' Party did not satisfy the two attributes referred to in section 7(5) of the Parliamentary Elections Act and therefore the said Party was not eligible to be treated as a recognized political party.

Learned Senior State Counsel did not dispute the fact that in his letter dated 21.01.2008, the Commissioner of elections had not given any reasons for the rejection of the application preferred by the petitioners. Learned Senior State Counsel referring to the decisions in **Samalanka Ltd**. v **Weerakoon**, **Commissioner of Labour et al** ([1994] 1 Sri L.R. 405), **Karunadasa** v **Unique Gem Stones Ltd. et al** ([1997] 1 Sri L.R. 256) and **Yaseen Omar** v **Pakistan International Airlines Corporation and others** ([1999] 2 Sri L.R. 375), stated that the failure to

give reasons by the Commissioner is not a fatal error and cannot be concluded to mean that there is no valid reason for the said rejection as claimed by the petitioners.

Accordingly learned Senior State Counsel for the respondents contended that in the circumstances there had not been any violation of the petitioners' fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

Having stated the submissions by both parties, let me now turn to examine the issues raised by them.

The main contention of the respondents as stated earlier was based on the fact that the petitioners had not furnished the Constitution of the Party in terms of section 7(4)(b) of the Parliamentary Elections Act.

Section 7 deals with recognized political parties for the purpose of elections and section 7(4)(b) of the Act reads as follows:

> "The Secretary of a political party shall, at the time an application is made under paragraph (a), furnish to the Commissioner a copy of the Constitution of such party and a list of office bearers of such party."

A plain reading of the aforementioned section, quite clearly stipulates that as correctly contended by the learned Senior State Counsel for the respondents that the requirement referred to in section 7(4)b is mandatory and the Secretary must submit the Constitution of the Party, along with the application to the Commissioner of Elections.

The 1st petitioner being the founder and the General Secretary of the Party in question had made an application to the Commissioner of Elections by his letter dated 01.01.2008 in which he had stated that,

> ". . . .
>
> **<u>දේශපාලන පක්ෂයක් ලියා පදිංචි කිරීම සඳහා වන ඉල්ලීමයි</u>**

පිළිගත් දේශපාලන පක්ෂයක් වශයෙන් ලියා පදිංචි කරනු ලැබීම සඳහා 1988 අංක 29 දරණ පනතින් සංශෝධිත 1981 අංක 01 දරණ පාර්ලිමේන්තු මැතිවරණ පනතෙහි 7(4) වගන්තිය ප්‍රකාරව මෙම ඉල්ලුම් පත ඔබ වෙත ඉදිරිපත් කරනු ලැබේ.

ලියා පදිංචි කරනු ලැබීම සඳහා අපේක්ෂා කරණ පක්ෂයේ නම ශ්‍රී ලංකා පෙරටුගාමී පක්ෂය වන අතර ඉහත කී 7(4) වගන්තිය මගින් නියම කර ඇති ලේඛණද ඇතුළත්ව පක්ෂය ලියාපදිංචි කිරීම සඳහා අවශ්‍ය වන මූලික ලේඛණ මේ සමග ඉදිරිපත් කරමි.

පක්ෂයේ ලකුණ ලෙස දැකැත්ත සහ මිටිය යොදාගැනීමට අපේක්ෂා කරන අතර එම සංකේතයෙහි අනුරුවක් මේ සමග අමුණා ඇතග පක්ෂයේ වර්ණය රෝස පාට වේ.

එසේම යෝජිත පක්ෂ ව්‍යවස්ථාවේ පිටපත් තුනක්ද පක්ෂයේ නිළධාරී මණ්ඩලයේ ලැයිස්තුවක් ද පක්ෂයේ මහා සම්මේලන දෙකක වාර්ථා ද මේ සමග ඉදිරිපත් කර ඇත.

මෙම අයදුම්පත සහ අමුනා ඇති ලේඛණ සළකා බලා අප පක්ෂය ලියා පදිංචි කිරීම සඳහා අවශ්‍ය පියවර ගන්නා ලෙස කාරුණිකව ඉල්ලා සිටිමි.

ස්තුතියි

මෙයටල

විශ්වාසී,

. . . . . .

ප්‍රධාන ලේකම්,

දීප්ති කුමාර ගුණරත්න.”

This clearly indicates that the petitioners had tendered the party Constitution along with the other relevant documents attached to their application form. In fact petitioners had tendered a copy of the party Constitution marked P1, along with the petition and affidavit to this Court.

Learned Senior State Counsel strenuously contended that the petitioners had failed to comply with the mandatory requirement stipulated in section 7(4)b of the Parliamentary Elections Act as they had not submitted the Constitution of the Party at the time of making their application. Her position was that the petitioners had submitted only a proposed Constitution and in support of her contention she relied on the letter forwarded by the petitioners on 01.01.2008, which was referred to earlier, where it was stated as follows:

> "**එසේම යෝජිත පක්ෂ ව්‍යවස්ථාවේ පිටපත් තුනක්ද පක්ෂයේ නිළධාරී මණ්ඩලයේ ලැයිස්තුවක් ද පක්ෂයේ මහා සම්මේලන දෙකක වාර්ථා ද මේ සමග ඉදිරිපත් කර ඇත.**"

The contention of the learned Senior State Counsel was that the usage of the word fhdaPs; mlaI jHjia:dj means that the document attached to the application is only a proposed Constitution and therefore the petitioners had not complied with the mandatory requirement, clearly specified under the Parliamentary Elections Act.

It is however interesting to note that, although the learned Senior State Counsel for the respondents took up the position that the petitioners had not complied with the mandatory requirement under the Parliamentary Elections Act by not furnishing the Constitution of the Party and that such non compliance had been the reason for the rejection of the application made by the petitioners, the 1st respondent in his affidavit dated 13.06.2008 had not made any reference to the non availability of the Party Constitution or petitioners submitting only a proposed Constitution. In fact the 1st respondent had averred that after considering the material presented to him by the petitioners, he was not convinced that the petitioners Party was a political party and that it was not organized to contest any election. In paragraph 14 of his affidavit, the 1st respondent had further averred that,

> "a. that an application was made in January 2008 seeking registration of a party by the name of 'Sri Lanka Peratugami Pakshaya' as a recognized political party;
>
> b. that by letter dated 07.01.2008 the petitioners' party was requested to come for an inquiry to be held on

17.01.2008 regarding the said application along with the relevant documentation in support of the application including membership registers, audit reports etc., if any;

c. that an inquiry was conducted by him on 17.01.2008 to consider the eligibility of the said party to be recognized as a political party under the Parliamentary Elections Act, No. 1 of 1981;

d. that he was not satisfied that the said party was eligible to be recognized as a political party for the reason that it was not a political party and not organized to contest any election;

e. that the said party appeared to be a party based on records on paper than being an actual political party and it seemed that the party was engaged in other activities rather than political activities;

f. that the petitioners' party was unable to demonstrate that they had a practical programme of work to confirm that they are a political party and that it is organized to carry out any election;

g. that the organizational structure of the petitioners' party appeared to be confined to paper and no proof was adduced to demonstrate that persons were in fact mobilized as per the organizational structure to organize the political activities of the party or that there are party organizers at the divisional, district or provincial levels engaged in political activities on behalf of the party;

h. that the petitioners' party had not put forward any nominations to contest any election to date and not mobilized support for any candidate at any election to date;

i. that by letter dated 21.01.2008 the petitioner was informed that the application for registration made by the said party was rejected."

The aforesaid affidavit indicates the reasons for the 1st respondent's decision and it is abundantly clear that the 1st respondent had not referred to the non submission of a valid party Constitution by the petitioners as contended by the learned Senior State Counsel for the respondents. Moreover and more importantly, the letter referred to by the 1st respondent in his affidavit dated 21.01.2008, which was sent to the petitioners informing that their application for registration had been rejected, does not refer to any of the reasons given by the 1st respondent in his affidavit dated 13.06.2008. The said letter (P16) is as follows:

". . .

දේශපාලන පක්ෂයක් වශයෙන් පිළිගනු ලැබීම සඳහා වූ ඉල්ලීම 1988 අංක 29 දරන පනතින් සංශෝධිත 1981 අංක 1 දරන පාර්ලිමේන්තු මැතිවරණ පනත

ඔබගේ 2008.01.01 දිනැති ඉල්ලීම හා ඉන් අනතුරුව 2008.01. 17 වන දින මගේ කාර්යාලයේදී පැවැත්වූ පරීක්ෂණයට ඔබගේ අවධානය යොමු කරනු කැමැත්තෙමි.

02 **ඔබගේ ඉල්ලුම් පත ප්‍රතික්ෂේප කරන ලද බව කණගාටුවෙන් දන්වමි.**

. . . ."

It was common ground that at the inquiry held by the 1st respondent on 17.01.2008, the 1st respondent had not given an indication as to whether the petitioners had satisfied the criteria required in terms of the Parliamentary Elections Act for the party to be recognized as a political party.

Accordingly it is not disputed that varying reasons have been given to this Court for the decision of the 1st respondent in rejecting the petitioners' application to be recognized as a political party. It is also to be noted that no reasons whatsoever were given by the 1st respondent in his communiqué dated 21.01.2008 addressed to the 1st petitioner.

As stated earlier, the main contention of the learned Counsel for the petitioners at the hearing was that no reasons were given by the 1st respondent for his decision. In the light of the aforementioned, it is apparent that it would be necessary to examine whether the failure to give reasons to petitioners by the 1st respondent had infringed the fundamental rights of the petitioners guaranteed in terms of Article 12(1) of the Constitution.

As stated earlier, learned Senior State Counsel strenuously contended that not giving reasons for the rejection of the petitioners' application is not a fatal error and the learned Counsel for the petitioners contended that such failure has amounted to a violation of the petitioners' fundamental rights and relied on the decisions of this Court in **Wijepala** v **Jayawardena** (S.C. (Application) No. 89/95 – S.C. Minutes of 30.06.1995), **Karunadasa** v **Unique Gem Stones Ltd**. ([1997] 1 Sri L.R. 256) and **Lal Wimalasena** v **Asoka Silva, General Manager, Peoples' Bank** (S.C. (Application) No. 473/2003 – S.C. Minutes of 04.08.2005).

The contention of the respondents regarding the question for the need to give reasons is that the failure to give reasons by the Commissioner is not a fatal error and cannot be construed to mean that there is no valid reason for the rejection of the petitioners' application as claimed by the petitioners. Further it was submitted that the failure to give reasons does not take away from the fact that the Commissioner formed his opinion after a proper inquiry and further the failure to give reasons by the Commissioner in his letter is not fatal as the reasons have been adequately explained to this Court by way of the 1st respondent's affidavit.

An examination of the decisions relied on by the respondents in support of their contention clearly shows that those decisions have spelt out the general position regarding the necessity to give reasons for a decision. For instance in **Samalanka Ltd.** v **Weerakoon, Commissioner of Labour and others** (supra) this Court had held that in the absence of a statutory requirement, there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry. The decision in **Yaseen Omar** (supra) also had been on the same line, where it was held that neither the Common Law nor principles of natural justice requires as a general rule that administrative tribunals or authorities should give reasons for their decisions that are subject to judicial review. Considering the question that arose in that appeal it was held that there is no statutory requirement imposed on the Commissioner to give reasons for his decision.

The decision in **Karunadasa** v **Unique Gem Stones Ltd. and others** (supra) had taken the view that natural justice also means that a party is entitled to a reasoned consideration of his case.

Therefore it would be apparent that none of the decisions referred to earlier, which were relied on by the respondents supports the contention that not giving reasons for a decision by an administrative authority is not a fatal error.

In such circumstances, it would be pertinent to examine the legal position pertaining to the need to give reasons.

For a long period of time, as stated by Bandaranayake, J., in **N.S.A.M. Nanayakkara** v **Peoples Bank and others** (S.C. (Application) No. 525/2002 – S.C. Minutes of 20.06.2007) the commonly accepted norm in English Law had been that there is no general rule or a duty to state reasons for judicial or administrative decisions (**Pure Spring Co. Ltd.** v **Minister of National Revenue** ([1947] 1 D.L.R. 501, Statements of Reasons for Judicial and Administrative Decisions, Michael Akehurst, M.L.R. Vol. 33, 1970, pg. 154). As pointed out by Michael Akehurst, a statement of reasons is not required by the rules of natural justice and therefore there is no duty to state reasons for the decisions of Courts, juries, licensing justices, administrative bodies and tribunals or domestic tribunals (Michael Akehurst (supra)). This position was again considered in **Marta Stefan** v **General Medical Council** ([1999] 1 W.L.R. 1293) by the Privy Council, where

it was held that there was no express or implied obligation on the Health Committee to give reasons for its decision within either the Medical Act 1983 or the General Medical Council Health Committee (Procedure) Rules Order of Council 1987. Referring to right to reasons, S.A. de Smith (De Smith's Judicial Review, 6th Edition, 2007, pg 411) had clearly stated that,

> "On this view, a decision – maker is not normally required to consider whether fairness or procedural fairness demands that reasons should be provided to an individual affected by a decision because the giving of reasons has not been considered to be a requirement of the rules of procedural propriety."

This position is well compatible with the theory that there is no general common law duty to give reasons for decisions (**Minister of National Revenue** v **Wrights' Canadian Ropes Ltd.** ([1947] A.C. 109), **R** v **Gaming Board for Great Britain, Ex.p. Benaim and Khaida** ([1970] 2 Q.B. 417), **Mc Innes** v **Onslow – Fane** ([1978] 1 W.L.R. 1520), **R** v **Civil Service Appeal Board Ex.p. Cunningham** ([1991] 4 All E.R. 310).

However, this position has changed dramatically and as pointed out by de Smith (supra, pg. 413),

> ". . . . it is certainly now the case that a decision – maker subject to the requirements of fairness should consider carefully whether, in the particular circumstances of the case, reasons should be given. Indeed, so fast is the case law on the duty to give reasons developing, that it can now be added that fairness or procedural fairness usually will require a decision – maker to give reasons for its decision. **Overall the trend of the law has been towards an increased recognition of the duty to give reasons . . . .**" (emphasis added).

Thus it appears that although the common law had failed to develop any general duty regarding the need to give reasons, there are several exceptions to this general principle.

One clear method, as pointed out in **N.S.A.M. Nanayakkara** v **People's Bank** (supra) was through statutory intervention, which came into being by the recommendations of the Report of the Committee on Administrative Tribunals and Enquiries, commonly known as Franks Committee (Cmnd. 218 (1957)). The Franks Committee recommended the need to give reasons ((supra), para 98, 351), that came into being through the Tribunals and Inquiries Act, 1958, which was replaced by the Tribunals and Inquiries Act, 1992.

The Franks Committee Report of 1957 ((supra) at para 98), in fact highlighted the issue as to why reasons should be given, referring to ministerial decisions taken, after the holding of an inquiry.

> "It is a fundamental requirement of fair play that the parties concerned in one of these procedures should know at the end of the day why the particular decision has been taken. **Where no reasons are given the individual may be forgiven for concluding that he has been the victim of arbitrary decision. The giving of full reasons is also important to enable those concerned to satisfy themselves that the prescribed procedure has been followed and to decide whether they wish to challenge the minister's decision in the courts or elsewhere. Moreover as we have already said in relation to tribunal decisions, a decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more truly to have been properly thought out**" (emphasis added).

In addition to the above there are several other instances in which the common law had imposed a duty to give reasons for its decisions. One such method was developed on the basis that the absence of reasons would render any right of appeal or review nugatory. Thus in **Minister of National Revenue** v **Wrights Canadian Ropes Ltd.** (supra), which considered an appeal from an income tax assessment, the Privy Counsel stated that,

> "Their Lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons

> for taking action . . . . But this does not mean that the Minister by keeping silent can defeat the tax payer's appeal . . . . The Court is . . . always entitled to examine the facts which are shown by evidence to have been before the Minister when he made his determination. If those facts are . . . insufficient in law to support it, the determination cannot stand . . . ."

A number of other decisions had taken a similar approach. For instance, in **R** v **Civil Service Appeal Board, *Ex parte* Cunningham** (supra), Lord Donaldson MR and McCowan and Leggatt, LJJ., had held that although there was no general rule that required administrative tribunals to give reasons, that such an obligation could arise as an incident of procedural fairness in appropriate circumstances.

This approach had been followed in other cases. In **R** v **Secretary of State for the Home Department *Ex parte* Doody** ([1994] 1 A.C. 531), which considered whether the Secretary of State is required to inform the prisoner the reasons as to why he was deciding on a certain period of time for imprisonment, Lord Mustill expressed the view that, although there was no general duty to provide reasons, there was a duty to give reasons in that instance, as it would facilitate any judicial review challenged by the prisoner. Lord Mustill had clearly stated in **Doody** (supra) that,

> ". . . I find in the more recent cases on judicial review a perceptible trend towards an insistence on greater openness, or if one prefers the contemporary jargon, 'transparency', in the making of administrative decisions."

Another method and one which was extremely important from the practical point of view, indirectly imposed a requirement that reasons be stated and if not had decided that the result reached in the absence of reasoning is arbitrary. Thus in the well known decision in **Padfield** v **Minister of Agriculture Fisheries and Food** ([1968] A.C. 997), the House of Lords decisively rejected the notion that the absence of a duty to state reasons, precluded the Court from reviewing the reasons for the decision. It was therefore stated by Lord Pearce in **Padfield** (supra) that,

> "If all the *prima facie* reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions."

Accordingly an analysis of the attitude of the Courts since the beginning of the 20th century clearly indicates that despite the fact that there is no general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision, is treated according to the standard of fairness. In such a situation without a statement from the person, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness vis-à-vis, rights of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement.

Referring to reasons, fair treatment and procedural fairness, Galigan (Due Process and Fair Procedures, Clarendon Press, Oxford, pg. 437) stated that,

> "If the new approach succeeds, so that generally a statement of reasons for an administrative decision will be regarded as an element of procedural fairness, then various devices invented in the past in order to allow the consequences of a refusal of reasons to be taken into account will gradually lose their significance."

The necessity to give reasons was considered by this Court, as referred to in Bandaranayake, J.'s judgments in **Lal Wimalasena** v **Asoka Silva and others** (S.C. (Application) No. 473/2003 - S.C. Minutes of 04.08.2005) and in **N.S.A.M. Nanayakkara** v **People's Bank** (supra), in **Wijepala**

v **Jayawardene** (S.C. (Application) No. 89/95 - S.C. Minutes of 30.06.1995, **Manage** v **Kotakadeniya** ([1997] 3 Sri L.R. 264), **Suranganie Marapana** v **The Bank of Ceylon and others** ([1997] 3 Sri L.R. 156) and in **Karunadasa** v **Unique Gemstones** ([1997] 1 Sri L.R. 256).

In **Wijepala** v **Jayawardene** (supra) considering the necessity to give reasons, at least to this Court, Mark Fernando, J., was of the view that,

> "The petitioner insisted, throughout that established practice unquestionably entitled him at least to his first extension and that there was no relevant reason for the refusal of an extension . . .
>
> Although openness in administration makes it desirable that reasons be given for decisions of this kind, in this case I do not have to decide whether the failure to do so vitiated the decision. **However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons – and so also, if reasons are suggested, they were in fact not the reasons, which actually influenced the decision in the first place**" (emphasis added).

In **Manage** v **Kotakadeniya and others** (supra), where an application of a Post Master for his extension of service, upon reaching the age of 55 years was refused, Amerasinghe, J., was of the view that,

> "the refusal to extend the service of the petitioner was not based on adequate grounds."

The order of retirement was thus quashed on the basis that the petitioner in that case was treated unequally and that there had been discriminatory conduct against the petitioner.

In **Suranganie Marapana** v **The Bank of Ceylon and others** (supra) it was held that the Board failed to show the Court that valid reasons did exist for the refusal to grant the extension, which was recommended by the corporate management and therefore it was held that the refusal to grant the extension of service sought was arbitrary, capricious, unreasonable and unfair. Considering the question in issue the Court had stated that,

> "Even though Public Administration Circular No. 27/96 dated 30.08.96 (P8), which was an amendment to Chapter 5 of the Establishments Code, does not have any direct application to the matter before us, it clearly sets out the attitude of the State in regard to the question of extension of service of public sector employees, when it states that where extensions of service of State Employees are refused **there should be sufficient reasons to support such decision beyond doubt**" (emphasis added).

It is also noteworthy to refer to the views expressed by Mark Fernando, J., in **Karunadasa** v **Unique Gem Stones** (supra) with reference to the need to give reasons to a decision, where it was stated that,

> ". . . whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision 'may be condemned as arbitrary and unreasonable'; certainly the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion."

On a consideration of our case law in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Moreover in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily, in coming to their conclusion. These aspects have been stated quite succinctly in the following

passage, where Prof. Wade had expressed the view that, (Administrative Law, 9th Edition, pg. 522),

> "Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. **A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others"** (emphasis added).

And more importantly,

> "**Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully**" (emphasis added).

The importance of giving reasons, irrespective of the fact that there are no express or implied obligation to do so, had been clearly shown in many decisions and it would be pertinent to mention the views expressed in **Osmond** v **Public Service Board of New South Wales and Another** ([1985] L.R.C. (Const.) 1041) and **Marta Stefan** v **General Medical Council** (supra).

In **Osmond** (supra), the appellant was employed in the New South Wales Public Service. In 1982 he applied for promotion to the vacant post of Chairman of the Local Lands Board. He was not recommended for this appointment and appealed to the Public Service Board under section 116 of the Public Service Act 1979. Soon after his appeal was heard by the Board he was informed orally that it had been dismissed, although no written notice of the decision was ever given to him and requests for a written decision with reasons were refused on the ground that it was not the Board's practice to give reasons.

It was held that natural justice required that the appellant should be given the reasons for the decision of the Board in his appeal and Kirby, J. had stated that,

> "The duty of public officials, in making discretionary decisions affecting others in the exercise of statutory powers, is to act justly and fairly; this will normally impose an obligation to state the reasons for their decisions. Such an obligation will exist where the absence of reasons would render nugatory a facility provided to appeal against the decision or would diminish a facility to test the decision by judicial review and ensure that it complies with the law and that relevant matters only have been taken into account."

In **Marta Stefan** (supra), the question related to a doctor, who was subjected to suspension of her registration for varying periods following decisions of the Health Committee of the General Medical Council that her fitness to practice was impaired. In February 1998 her case came before the Health Committee again and the Committee concluded that her registration should be suspended indefinitely. The only reason given for the decision was that the Committee have carefully considered all the information presented to them and continue to be deeply concerned about her medical condition and that the Committee have again judged her fitness to practice to be seriously impaired and have directed that her registration be suspended indefinitely.

Allowing the appeal by the Doctor, it was held that there was no express or implied obligation on the Health Committee to give reasons for its decision within either the Medical Act 1983 or the General Medical Council Health Committee (Procedure) Rules Order of Council 1987, but that in the light of its judicial character, the framework in which it operated and the provision of a right of appeal against its decisions there was a common law obligation to give at least a short statement of the reasons for its decision, that the extent and substance of the reasons would depend upon the circumstances and they did not need to be elaborate or lengthy, but they should be such as to tell the parties in broad terms, why the decision was reached. It was also decided that the doctor's case would be remitted to a freshly constituted Health Committee for rehearing with reasons to be given for its decision.

The petitioners had complained of the infringement of their fundamental right guaranteed in terms of Article 12(1) of the Constitution. Article 12(1) of the Constitution deals with the right to equality and reads as follows:

> "All persons are equal before the law and are entitled to the equal protection of the law."

Equality, which could be introduced as a dynamic concept, forbids inequalities, arbitrariness and, unfair decisions. As pointed out by Bhagwati, J. (as he then was) in **E.P. Royappa** v **State of Tamil Nadu** (A.I.R. (1974) S.C. 555),

> "From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a Republic while the other, to the whim and caprice of an absolute monarch."

In such circumstances to deprive a person of knowing the reasons for a decision, which affects him would not only be arbitrary, but also a violation of his right to equal protection of the law.

As pointed out by Craig (Administrative Law, 4th Edition, 1999 pg. 430) referring to Rabin (Job Security and Due Process: Monitoring Administrative Discretion Through a Reasons Requirement (44 U. Chi. L.R. 60)) the very essence of arbitrariness is to have one's status redefined by the State without an adequate explanation of its reasons for doing so.

It is therefore apparent that as pointed out by Prof. Wade (Administrative Law, supra pg. 527), the time has now come for the Court to acknowledge that there is a general rule that reasons should be given for decisions based on the principle of fairness. Prof. Wade (supra) had further stated that,

> "Such a rule should not be unduly onerous, since reasons need never be more elaborate than the nature of the case admits, but

the presumption should be in favour of giving reasons, rather than, as at present, in favour of withholding them,"

It is to be noted that there have been instances where Courts had quashed the decisions when only vague reasons had been given (**Re Poyser and Mills' Arbitration** ([1964] 2 Q.B. 467) or in circumstances where ambiguous reasons were provided (**R** v **Industrial Injuries Commissioner, *Ex parte* Howarth** ((1968) 4 K.I.R. 621).

It is not disputed that in the instant application, although the 1st respondent had informed this Court his reasons for the refusal of petitioners' application for the recognition of the Party in question, that in his communiqué to the petitioners on 21.01.2008 (P16) referred to above, no reasons whatsoever were given, which in my view means a denial of justice, an error of law and more importantly in connection to this matter, the said decision to withhold the reasons is arbitrary, unfair and unreasonable within the framework of Section 12(1) of the Constitution.

It is also to be noted, as referred to earlier in detail, that the reasons given by the 1st respondent are contradictory to that of the submission made by the learned Senior State Counsel for the respondents, especially with regard to the availability of an approved Party Constitution.

In such circumstances for the reasons aforementioned I hold that the decision reflected in the document dated 21.01.2008 (P16) is null and void and therefore the 1st respondent had violated the petitioners' fundamental rights guaranteed in terms of Article 12(1) of the Constitution. The petitioners' application is accordingly allowed. I direct the 1st respondent to re-consider the application submitted by the petitioners and to give reasons for his decision following such re-consideration.

I make no order as to costs.

Judge of the Supreme Court

N.G. Amaratunga, J.

I agree.

Judge of the Supreme Court

Saleem Marsoof, J.

I agree.

Judge of the Supreme Court