

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

*In the matter of an application
under and in terms of the Proviso to
Article 99(13)(a) of the Constitution of
the Democratic Socialist Republic of
Sri Lanka*

SC Expulsion 02/2021

Ven. Athuraliye Rathana Thero,
Sadaham Sewana,
Gothami Road,
Rajagiriya

PETITIONER

Vs.

- 01 Ape Janabala Pakshaya,
No. 15/27, Adagala Watta,
Wellava Road, Kurunegala
02. Nishantha Ratnayake,
General Secretary,
Ape Janabala Pakshaya,
No. 15/27, Adagala Watta,
Wellava Road, Kurunegala
03. Saman Perera,
Chairman,
Ape Janabala Pakshaya,
No. 15/27, Adagala Watta,
Wellava Road, Kurunegala

04. Samantha Keerthi Bandara,
General Secretary,
Wijaya Dharani National
Council, Gothami Road,
Rajagiriya
05. Nimal Punchihewa,
Chairman,
Election Secretariat,
Sarana Mawatha, Rajagiriya
06. G.S.B. Divaratne,
Member,
Election Secretariat,
Sarana Mawatha, Rajagiriya
07. M.M. Mohomed,
Member,
Election Secretariat,
Sarana Mawatha, Rajagiriya
08. K.P.P. Pathirana,
Member,
Election Secretariat,
Sarana Mawatha, Rajagiriya
09. Member,
Election Secretariat,
Sarana Mawatha, Rajagiriya

10. Saman Sri Ratnayake,
Commissioner General of
Elections,
Election Secretariat,
Sarana Mawatha,
Rajagiriya

11. Dhammika Dasanayaka,
Secretary General of Parliament,
Parliament of Sri Lanka,
Sri Jayawardenapura, Kotte.
RESPONDENTS

Before: Buwaneka Aluwihare, PC, J
Murdu N.B. Fernando, PC, J
Janak De Silva, J

COUNSEL: Sanjeewa Jayawardena, PC with Rukshan Senadeera, S. Paliawadana
and Eranga Thilakaratne for the Petitioner instructed by Deshan
Wimalaratna

Farman Cassim, PC with Vinura Kularatne instructed by Dimuthu
Kuruppuarachchi for the 1st to 3rd Respondents.

Nilshantha Sirimanne with De Shara Goonethileke for the 4th
Respondent.

Dr. Avanti Perera, DSG for the 5th to 11th Respondents.

ARGUED ON: 26.09.2022.

DECIDED ON: 13.10.2023

Determination

Aluwihare PC, J

The Petitioner invoked the jurisdiction of this court in terms of Article 99(13)(a) of the Constitution seeking declarations from this court that the expulsion of the Petitioner from ‘Ape Janabala Pakshaya’, is invalid; that the seat he held in Parliament has not become vacant consequent to such expulsion and that the Petitioner has not ceased to be a member of Parliament.

The Petitioner was declared elected as a Member of Parliament under Article 99A of the Constitution and the same was gazetted by the Commissioner General of Elections under an order of the Election Commission on 18-12-2020.

The factual background

The Petitioner is the Chairman of the ‘Wijaya Dharani National Council’; a political party but not a recognized political party under the provisions of the Parliamentary Elections Act No. 1 of 1981, as amended. The Petitioner, therefore, had decided to contest the general elections through the 1st Respondent which is a recognized political party registered with the Election Commission. Accordingly, a Memorandum of Understanding (hereinafter referred to as the MOU) was signed between the 1st Respondent, ‘Ape Janabala Pakshaya’ party and ‘Wijaya Dharani National Council’ on 18.03.2020. This was to create a coalition or an alliance between the two political parties and to facilitate ‘Wijaya Dharani National Council’ to contest for the Parliamentary Elections under the 1st Respondent, ‘Ape Janabala Pakshaya’. [P4]

In terms of the MOU entered between the ‘Ape Janabala Pakshaya’ and the ‘Wijaya Dharani National Council’, the parties had expressly agreed, inter alia, to the following conditions;

- a) Clause 5; the parties had very clearly agreed that the ‘Ape Janabala Pakshaya’ being the first party to the same, has no right to influence or intervene or object to any political decisions and activities taken by the 2nd

party to the MOU, *i.e.*, the ‘Wijaya Dharani National Council’ of which the Petitioner is a member as well as its chairman.

- b) Clause 6; the parties had agreed that the 1st Party Ape Janabala Pakshaya’ will not have any influence on a member of parliament elected from the 2nd party ‘Wijaya Dharani National Council’ in relation to any activity of such member.
- c) Clause 7; The members of the 2nd party [Wijaya Dharani National Council] cannot be subjected to the rules and regulations of the 1st Party; Ape Janabala Pakshaya’, no disciplinary action or other influence can be brought upon the members of the 2nd Party.
- d) Clause 4, the parties also agreed to appoint a candidate nominated by the Petitioner, as a member of Parliament as the 1st appointee from the National List and in the event a 2nd member is to be nominated from the National list, such nomination to be done by the 1st Party.

Further, the members of the ‘Wijaya Dharani National Council’ were to remain separate and distinct as opposed to *de jure* members of the ‘Ape Janabala Pakshaya’ and were not required to obtain the membership of the said ‘Ape Janabala Pakshaya’.

Pursuant to executing the MOU, each candidate of the ‘Wijaya Dharani National Council’ party including the Petitioner, thereafter signed and executed a ‘Letter of Promise’, whereby the candidates agreed to abide by the terms and conditions stipulated therein, pledging allegiance to the ‘Wijaya Dharani National Council’. The Pledge further confirmed that the Disciplinary Committee of ‘Wijaya Dharani National Council’ had disciplinary control over its members.

At the conclusion of the Parliamentary Election on 05.08.2020, the 'Ape Janabala Pakshaya' was informed by the Election Commission that it had secured one National List seat in Parliament, in terms of Article 99A of the Constitution.

The Petitioner, albeit, after a brief dispute among the coalition partners, was declared elected as a Member of Parliament under the Constitution provision referred to, by Gazette Notification dated 18.12.2020.

According to the Petitioner, he received a letter dated 30.06.2020 under the hand of the 2nd Respondent, calling for explanation in relation to five issues enumerated therein, on the basis that the Central Committee of the 'Ape Janabala Pakshaya' had decided to hold an inquiry, in view of the several complaints received by the Party [P18]. Whilst calling upon the Petitioner to respond to the 'issues' referred to in the letter within seven days, it states that if the Petitioner is unable to provide acceptable explanation to the issues raised in the letter, the Disciplinary Committee of the 'Ape Janabala Pakshaya' will take steps to issue a charge sheet' against the Petitioner.

The Petitioner has taken strong objection to the said letter on the basis that he cannot be subjected to any disciplinary control by the 'Ape Janabala Pakshaya' since the Constitution of the said Party has no application to the Petitioner as he is not a member of the said political Party and the Constitution of the said Political Party mandates taking disciplinary action against its members only. In any event, the MOU [P4] categorically states that the disciplinary control of the members of 'Vijaya Dharani National Council' is not within the preview of the 'Ape Janabala Pakshaya'.

The Petitioner has not replied the latter [P18] reasoning that, without any form of prejudice to the position of the Petitioner, the provisions contained in the Constitution of 'Ape Janabala Pakshaya' have no application or authority as far as the Petitioner is concerned.

The Petitioner was sent a second letter [by the 2nd Respondent] dated 05.08.2020 containing eight charges and informing the Petitioner that a disciplinary inquiry relating to the said charge sheet would be held on the 20th August 2020, requiring the Petitioner to attend the same. Due to the spread of Covid 19 pandemic, however, the Petitioner was informed that the said inquiry will not be held on 20.08.2021.

The Petitioner had then been sent a charge sheet again by a letter dated 01.10.2021 by the Chairman of the Disciplinary Committee of 'Ape Janabala Pakshaya' containing the same charges as the previous charge sheet dated 05.08.2021 and informing the Petitioner that the inquiry into the charges will be held on 14.10.2021

The petitioner was also informed that in the event the Petitioner is found guilty for one or more of the charges stipulated therein, the same will be communicated to the Chairman of the party, the Political Board and Central Working Committee, for the consideration of the expulsion of the Petitioner from 'Ape Janabala Pakshaya' and in the event of the Petitioner failing to attend the said disciplinary inquiry, the inquiry will be conducted by the said Disciplinary Committee, *ex parte*.

The Petitioner contended that he was hospitalised on the 13.10.2021 and as such, he instructed his Attorney, Dinesh Vidanapathirana to inform the Disciplinary Committee of his medical condition and his incapacity to participate at the inquiry. It is alleged that the Attorney concerned was prevented at the gate either to communicate with any official or from informing the medical condition of the Petitioner, This is affirmed by the Affidavit of Dinesh Vidanapathirana dated 11.11.2021 [P22].

The 2nd Respondent, by his letter dated 15.10.2021, had communicated to the Election Commission, the decision of the Central Committee of the 'Ape Janabala Pakshaya' to expel the Petitioner from the membership of the Party and had requested the Election Commission to annul the parliamentary seat held by the Petitioner.

The Petitioner had also received a letter dated 15.10.2021 informing him of the recommendation of the disciplinary committee and the purported decision of the Central Working Committee and the Chairman of the party; 'Ape Janabala Pakshaya'.

By letter dated 16.10.2021[P25], the 2nd Respondent had informed the Secretary General of the Parliament that the Petitioner has been expelled from 'Ape Janabala Pakshaya' with effect from 14.10.2021 and consequently, the Parliament seat held by the Petitioner had fallen vacant by virtue of Article 99(13)(a) of the Constitution and had requested the Secretary General to take necessary action in terms of Article 99(13) of the Constitution read with Section 64 of the Parliamentary Elections Act No.1 of 1981. The Petitioner, by letter dated 08.11.2021 addressed to the 2nd respondent, placed his position relating to the dispute and challenged the decision taken by the disciplinary committee and the Central Working Committee of the party including the Chairman of 'Ape Janabala Pakshaya'.

The gravamen of the Petitioner is that he cannot be subjected to the disciplinary control or authority of the 'Ape Janabala Pakshaya' or its Central Working Committee and as such the action taken against him is patently illegal and grievously unlawful and is also violative of the rules of natural justice. It was on the above premise that the Petitioner invoked the jurisdiction of this court in terms of Article 99(13) (a) of the Constitution.

Subsequent developments

After the Petitioner invoked the jurisdiction of this court, which was on the 11th of November 2021, the attorney on record for the 1st to the 3rd Respondent by way of a motion dated 21st January 2022, informed the Court that steps had been taken to withdraw the expulsion of the Petitioner and produced a copy of the letter signed by the 2nd Respondent dated 12.01 2022, sent to the Petitioner and copied both to the Secretary General of Parliament as well as the Chairman Election Commission [A]. The letter states that the decision taken by 'Ape Janabala Pakshaya' on 14.10.2021 to

expel the petitioner will be revisited by the Central Committee and the Chairman of the Party.

In response to the motion referred to above, the Petitioner by way of a motion dated 21st February 2022, brought to the attention of the Court that the withdrawal of the decision to expel the petitioner is conditional and as such the Petitioner wishes to pursue this application and invited this Court to make a final determination with regard to the validity or otherwise of the impugned expulsion.

Sequel to the said motion by the Petitioner dated 21.02.2022 referred to above, the 1st to the 3rd Respondent filing a further motion on 24th February 2022 informed court that steps have been taken to withdraw the expulsion of the Petitioner and had annexed a letter dated 14.02.2022 addressed to the Petitioner informing him that the decision taken by the Central Committee and the Chairman of the ‘Ape Janabala Pakshaya’ 14.10.2021 to expel the Petitioner was rescinded [X]. The letter had been copied to the Secretary General, Parliament and the Chairman, Elections Commission. As opposed to the letter issued by the 2nd Respondent dated 12.01.2022 [A], the second letter referred to above [X] is clearly an unconditional rescinding of the decision to expel the Petitioner from the membership of the ‘Ape Janabala Pakshaya’.

Even in this backdrop, relying on the decision in the case of *Ameer Ali and Others V. Sri Lanka Muslim Congress and Others* 2006 IV SLR 189, the learned President’s Counsel for the Petitioner contended that notwithstanding the withdrawal of the expulsion of the Petitioner, this Court has the jurisdiction to determine the validity of the expulsion. The learned President’s Counsel contended that the withdrawal of the expulsion is conditional and restricted only to one of the grounds on which the expulsions have been challenged before this court, namely the failure to comply with the principles of natural justice, thus, this Court should hear and determine the matter in its entirety.

The learned Counsel for the 1st to 3rd respondents, [the party, General Secretary and Chairman respectively], however, submitted that, since the expulsion had been withdrawn, it is unnecessary for this court to make any decision as to the validity of the expulsion and that the proceedings should be accordingly terminated.

In terms of Article 99(13)(a) of the Constitution, where a Member of Parliament ceases by expulsion to be a member of a recognized party on whose nomination paper, his name appeared at the time of becoming such Member of Parliament, his seat becomes vacant upon the expiration of a period of one month from the date of his ceasing to be such member. The proviso to the Sub-article states that the seat will not become vacant if prior to the expiration of one month the member applies to the Supreme Court and this Court determines in such application that the expulsion was invalid. It is to be noted that the withdrawal of the expulsion by the 2nd and 3rd respondents on behalf of the 1st respondent was done on 14.02.2022, after a period of one month had elapsed from the date of the impugned expulsion. Thus, the withdrawal [of the expulsion] was done at a time when this Court was seized with the matter and in terms of the proviso to the Constitutional provision referred to, the seat will become vacant only if this Court makes a determination that the expulsion is valid. Accordingly, the withdrawal by the respondents does not *per se* result in a position where the expulsion becomes invalid and the Petitioner is correct in requesting a determination to be made by the Court as to the validity of the expulsion. The learned President's Counsel submitted that the initial letter [A] seeking to withdraw the expulsions on the alleged non-compliance with the principles of natural justice in arriving at a decision to expel the Petitioner should be taken as a concession on the part of the 1st to 3rd Respondents of this ground of invalidity.

The sequence of events outlined above reveals that the patent failure to adhere to the principles of natural justice in the purported decision to expel the Petitioner from the party, without prejudice to the position held by the Petitioner that Petitioner is not subject to the disciplinary control or authority of the 'Ape Janabala Pakshaya' and/or

its Central Working Committee, the party Chairman or the Disciplinary Committee. Furthermore, the Petitioner asserts that the conduct of these bodies including the party itself is patently illegal and grievously unlawful and is also violative the fundamental postulates of the rule of law, and also the basic rules of natural justice, including the principle of *Audi Alteram Partem*, in as much as, it is very clear that the said purported disciplinary committee of the ‘Ape Janabala Pakshaya’ arrived at the aforesaid recommendation/decision to expel the Petitioner from ‘Ape Janabala Pakshaya’ political party, without affording any form of hearing whatsoever to the Petitioner and/or his legal representative.

In the case of *Tilak Karunaratne vs. Sirimavo Bandaranaike and Others* 1993 1 SLR 91, Dheeraratne J., having examined the nature of the jurisdiction conferred on this Court in terms of the provisions of Article 99(13)(a) observed; [at page 101]-

“The nature of the jurisdiction conferred on the Supreme Court in terms of the proviso to Article 99(13)(a) is indeed unique in character; it calls for a determination that expulsion of a member of Parliament from a recognized political party on whose nomination paper his name appeared at the time of his becoming such Member of Parliament, was valid or invalid. If the expulsion is determined to be valid, the seat of the Member of Parliament becomes vacant. It is this seriousness of the consequence of expulsion which has prompted the framers of the Constitution to invest that unique original jurisdiction in the highest court of the island, so that a Member of Parliament may be amply shielded from being expelled from his own party unlawfully and/or capriciously. It is not disputed that this Court’s jurisdiction includes, an investigation into the requisite competence of the expelling authority, an investigation as to whether the expelling authority followed the procedure, if any, which was mandatory in nature; an investigation as to whether there was breach of principles of natural justice in the decision-making process; and an investigation as to whether in the event of grounds of expulsion being specified by way of charges at a domestic inquiry the member was expelled on some other grounds which were not so specified”

In the instant case, as referred to earlier Clauses 5, 6 and 7 of the MOU[P4] entered into between the Petitioner's party; 'Wijaya Dharani National Council' and the political party of the Respondents, 'Ape Janabala Pakshaya' clearly spells out that the members of the 'Wijaya Dharani National Council including the Petitioner shall not be subject to the rules and regulations of the 'Ape Janabala Pakshaya' and such members cannot be called upon for any disciplinary inquiry.

In the circumstances aforesaid, it was submitted that the office bearers of the 'Ape Janabala Pakshaya' cannot influence, intervene, or object to the political decisions taken by the 'Ape Janabala Pakshaya' nor is there any provision to subject the Petitioner to disciplinary control of 'Ape Janabala Pakshaya'. Thus, it would be of vital importance to consider whether officials of 'Ape Janabala Pakshaya' had a mandate to initiate disciplinary proceedings against the Petitioner in the first place. In this regard Justice Marsoof in the case *Perumpulli Hewage Piyasena, v. Ilankai Tamil Arasu Kadchi* [SC Application Special [Expulsion] No. 03/2010, SC minutes 8.02.2011] observed;

"For this purpose, before considering the grounds set out in paragraph 29 of his Petition dated 10th December 2010 for challenging his expulsion, it is necessary to consider whether, in the first place, the Petitioner was amenable to the disciplinary control of ITAK. This is a matter of fundamental importance which involves another important question, namely, whether the Petitioner is or was a member of ITAK, because it is obvious that only a member of a political party that can be dealt with by that party for any breach of discipline."

In the case of *Ameer Ali and Others vs. Sri Lanka Muslim Congress and Others*, 2006, 1 SLR 189, Sarath N. Silva J [as he then was], observed that this Court has to examine the requisite competence of the expelling authority and the nature of the decision-making process including that of the "domestic inquiry" to be satisfied as to its bona fides and the compliance with the principles of natural justice.

In the circumstances, I hold that the decision to expel the petitioner from the membership of 'Ape Janabala Pakshaya on a purported decision of the Disciplinary Committee by the letter dated 15.10.2021 marked 'P23', is *ex-facie* illegal as it has not been made by the appropriate disciplinary authority in terms of the MOU.

For all the aforesaid reasons, I determine that for the purposes of Article 99(13)(a) of the Constitution, the purported expulsion of the Petitioner, Ven. Athuraliye Rathana Thero was invalid.

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

Expulsion determined invalid.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree.

JUDGE OF THE SUPREME COURT