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

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

SC Expulsion 01/2022

Zainul Abdeen Nazeer Ahamed
No. 107, Railway Avenue,
Kirulapone, Colombo 05

PETITIONER

Vs.

1. The Sri Lanka Muslim Congress,
   Dharussalam
   No 51, Vauxhall Lane,
   Colombo 02.

2. Rauff Hakeem
   Leader, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

3. A. L. Abdul Majeed
   Chairman, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

4. A. C. Raawather Naina Mohamed
   Senior Deputy Leader, Sri Lanka
   Muslim Congress

No 51, Vauxhall Lane,
Colombo 02.

5. U. T. M. Anver
   Deputy Leader II, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

6. Br. H. M. M. Harees,
   Deputy Leader III, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

7. Br. S. M. A. Gaffoor,
   Deputy Leader IV, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

8. Br. Nizam Kariapper,
   Secretary, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

9. Br. M. S. M. Aslam,
   Treasurer, Sri Lanka Muslim Congress
   No 51, Vauxhall Lane,
   Colombo 02.

10. Br. M. I. M. Mansoor
    National Coordinating Secretary, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,

Colombo 02.

11. Moulavi A. L. M. Kaleel
    President Majlis – e-Shoora , Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

12. Br. U. L. M. N. Mubeen
    National Propaganda Secretary, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

13. Shafeek Rajabdeen
    National Organiser, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

14. Br. A. M. Faaiz
    Director International Affairs, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

15. Br. M. B. Farook
    Director Constitutional Affairs, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

16. Br. M. S. Thowfeek
    Director Affiliated Bodies, Sri Lanka Muslim Congress

No 51, Vauxhall Lane,
Colombo 02.

17. Moulavi H. M. M. Ilyas
    Representative of the Ulema's Congress, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

18. Br. K. A. Baiz
    Director Political Affairs, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

19. Br. M. Naeemullah
    Deputy Chairman, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

20. Br. Mansoor A. Cader
    Deputy Secretary, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

21. Br. Ziyadh Hamieedh
    Deputy President Majlis – e - Shoora, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

22. Br. Rahmath Mansoor

Deputy National Coordinating
Secretary, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

23. Seyed Alizahir Moulana
Deputy National Propaganda
Secretary, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

24. Br. M. Faizal Cassim
Deputy National Organiser, Sri Lanka
Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

25. Br. A. L. M. Nazeer
Coordinator Political & Religious
Affairs, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

26. S. L. M. Faleel
Coordinator Education & Cultural
Affairs, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

27. R. M. Anver MPC
Coordinator Social Service & Disaster
Relief, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

28. A. L. Thavam MPC
    Coordinator Youth & Employment
    Affairs, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

29. Ms. Sithy Rifaya Ifthie
    Ladies Congress Representative, Sri
    Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.
30. Br. A. J. M. Rizvi
    Secretary Working Committee, Sri
    Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

31. Br. I. L. M. Mahir MPC
    Secretary – Delegate's Conference,
    Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

32. Br. U. M. Wahid
    Secretary – Majlis – e-Shoora, Sri
    Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

33. Br. M. H. Abdul Hai
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

34. Br. M. Y. M. Hilmy

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

35. Br. J. Ansar
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

36. Br. A. S. M. Rilvan
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

37. Br. M. N. M. Nafly
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

38. Br. M. I. M. Firthouse
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

39. Br. Jaufer Marikar
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

40. Br. A. M. Rakeeb
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

41. Br. M. T. Thameem

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

42. Br. M. H. A. Gaffoor
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

43. Br. J. M. Lahir
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

44. Br. M. H. M. Nazik
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

45. Br. M. Safee Raheem
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

46. Br. Arshad Nizamdeen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

47. Br. M. H. Segu Ismail
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

48. Br. N. Mahir

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

49. Br. M. S. A. Waasith
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

50. Br. M. I. Naiser
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

51. Br. A. M. Harees
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

52. Br. M. H. M. Salman
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

53. Br. J. M. Fuard Najeeb
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

54. Moulavi U. M. Jabeer
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

55. Br. S. H. M. Niyas

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

56. Br. H. M. Rayees
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

57. Br. A. R. A. Hazeer
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

58. Br. A. C. A. Nazar
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

59. Br. Moulavi A. M. Mubardeen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

60. Br. A. H. Fairoze
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

61. Br. A. H. Fairoze
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

62. Br. A. C. Yehya Khan

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

63. Br. S. M. M. Musthaffa
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

64. Br. Marzuk Ahamed Lebbe
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

65. Br. Shibly Farook
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

66. Br. Arif Samsudeen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

67. Br. A. Jalaaldeen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

68. Br. B. Thajudeen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

69. Br. H. M. M. Riyal

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

70. Br. M. N. M. Jawzy
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

71. Br. F. Fatheen
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

72. Br. M. S. M. Marzook
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

73. Br. Riya Mashoor
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

74. Br. Hunais Farook
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

75. Br. H. M. M. Faiz
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

76. Br. S. M. A. Niyas

Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

77. Br. Athamlebbe Nafeel Amanulla
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

78. Br. K. M. Nihar
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

79. Br. M. M. A. Aroos
Chairman Mutur Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

80. Br. A. Mubarak
Chairman KPS Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

81. Br. Rizvi
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

82. Br. Aliyar Nazeer
Member, Sri Lanka Muslim Congress
No 51, Vauxhall Lane,
Colombo 02.

83. Moulavi M. A. J. Mohamed Jazeel
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

84. Br. K. Ameenullah
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

85. Br. M. S. M. Ilham Sathar
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

86. Br. M. H. M. Najath
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

87. Br. Seiyadu Mohamed Ibrahim
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

88. Seen Mohamed Mohamed Haniffa
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

89. M. T. Mohamed Safras
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

90. Br. S. M. A. Ansar Moulana
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

91. Br. Ayathubawa Riyas
    Member, Sri Lanka Muslim Congress
    No 51, Vauxhall Lane,
    Colombo 02.

The 2nd to 91st Respondents above named all being members of the High Command of the Sri Lanka Muslim Congress Dharussalam, No 51, Vauxhall Lane, Colombo 02.

92. Dammika Dissanayaka
    Secretary General of Parliament
    Parliamentary Complex,
    Sri Jayawardenapura Kotte.

93. Nimal G. Punchihewa
    Chairman, Election Commission
    Election Secretariat,
    Sarana Mawatha,
    Colombo 12.

94. S. B. Divaratne
    Member Election Commission
    Election Secretariat,
    Sarana Mawatha,
    Colombo 12.

95. M. M. Mohamed
Member Election Commission
Election Secretariat,
Sarana Mawatha,
Colombo 12.

96. A. P. P. Pathirana
Member Election Commission
Election Secretariat,
Sarana Mawatha,
Colombo 12.

97. J. Thiyagarajah
Member Election Commission
Election Secretariat,
Sarana Mawatha,
Colombo 12.

RESPONDENTS

Before : **P. PADMAN SURASENA, J**
: **S. THURAIRAJA PC, J**
: **MAHINDA SAMAYAWARDHENA, J**

Counsel : Sanjeeva Jayawardena PC with Ruwantha Cooray, Rukshan Senadheera and Punyajith Dunusinghe for the Petitioner.

M. A. Sumanthiran PC with Viran Corea, Anne Kulanayagam and Divya Mascranghe for the 1st, 2nd, and 8th Respondents.

Dr. Romesh de Silva PC with Niran Anketel for the 17th and 21st Respondents.

Uditha Egalahewa PC with N. K. Ashokbharan for the 33rd Respondent.

Kuvera de Zoysa PC with Pasindu Bandara for the 41st, 42nd and 45th Respondents.

Indumini Randeny SC for the 92nd to 97th Respondents.

Argued on : 10.05.2023, 23.06.2023

Decided on : 06.10.2023

P Padman Surasena J

THE BACKGROUND

The Petitioner is a member of the 1st Respondent party, the Sri Lanka Muslim Congress (hereinafter sometimes referred to as the 'SLMC'). The SLMC is a political party recognized under the Parliamentary Elections Act No. 01 of 1981 (as amended).

The 2nd Respondent and the 3rd Respondent in this case are respectively, the Leader and the Chairman of the SLMC and are also members of the SLMC's High Command. The High Command of the SLMC is the apex decision making body of the party.

According to the petition, the 4th-91st Respondents are also members of the High Command of the SLMC. The 92nd Respondent is the Secretary General of the SLMC and the 93rd Respondent is the Chairman of the Election Commission, while the 94th to the 97th Respondents are all members of the Elections Commission.

At the General Election conducted in the year 2020, the Petitioner was elected as a Member of Parliament from the SLMC and agreed to conduct himself as a member of the opposition in line with the electoral pact of the SLMC. The Petitioner along with the 6th, 16th and 24th Respondents had signed a document as members and representatives of the SLMC in parliament pledging their loyalty to the constitution, rules and regulations of the SLMC. The Petitioner himself has produced the said special pledge of loyalty to the constitution, rules and regulations marked '**P5**' with his Petition. The facts relevant to the instant case revolves around the voting took place at the budget proposal (Appropriation Bill) for the year 2022 presented to the Parliament by the Hon. Minister of Finance on 12-11-2021. The second reading of the said Appropriation Bill had been fixed for 22-11-2021. The SLMC had then called an urgent meeting of the High Command to be held on 21-11-2022 which is the day prior to the said scheduled second reading. This was for the purpose of deciding how members of the SLMC should vote at the second reading of the said Appropriation Bill.

It is the position of the SLMC that its High Command had decided at that meeting not to vote in favour of the said Appropriation Bill in Parliament. The High Command had also decided that the SLMC members could either vote against the said Appropriation Bill or abstain from voting. The 1st Respondent has produced its decision marked '**1R2**'. It is the position of the SLMC that the Petitioner being aware of the aforesaid meeting and its unanimous decision taken on 21-11-2021 had nevertheless proceeded to vote in favour of the said Appropriation Bill on 22-11-2021 at its second reading, and at the third reading as well, in blatant violation of the said decision of the SLMC High Command. The SLMC has alleged that the Petitioner while holding a senior and substantial position in the party High Command has breached the party decision.

The Petitioner admits that he was aware of the said meeting which was to be held on 21-11-2022 to decide on the party position in the voting at the said second reading of the said Appropriation Bill which was scheduled on 22-11-2021. However, the petitioner states that upon being informed that the said meeting of the High Command was to be held on 21-11-2021 at the party headquarters, he had duly communicated to the Secretary of the SLMC of his inability to attend the said meeting and sought to be excused from the said meeting. It is the position of the Petitioner that he was not informed of any such decision taken at the meeting held on 21-11-2021 and therefore he had voted in favour of the aforesaid Appropriation Bill at its second reading held in Parliament on 22-11-2021.
It was in the above circumstances, that the SLMC has called for a written explanation from the Petitioner by the letter dated 27-11-2021 (produced marked "**P9**") signed by the 8th Respondent who is the Secretary of the SLMC. After the exchange of several other letters between the SLMC and the Petitioner which I will refer to later in this judgment, the SLMC by the letter dated 23-04-2022 produced marked **P15**, had communicated to the Petitioner about his expulsion from the party. Thus, it is in the above backdrop that the Petitioner has filed the Petition in the instant case in terms of Article 99 (13) (a) of the Constitution, praying in his Petition for an order from this court to set aside and invalidate the SLMC's decisions to expel him from the party as per letter **P15** dated 23-04-2022.

JURISDICTION OF THE SUPREME COURT.

As the Petitioner has filed the Petition in this case under Article 99 (13) (a) of the Constitution, let me at the outset reproduce that Article here.
Article 99 (13) (a)

> *(13) (a) Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:*
>
> *Provided that in the case of the expulsion of a Member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination.*

As the Petitioner in the instant case has prayed in his Petition for an order from this court to set aside and invalidate the SLMC's decisions to expel him from the party, let me first clearly identify the nature of the jurisdiction this Court must exercise under the above constitutional provision over the impugned decision of the SLMC to expel the Petitioner from the SLMC. In doing so, let me at the very commencement of this discourse, refer to the previous decisions of this Court which had considered the nature of the jurisdiction this Court must exercise in such cases.

In the case of *Gamini Dissanayake Vs M. C. M. Kaleel and others*,[1] (hereinafter sometimes referred to as *Gamini Dissanayake's* case), which this Court had decided on 03rd December 1991, eight members of the United National Party who were also Members of Parliament had filed eight petitions in terms of Article 99 (13) (a) of the Constitution challenging their expulsion from the Party.

Mr. H. L. de Silva, PC during the argument in *Gamini Dissanayake's* case, had cited many cases relating to social clubs, trade unions and voluntary associations in which decisions for the expulsion of their members had been struck down for want of a fair hearing. To the contrary, Mr. K. N. Choksy PC had contended in that case, *inter alia* that the right to a hearing is not an inveterate rule and depends on the facts and circumstances of the case and the grounds on which disciplinary action has been taken. It was the contention of Mr. Choksy PC in that case, that if the matter which the petitioner says he could have placed before the

[1] 1993 (2) Sri. L. R. 135.

tribunal for consideration is a question of law or interpretation of statute or a rule or contract, all such matters are questions which this Court must decide and therefore, the lack of hearing does not vitiate the decision because the Court is in a position to adjudicate on them. Having considered those arguments, Kulatunga, J. in the majority judgment of this Court in *Gamini Dissanayake's* case, observed as follows:

> *"The right of a MP to relief under Article 99 (13) (a) is a legal right and forms part of his constitutional rights as a MP."*[2]

In *Gamini Dissanayake's* case, Fernando J in the minority judgment, stated the following on the above arguments:

> *"Our jurisdiction under Article 99(13) (a) is not a form of judicial review, or even of appeal, but rather an original jurisdiction analogous to an action for a declaration,*[3] *though it is clearly not a re-hearing. Are we concerned only with the decision-making process, or must we also look at the decision itself? Article 99 (13) (a) requires us to decide whether the expulsion was valid or invalid, some consideration of the merits is obviously required. .."*[4]

The case of *Tilak Karunaratne Vs. Mrs. Sirimavo Bandaranaike and others*,[5] (hereinafter sometimes referred to as *Tilak Karunaratne's* case), is a case this Court had decided on 27th April 1993. The Petitioner Tilak Karunaratne who filed that petition in terms of Article 99 (13) (a) of the Constitution challenging his expulsion from the Party was a Member of Parliament belonging to the Sri Lanka Freedom Party who was duly elected at the General Election held in 1989, to represent Kalutara District.

Mr. H. L. de Silva, PC who appeared for some of the respondents including the 1st respondent Mrs. Sirimavo Bandaranaike in *Tilak Karunaratne 's* case, contended that the jurisdiction of this court does not extend to an examination of the merit worthiness of the expulsion as the decision to expel the petitioner in that case was a political decision and therefore the criteria adopted for expulsion may vary from case to case, person to person and time to time. Mr. H. L. de Silva, PC in that case further submitted that this court could interfere only if the decision of the expelling authority was unreasonable in the 'Wednesbury sense' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation)[6] that is, if the decision is so unreasonable

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[2] At page 234.
[3] Emphasis is mine.
[4] At page 198.
[5] 1993 (2) SLR 90.
[6] [1947] 2 All ER 680; [1948] 1 KB 223.

as to be irrational. In that case, the learned counsel for the respondents relying on the cases Dawkins v. Antrobus;[7] Richardson - Gardner v. Freemantle;[8] Maclean v. Workers Union and others;[9] and Hopkinson v. Marquis of Exeter;[10] which were cases in relation to expulsion of members from voluntary associations, sought to argue that if exercise of the power of expulsion was made bona fide, this court should refrain from interfering with it. Mr. H. L. de Silva, PC in that case had reminded the Court of the words of caution of the great American Chief Justice, Marshall that 'judges should not enter the political thicket'.[11]
Rejecting the above argument, this Court in *Tilak Karunaratne's* case by its majority judgment, has identified the jurisdiction this Court must exercise under Article 99 (13) (a) of the Constitution in the following paragraph which has been quoted from the majority judgment of Dheeraratne J.

> *"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*

[7] (1879) 17 Ch D 615 [1881-51] All ER Rep. 126; (1881) 44 LT 557.

[8] (1870) 24 L.T. 81; 19 W.R. 56

[9] (1929) 141 Law Times 83 ; [1929] 1 Ch. 602.

[10] (1867) LR 5 Eq. 63 ; (1867) 37 LJ Ch. 173.

[11] At page 102.

> *inquiry, the member was expelled on some other grounds which were not so specified. ….."* [12]

Having held as above, Dheeraratne J in that case, cited with approval the views expressed by Fernando J in the minority judgment in *Gamini Dissanayake's* case with regard to the nature of jurisdiction of this Court under Article 99 (13) (a) of the Constitution. Thus, Dheeraratne J in *Tilak Karunaratne's* case stated as follows:

> *"… Our jurisdiction appears to be wider; it is an original jurisdiction on which no limitations have been placed by Article 99 (13) (a). As stated by Fernando J. in Dissanayake and others v. Kaleel and others, " Our own jurisdiction under Article 99 (13) (a) is not a form of judicial review, …"* [13]

On 1st July 2005, a bench of five judges of this Court decided the case of *Ameer Ali and others Vs. Sri Lanka Muslim Congress and others*,[14] hereinafter sometimes referred to as *Ameer Ali's* case. All five judges of this Court were unanimous in their conclusion. In that case, three Petitioners who had contested the General Election held in April 2004, and returned as Members of Parliament had filed the petitions in that case in terms of Article 99 (13) (a) of the Constitution challenging their expulsion from the Party. The five Judge bench of this Court proceeded to examine the nature of the jurisdiction of this Court with regard to the petitions filed under Article 99 (13) (a) of the Constitution. The said five-judge bench in the judgment of Court, also cited with approval (unanimously), the aforesaid views expressed by Kulatunga J in the majority judgment of this Court in *Gamini Dissanayake's* case, as well as the aforesaid views expressed by Dheeraratne J in the majority judgment of *Tilak Karunaratne 's* case, regarding the nature of the jurisdiction of this Court under Article 99 (13) (a) of the Constitution. Thus, in *Ameer Ali's* case, five judges of this Court have unanimously endorsed the aforesaid views.

In *Sarath Amunugama and others Vs. Karu Jayasuriya Chairman UNP and others*,[15] (hereinafter sometimes referred to as *Sarath Amunugama's* case), which this Court had decided on 03rd February 2000, the five petitioners (whose cases were heard together) were Members of Parliament representing the United National Party which is a recognized political party. The petitioners in that case had filed applications in the Supreme Court in terms of

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[12] At page 101.
[13] At page 102.
[14] 2006 1 SLR (at page 189).
[15] 2000 (1) Sri. L. R, 172.

Article 99(13)(a) of the Constitution as they had been summarily expelled from the membership of the Party on a decision of the Working Committee of the Party. With regard to the nature of the jurisdiction of this Court under Article 99 (13) (a) of the Constitution, Amerasinghe J who was then Acting Chief Justice, in his judgment had cited and reproduced with approval, Fernando J's sentiments with regard to the said jurisdiction of this Court expressed in *Gamini Dissanayake's* case.

The Petitioner in *Perumpulli Hewage Piyasena Vs. Illankai Thamil Arsukachchi and others*,[16] had filed that application in terms of the proviso to Article 99 (13) (a) of the Constitution challenging his expulsion from the Ilankai Tamil Arasu Kadchi (ITAK), which is a recognized political party on whose nomination paper his name admittedly had appeared at the time of his election as a Member of Parliament for Digamadulla District at the April 2010 General Election. The learned President's Counsel for the 3rd Respondent in that case highlighted four specific allegations of suppressions and misrepresentations by the petitioner in that case in the course of his lengthy oral and written submissions before Court. The learned President's Counsel for the Petitioner in that case, too made detailed submissions to show firstly, that the Petitioner's conduct was bona fide and secondly, that it was in accordance with his obligations to Court in relation to uberrima fides.

In *Perumpulli Hewage Piyasena's* case, Saleem Marsoof J also cited with approval, the aforesaid views expressed by Dheeraratne J in the majority judgment of *Tilak Karunaratne 's* case, regarding the nature of jurisdiction this Court must exercise in cases of this nature filed under Article 99 (13) (a) of the Constitution, and went on to state as follows:

> *"The jurisdiction of this Court conferred by Article 99(13)(a) of the Constitution is sui generis, original and exclusive, and does not confer any discretion to this Court to dismiss in limine an application filed there under merely on the ground of suppression or misrepresentation of material facts, as in cases involving injunctive relief or applications for prerogative writs.[17] As noted by Fernando, J. in Gamini Dissanayake v. Kaleel and Others [1993] 2 Sri LR 135 at 198, it is "not a form of judicial review, or even of appeal, but rather an original jurisdiction analogous to an action for a declaration, though it is clearly not a re-hearing." As Dheeraratne, J. observed in Tilak Karunaratne v. Sirimavo Bandaranaike [1993] 2 Sri LR 90 at 101".[18]*

[16] SC Expulsion No. 03/ 2010 (decided on 08-02-2011).
[17] Emphasis is mine.
[18] Page 6 of that judgment.

Thus, this court in all the previous cases has consistently taken and maintained the position that the nature of the jurisdiction this Court conferred on it by Article 99 (13) (a) of the Constitution: is not a form of judicial review; is not even in the form of an appeal; is rather an original jurisdiction analogous to an action for a declaration; is not a re-hearing; is indeed unique in character and original in nature vested in the highest Court of the island; is a very wide jurisdiction; is an original jurisdiction on which no limitations have been placed by Article 99 (13) (a); is sui generis; is original and exclusive; is a jurisdiction to determine the validity or otherwise of an expulsion in terms of the proviso to Article 99(13)(a) of the Constitution; is neither injunctive nor discretionary; is indeed unique in character. I agree with the above views consistently taken by this Court.

Thus, this Court is under a duty as empowered by Article 99(13)(a) of the Constitution, to examine the merits of the decision of the SLMC expelling the Petitioner from the party as the Petitioner in the instant case has invoked the jurisdiction of this Court vested in it under Article 99(13)(a) of the Constitution.

EFFECT OF BREACH OF THE RULES OF NATURAL JUSTICE IN EXPULSIONS

The next question I would consider is as to what would happen when there is some breach of the Rules of Natural Justice in particular, the Rule of Audi Alteram Partem. Let me refer to the previous instances where this Court had considered this aspect when it had exercised its jurisdiction under Article 99(13)(a) of the Constitution.

In *Gamini Dissanayake's* case, Kulatunga J in delivering the majority judgment of this 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.*[19] *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. ..."*[20]

Kulatunga J in *Gamini Dissanayake's* case, had taken that view whilst being mindful of the fact that any expulsion of a member from the party will visit the same consequence as any

[19] Emphasis is mine.
[20] At page 234.

declaration that his election to Parliament is void or subject to any of the disqualifications as are specified in the Constitution which would result in such member losing his seat in Parliament. Nevertheless, it was Kulatunga J's view that when there is a complaint that the relevant decision has been taken in breach of the rules of natural justice, even such decision would stand competent in the presence of overwhelming reasons warranting such decision. Such overwhelming reasons must be most exceptional circumstances permitted by law and in furtherance of the public good the need for which should be beyond doubt.

Even in the minority judgment in *Gamini Dissanayake's* case, Fernando J having considered all the relevant authorities before him, had recognized the fact that there are several cases in which decisions have been allowed to stand although such decisions had been taken without a hearing.[21] Fernando J in that case had listed some of the categories to which such cases belong: the instances where there is 'no legitimate expectation' of a hearing; the instances where a hearing becomes a 'useless formality'; the instances where there is 'no injustice or no real prejudice'; the instances where there is 'urgency' to take a decision; the instances where there is 'discretion' on the decision maker; the instances where there is a 'subsequent hearing also taking place after the impugned decision which 'is enough'; the instances where the person aggrieved by the decision could not have adduced any evidence even if an inquiry was held; the instances where the case is in the nature of "open and shut case" etc.

In *Gamini Dissanayake's* case, Fernando J having considered the above aspects, had proceeded to hold in respect of some of the petitioners in that case, that a hearing would not have been a useless hearing as those petitioners could have tendered an explanation to the issues raised. Having held as above, Fernando J then proceeded to consider the merits of the cases in respect of the other petitioners in that case and indeed held that the expulsion of the other petitioners in *Gamini Dissanayake's* case, (petitioners in SC Special No.s 05 and 08/ 1991) was valid for the reasons he had set out in his judgment. In doing so, Fernando J went on to say, in his judgment the following:

> *"Had these proceedings been purely by way of judicial review, it may well be that we would have to shut our eyes to the merits of the decision, and look only at the defects in the decision-making process. But it is accepted that our jurisdiction is not restricted. The burden, if any, must be on the Respondents, for it is the denial of natural justice by them which has resulted in these proceedings. I have*

[21] At page 186.

therefore to consider whether, on the merits the respondents have shown that the decision was a good one, thereby disentitling the petitioners to relief".[22]

The basis for Fernando J to hold that the expulsion of some of those petitioners to be valid in *Gamini Dissanayake's* case was because those petitioners had not tendered any explanation either in their affidavits or in the documents.

Thus, it could be seen that even Fernando J in his minority judgment, despite the breach of the Rules of Natural Justice by the respondents in that case, had proceeded to hold that the expulsion of some of those petitioners was valid. This goes on to show that our courts have recognized the availability of such a course of action in the course of the proceedings in this court, where a petitioner has invoked this Court's jurisdiction under Article 99 (1) (3) of the Constitution. This is because the jurisdiction of the Supreme Court in this instance is not mere exercise of Judicial Review of the decision of the relevant party which has expelled the relevant member.

The set of cases I would cite next, would show that this Court has indeed consistently applied the above test in all the other cases as well, before it had decided to grant relief to the petitioners of those respective cases.

The petitioner in *Rambukwella Vs. UNP and others*,[23] being a Member of Parliament has filed that petition in terms of Article 99(13)(a) of the Constitution, for a determination that his expulsion from the United National Party (UNP), is invalid. In that case also this court had held, that the expulsion of the petitioner in that case by the UNP was invalid. That was because the reasons such as: the cogent material pointing to the absence of jurisdiction of the body which had taken relevant disciplinary action against the petitioners; the denial of legal representation to the petitioner, which would have enabled the petitioner to show to the satisfaction of the body and to establish the absence of jurisdiction; the defects in the resolution of the national executive committee in that the said resolution had not been seconded by any person, or put to vote before national executive committee, i.e., because the resolution was *ex facie* defective since no person seconding it nor the matter being discussed or put to vote before the national executive committee; the fact that the petitioners conduct could not have possibly come within the ambit of Article 3.4(d) of the constitution of the United National Party under which the petitioner in that case was charged etc. were present in that case. Sarath N Silva CJ in that case, held as follows:

"Although membership of the Party has a concomitant liability to disciplinary action in terms of the Constitution of the Party as correctly submitted by Counsel for the

[22] Emphasis is mine.
[23] 2007 (2) SLR 329.

> *respondents, in deciding on the validity of an expulsion, which has the further implication of the loss of the seat in Parliament, the overall conduct of the person subject to such action has to be taken into account".*[24]

In *Sarath Amunugama's* case, the United National Party expelled five petitioners (five connected applications) from the membership of the party on a decision of the working committee of the party. The immediate ground of expulsion was that the petitioners had met then President Chandrika Bandaranaike Kumaratunga, and assured her of winning the Presidential Election 1999, when in fact the United National Party had nominated its leader Ranil Wickremesinghe as a candidate at that election. Two more allegations made especially against petitioner Sarath Amunugama, were,

1. Pronouncing to National media about formation of a national government without a mandate form the party and
2. The fact that he had told the BBC that he would leave the United National Party if the party failed to respond to his national government concept.

In that case, no explanations were called for from the petitioners; no charge sheets were served on petitioners; no inquiry was held against the petitioners, before the decision to expel them from the membership of the party. Acting Chief Justice Amerasinghe, in that case, stated that he was unable to accept the submissions of the learned counsel for respondents that a hearing would have been "useless" for several reasons. Some of those reasons were, that the matter could not have been described as an "open and shut case". Another reason Acting Chief Justice Amerasinghe had given was that a hearing would not have been a "useless formality" for the working committee had a choice of sanction.

Even in *Sarath Amunugama's* case, Acting Chief Justice Amerasinghe had cited the proposition of kulatunga J in *Gamini Dissanayake's* case which had recognized that in the presence of overwhelming reasons, the court, as it is exercising a *sui generis* jurisdiction under Article 99 (13) (a) of the constitution, can do what the court did in *Gamini Dissanayake's* case. It is apt to reproduce the relevant paragraph of Acting Chief Justice's judgment from *Sarath Amunugama's* case.

> *"Kulatunga, J. (with whom Wadugodapitiya, J. agreed) stated at p. 242 that "since the petitioners had not been prepared to submit themselves to the party councils, then, there is no force in their complaint that the Working Committee had failed to give them a hearing. I hold that the Working Committee acted fairly and reasonably in taking disciplinary proceedings against the petitioners in the way it did.*

[24] At page 334; emphasis is mine.

> *Kulatunga, J. went into the merits of the case and concluded at p. 246 that "the remedy of expulsion befits the mischief unleashed by the petitioners".*
> *However, Kulatunga, J. seems to suggest that it is not in every case that the Court should go into the merits". ….*[25]

Similarly, Acting Chief Justice Amerasinghe, in *Sarath Amunugama's* case had also cited Dheeraratne J's judgment in *Tilak Karunaratne's* case. The relevant paragraph from Acting Chief Justice's judgment is reproduced below,

> *"In Tilak Karunanaratne v. Mrs. Sirimavo Bandaranaike and others, the petitioner, a Member of Parliament, was expelled from his party on a decision of the Executive Committee of the party to which he refused to submit. He challenged his expulsion in terms of Article 99(13)(a) of the Constitution. Dheeraratne, J. at p. 115 stated that, in view of the conclusion His Lordship had reached, namely that "the petitioner's impugned statements are justified" in that he was exercising his Constitutional rights of freedom of speech and association, it was "unnecessary" to deal with certain questions, including a "failure to observe principles of natural justice in the decision making process." Dheeraratne, J. (Wijetunga, J. agreeing) held that the expulsion of the petitioner was invalid. Dheeraratne J. said at pp. 101-102 that Article 99(13)(a) conferred an original jurisdiction on the Court empowering it to go into the merits and shield Members of Parliament from being "unlawfully and/or capriciously" expelled from their parties. His Lordship did not accept the submission of learned counsel, Mr. H.L. de Silva, P.C., that investigations by the Court should be restricted to the question whether proper procedures had been followed,*[26] *lest judges might find themselves wandering into the "political thicket", and cited with approval the observations of Fernando, J. quoted above in Dissanayake on that question".*[27]

In *Ramamoorthy and Rameshwaran Vs. Douglas Devananda and others*,[28] , G. P. S. de Silva CJ had quoted with approval, the observations of Kulatunga J in *Gamini Dissanayke's* case (quoted above), and proceeded to hold that no "weighty considerations" like in *Gamini Dissanayke's* case were present in *Ramamoorthy's* case.

In *Ameer Ali's* case, three petitioners who had been expelled from the SLMC, had contended that they had serious differences of views in regard to the manner in which the members

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[25] At page 199.
[26] Emphasis is mine.
[27] At page 200.
[28] 1998 (2) Sri. L. R. 278.

elected from the SLMC should conduct themselves, in Parliament as well as with the Leader of the party. They had refused to sign a pledge in the specimen form declaring loyalty and total allegiance to the party, to its Leader and to the High Command. They had written a joint letter informing the Leader of the party that they would extend their fullest support to the Government in its endeavor to find a lasting solution to the problems identified by them, which will benefit the Muslims in particular and the country at large in general. Shortly thereafter the three petitioners in that case were appointed as project ministers, they received letters from the party requiring them to show cause as to why disciplinary action should not be taken against them. The petitioners responded by letter requesting time to answer and were granted an additional 10 days and were required to be present at the meeting of the High Command, scheduled for 09-12-2004. The petitioners replied to charges by letter dated 07-12-2004 denying allegations and setting out most of the facts and circumstance included in the letter previously addressed to the Leader. By letter dated 20-12-2004, the Secretary General, disputed the contents of the reply and informed the Petitioners that they could present their case to the High Command and requested that a date be nominated in the month of January, on which date the matter would be heard at one of the Hotels that were specified. It appears that no further action was taken in the matter until March 2005, when letters dated 01-03-2005, was received by the Petitioners, signed by the Secretary General who informed them that the Polit bureau will go in to the show cause notice at a meeting on 12-03-2005 to be held at the Earls Court, Trans Asia Hotel at 5.00 p.m. The Petitioners were requested to be present. Another letter was received by the Petitioners bearing the same date sent by the Secretary General requesting the Petitioners to be present on Sunday 13th March at 5.00 p. m. at the same venue for a meeting of the High Command and at which meeting the High Command will go into the show cause notice that had been issued. The Petitioners replied by letters dated 11-03-2005, referring to the two sets of inquiries to be held by two bodies of the party and stated that they were puzzled as to how they have been summoned to face two disciplinary inquiries on two successive dates in respect of allegations set out in one show cause notice. The Petitioners sought specific clarification as to which particular body would seek to exercise disciplinary control. It was in such a background that the petitioners in that case had been notified of their expulsion from the party by letter dated 04-04-2005.

Indeed, it is noteworthy that in *Ameer Ali's* case the High Command of SLMC, after this Court had issued notices on the Respondents in that case, having taken into consideration the statements in the affidavits filed in Court and having taken into consideration the positions taken up by the petitioners that they were not afforded a hearing prior to adopting the extreme measure of expulsion, had decided to withdraw the expulsions communicated by letter dated

04-04-2005 in order to give them a further opportunity to present their position before the Party. Thus, in *Ameer Ali's* case, the relevant party (the SLMC) itself had conceded that it should have afforded the petitioners in that case, an opportunity to present their positions before the Party.

Even in *Ameer Ali's* case, the five-judge bench of this Court had cited the proposition of kulatunga J in *Gamini Dissanayake's* case that 'if the complaint is that the petitioner 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' when it decided the following:

> *"To say the least, the Leader has thrown the principles of natural justice and fairness to the winds. The hostile comments made well before the commencement of any disciplinary action by itself establish the allegations of the Petitioners of malafides and of bias. To make matters worse, the Leader has precipitously stated that the Party will take action against the Petitioners in due course. Thereby he has assumed the authority to decide on the matter for the entire Party. This is far removed from the democratic process, which should characterize the action of a political party and the degree of fairness, being a sine qua non of any disciplinary action that may be validly taken by a political party in respect of any of its members.*
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> *In this background the Court has to examine the impugned disciplinary process with a greater degree of caution to ascertain whether the initial stigma of bias and mala fides have been removed in the course of the disciplinary action allegedly taken".*[29]

With regard to *Ameer Ali's* case, it would suffice for me to state here that such were the facts of *Ameer Ali's* case. Thus, the foregoing judicial precedence show in short that any breach of the Rules of Natural Justice alone cannot finally decide the validity of the expulsion of a petitioner in a petition filed under Article 99 (13) (a) of the constitution.

HAS THE ABSENCE OF A FORMAL INQUIRY VITIATED THE EXPULSION?

Let me now turn to the question whether the absence of a formal inquiry has vitiated the decision of the SLMC to expel the Petitioner in the instant case. In doing so, let me first refer to the approach the following three English cases had taken on the above question. These

[29] At page 197.

would be relevant in that regard as Kulatunga J in *Gamini Dissanayake's* case, has adopted those principles.

Let me first refer to the case of Gaiman Vs. National Association for Mental Health,[30] (hereinafter sometimes referred to as *Gaiman's* case). The National Association for Mental health a highly reputable charitable body concerned with, *inter alia*, the preservation and development of mental health and the prevention and treatment of mental disorders. The Association had a council of management comprising the chairman, vice-chairman and honorary treasurer together with a number of ordinary members elected by the association. The Articles of Association provided, inter alia, that a member of the Association shall forthwith cease to be a member if such member has been requested by resolution of the Council to resign. It has further provided that a member so requested to resign may within seven days after such notice of resolution has been given, appeal against such resolution to the Association in a General Meeting and in the event of such appeal being successful, the resolution requesting the member to resign shall be void *ab initio*.

Let me now briefly state facts of *Gaiman's* case. For five years there had been a state of hostility between the Association and members of the 'Church of Scientology' and articles in a periodical published by the association had resulted in two actions by Scientologists against the Association for libel. The Scientologists had attacked the Association in various publications. In 1969, the rate of applications for membership of the Association had increased. Notice was given of the annual general meeting of the Association to be held on 12th November. The nominations included the nominations of the plaintiffs as chairman and ordinary members of the council. All nominees, proposers and seconders appeared to be Scientologists. On 10th November, the council, acting under the above provisions in its Articles of Association, expelled 302 members of the Association. Those expelled members sought a mandatory injunction from Courts, praying for an order on the Association to afford to the plaintiffs, until trial of the action, all rights of their membership.

Megarry J in *Gaiman's* case, refusing to grant the prayed mandatory injunction, held in his judgment *inter alia*, the following points:

i. There were no grounds for the court to intervene to prevent an alleged abuse of power by the council since the power to deprive a member of his membership was a direct power and the evidence did not disclose that it had been exercised otherwise than in good faith and in what were believed to be the best interests of the association and members as a whole.

[30] [1970] 2 All ER 362, 374, 376, 381.

ii. The principles of natural justice did not apply to the expulsion of members, so as to afford them a right to be heard before expulsion, because there were circumstances sufficient to prevent the application of the principles, in that the council owed the association a duty to exercise their powers bona fide in the interests of the association; this duty might require a power to be exercised at great speed (whereas natural justice might require delay); this in itself indicated that the council was intended to be able to exercise its powers unfettered by the principles of natural justice.

Megarry J in his judgment proceeded further to hold that the council had acted in the *bona fide* belief that it was in the best interests of the Association and that the council had exercised its power of deprivation of membership in good faith for the purpose for which it was conferred on it by the Articles of Association. Megarry J proceeded further to hold as follows:

> *It is beyond question that Scientologists have for long been attacking the association in a variety of ways. The attacks have been virulent, and like the sentiments, the language, I think, speaks for itself. I need say no more about it than that much of it cannot be described as moderate and reasoned argument designed to convert those who hold what are conceived to be erroneous views".*[31]

In *Gamini Dissanayake's* case, it was common ground that the petitioners have been expelled from the party without informing them of the charge or giving them an opportunity of being heard. Kulatunga J in its majority judgment having considered the question whether such a procedure could be justified, referred to and adopted the principle used by Megarry J, in Gaiman's case. Kulatunga J then proceeded to apply the same to the facts and circumstances in *Gamini Dissanayake's* case. The following paragraph quoted from Kulatunga J's judgment in *Gamini Dissanayake's* case would bear testimony to that.

> *"As Megarry J. observed in Gaiman's case I am myself not concerned with " the merits of the views " held by the UNP and the petitioners, (described in the Press as "rebels"). I am concerned with the right of the Working Committee to have proceeded against the petitioners without a hearing. As in Gaiman's case here too the attacks have been " virulent " and " much of it cannot be described as being moderate and reasoned argument designed to convert those who hold what are conceived to be erroneous views." Mr. Choksy submitted that in Gaiman's case the Scientologists had been making representations for several years; here they launched a campaign without any prior discussion within the party. I would add that in Gaiman's case there was no threat to stable*

[31] At page 373 & 374.

> *government in the country; nor was there any campaign which was likely to confuse or inflame the public mind against the Head of a State, the government and the party in power. The interests involved in that case were those of the Mental Health Association whereas this case involves the interests of a party which has been voted into power by the electors and above all the interests of the public who are often the victims of such indisciplined controversy."*

Having stated the above, Kulatunga J in *Gamini Dissanayake's* case proceeded to hold as follows:

> *"The point I make is that if the petitioners themselves were not prepared to submit to the party councils, then, there is no force in their complaint that the Working Committee had failed to give them a hearing. I hold that the Working Committee acted fairly and reasonably in taking disciplinary proceedings against the petitioners in the way it did".*[32]

The second English case I would refer to, is the case of *Glynn Vs. Keele University and another*,[33]hereinafter sometimes referred to as *Keele University's* case. In that case, certain students had appeared naked in the area of the Students' Union on 19th June 1970 causing offence to many members and employees of the University, and residents on the campus. The offenders included the Plaintiff in that case and certain students due to graduate on the 1st July. The term ended on the 30th June and the Graduation Ceremony was on the 1st July. If a Disciplinary Panel had been convened it could not have met until after the end of term, by which time the graduation students would no longer have been within the disciplinary jurisdiction of the University. Thus, the vice-chancellor referring to the incident of 19th June and to his responsibility for maintaining good order, wrote to the plaintiff by letter dated 1st July, to the following effect:

> *`.. I shall report to the Council at its meeting on the 7th July that you have been fined 10 pounds and excluded from residence in any residential accommodation on the University campus from today's date for the whole of the session of 1970/71 . . . If you wish to address any grievance in connection with the above to the Council . . . you should send it in writing to the Registrar to reach him not later than Tuesday, 7th July.'*

The plaintiff replied to the Registrar by letter dated 3rd July stating that he wished to appeal; but having gone abroad for the long vacation, and having left no forwarding address he did

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[32] At page 242.
[33] [1971] 1 W L R 487, [1971] 2 All E R 89.

not receive a letter giving him notice that the appeal was to be heard on 2nd September. As the plaintiff did not appear at the hearing of the appeal the vice-chancellor's decision stood. The plaintiff, sought from Courts, *inter alia*, an injunction against the University of Keele and the vice-chancellor of the university, restraining them from excluding him from residence on the campus of the university for the remainder of the academic year 1970/71.

It must be stressed here that in *Keele University's* case, the Plaintiff had not made any formal admission that he was one of the undergraduates concerned in the offence; there was nowhere in his affidavits, or in the submissions of the counsel for him, any real suggestion that he was not one of the naked undergraduates on that occasion.

Pennycuick V-C in *Keele University's* case, having concluded the followings: the Vice Chancellor was under a duty to comply with the requirements of natural justice; the Vice Chancellor had not complied with the rules of natural justice; nevertheless, proceeded to decide as follows.

> *I have, again after considerable hesitation, reached the conclusion that in this case I ought to exercise my discretion by not granting an injunction. I recognize that this particular discretion should be very sparingly exercised in that sense where there has been some failure in natural justice. On the other hand, it certainly should be exercised in that sense in an appropriate case, and I think this is such a case. There is no question of fact involved as I have already said. I must plainly proceed on the footing that the plaintiff was one of the individuals concerned. There is no doubt that the offence was one of a kind which merited a severe penalty according to any standards current even today. I have no doubt that the sentence of exclusion of residence in the campus was a proper penalty in respect of that offence. Nor has the plaintiff in his evidence put forward any specific justification for what he did. So the position would have been that if the vice-chancellor had accorded him a hearing before making his decision, all that he, or any one on his behalf could have done would have been to put forward some general plea by way of mitigation. I do not disregard the importance of such a plea in an appropriate case, but I do not think the mere fact that he was deprived of throwing himself on the mercy of the vice-chancellor in that particular way is sufficient to justify setting aside a decision which was intrinsically a perfectly proper one.*
>
> *In all the circumstances, I have come to the conclusion that the plaintiff has suffered no injustice, and that I ought not to accede to the present motion.*[34]

[34] At page 97.

Kulatunga J in *Gamini Dissanayake's* case, relied on *Keele University's* case, to illustrate how the Court's approach is affected by the subject matter.

The third English case I would refer to, is the case of Cinnamond and others Vs. British Airports Authority,[35] (hereinafter sometimes referred to as the *Cinnamond's* case. In that case, six minicab drivers (the appellants in that case), had been prosecuted on numerous occasions by the British Airports Authority for loitering at an airport owned and operated by the Authority and touting there for passengers. They persistently refused to pay the fines and continued to loiter and tour for fares. Acting under a byelaw which empowered the Authority to prohibit any person from entering the airport except as a bona fide airline passenger, the Authority by notice prohibited the appellants from entering the airport until further notice. The Authority had not given any opportunity for the appellants to make any representations to the Authority before the ban was imposed. Thus, one of the grounds upon which the appellants sought a declaration from Courts that those notices were invalid was that there had been a breach of the Rules of Natural Justice.

Lord Denning, Shaw LJ and Brandon LJ though unanimous in their final conclusion in *Cinnamond's* case had considered the question whether there had been a breach of the rules of natural justice because the appellants had not been given an opportunity of making representations to the Authority before the ban was imposed and proceeded to comment on this aspect of the case in their separate judgments. Lord Denning in his judgment in *Cinnamond's* case held as follows:

> *"Counsel for the plaintiffs urged us to say that this was such a case; that there ought to have been an opportunity given to these six car-hire drivers, so that they could be heard. They might give reasons on which the prohibition order might be modified; or they might be given a little time; or they might be ready to give an undertaking which might be acceptable: to behave properly in future. When it was said that a fair hearing would make no difference, counsel cited an important passage from Professor Wade's Administrative Law (4th Edn, 1977, P 455):*
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> > *'... in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified.'*

[35] [1980] 2 All ER 368.

I can see the force of that argument. But it only applies when there is a legitimate expectation of being heard. In cases where there is no legitimate expectation, there is no call for a hearing. We have given some illustrations in earlier cases. I ventured to give two in R v Gaming Board for Great Britain, ex parte Benaim [1970] 2 All ER 528 at 533, [1970] 2 QB 417 at 430. I instanced the Board of Trade when they granted industrial development certificates, or the television authorities when it awarded television programme contracts. In administrative decisions of that kind, a hearing does not have to be given to those who may be disappointed. Only recently in Norwest Holst Ltd v Department of Trade [1978] 3 All ER 280 at 292, [1978] Ch 201 at 224 I gave the instance of a police officer who is suspended for misconduct. Pending investigations, he is suspended on full pay. He is not given any notice of the charge at that stage, nor any opportunity of being heard. Likewise, the Stock Exchange may suspend dealings in a broker's shares. In none of these cases is it necessary to have a hearing.

Applying those principles, suppose that these car-hire drivers were of good character and had for years been coming into the airport under an implied license to do so. If in that case there was suddenly a prohibition order preventing them from entering, then it would seem only fair that they should be given a hearing and a chance to put their case. But that is not this case. These men have a long record of convictions. They have large fines outstanding. They are continuing to engage in conduct which they must know is unlawful and contrary to the byelaws. When they were summonsed for past offences, they put their case, no doubt, to the magistrates and to the Crown Court. Now when the patience of the authority is exhausted, it seems to me that the authority can properly suspend them until further notice, just like the police officer I mentioned. In the circumstances they had no legitimate expectation of being heard. It is not a necessary preliminary that they should have a hearing or be given a further chance to explain. Remembering always this: that it must have been apparent to them why the prohibition was ordered, and equally apparent that, if they had a change of heart and were ready to comply with the rules, no doubt the prohibition would be withdrawn. They could have made representations immediately, if they wished, in answer to the prohibition order. That they did not do.

The simple duty of the airport authority was to act fairly and reasonably. It seems to me that it has acted fairly and reasonably. I find nothing wrong in the course

which it has taken. I find myself in substantial agreement with the judge, and I would dismiss the appeal."

Shaw LJ in his judgment in *Cinnamond's* case, while agreeing with Lord Denning, referring to the failure to give the six minicab drivers an opportunity of making representations to the Authority, stated as follows:

"As to the suggestion of unfairness in that the plaintiffs were not given an opportunity of making representations, it is clear on the history of this matter that the plaintiffs put themselves so far outside the limits of tolerable conduct as to disentitle themselves to expect that any further representations on their part could have any influence or relevance. The long history of contraventions, of flouting the regulations and of totally disregarding the penalties demonstrate that in this particular case there was no effective deterrent. The only way of dealing with the situation was by excluding them altogether.

It does not follow that the attitude of the authority may not change in the future if it can be persuaded by representations on behalf of the plaintiffs that they are minded in future to comply with those regulations.

The learned judge came to the right conclusion, and I too would dismiss the appeal".[36]

Brandon LJ in his judgment in *Cinnamond's* case while agreeing with Lord Denning, held as follows:

"The third question which was argued before us was that of natural justice. So far as that is concerned, I agree with what has been said by Lord Denning MR and Shaw LJ. I do not think that in the circumstances of this case there was any need to give the plaintiffs an opportunity to make representations to the authority before they issued the ban. The reason for the ban must have been well known when the letters were received. Any representations which were desired to be made could have been made immediately by letter. None were. The truth is that no representations other than representations which included satisfactory undertakings about future behaviour would have been of the slightest use.

If I am wrong in thinking that some opportunity should have been given, then it seems to me that no prejudice was suffered by the plaintiffs as a result of not being given that opportunity. It is quite evident that they were not prepared then,

[36] At page 375 & 376.

and are not even prepared now, to give any satisfactory undertakings about their future conduct. Only if they were would representations be of any use".[37]

In *Gamini Dissanayake's* case, Kulatunga J in the majority judgment when considering the question whether such a procedure could be justified had referred to and adopted with approval, the approach Lord Denning had taken in *Cinnamond's* case.[38]That was to justify the common ground that the petitioners in *Gamini Dissanayake's* case, had been expelled from the party without informing them of the charge or giving them an opportunity of being heard. In *Jayatillake and another Vs. Kaleel and others*,[39] (hereinafter referred to as *Jayatillake's* case), two petitioners who are Members of Parliament filed petition in this Court invoking its jurisdiction under Article 99 (13) (a) of the Constitution challenging their expulsion from the United National Party (UNP). In that case, the Disciplinary Committee of the Party's Working Committee recommended on 3-12-1991 to take disciplinary action against the Petitioners on account of several matters. The Working Committee met at 7.00 p.m. on the same day and, having considered the Report of the Disciplinary Committee and the letters dated 9-10-1991 written by the Petitioners, decided that the General Secretary should write to these two members, requesting them to be present at a meeting of the Working Committee to be held on 06-12-1991 at 8.00 p.m. "for the purpose of discussing their conduct as members of the Party". No particulars were given to the petitioners. Admittedly, the petitioners had not received those letters on or before 06-12-1991. Assuming that the Petitioners had received notice, the Working Committee duly met on 06-12-1991, considered the relevant material and then resolved to expel the petitioners in that case from the Party, with immediate effect, for the reasons given in the letters dated 09-12-1991 and communicated to the petitioners of their expulsion. The petitioners before they received the letters from the party communicating their expulsion, had sent letters dated 09-12-1991 to the UNP to inform that they were not in receipt of letters informing them that the meeting of the Working Committee was to be held on 06-12-1991 at 8.00 p.m. However, neither Petitioner had requested another opportunity of appearing before the Working Committee. Nevertheless, the UNP had sent letters to the petitioners asking the petitioners to submit written observations stating their position with regard to the charges before 27-12-1991. The petitioners had received those letters on 23-12-1991 and they had replied. The Working Committee met on 30-12-1991; they considered the Petitioners' replies dated 26-12-1991. The Working Committee decided that the Petitioners had not adduced any facts or reasons to justify further inquiry and accordingly, decided not

[37] At page 376 & 377.
[38] At page 236.
[39] 1994 (1) Sri. L.R. 319.

to reconsider or alter the decisions reached on 06-12-1991 which was then communicated to the petitioners the same day.

Although there are two judgments in *Jayatillake's* case, one by Fernando J and the other by Kulatunga J with which Wadugodapitiya J had agreed. Both judgments had considered the question whether there had been a breach of the Rules of Natural Justice in view of the fact that there was no formal hearing before making the decision to expel the petitioners in that case from the party. Both judgments had concluded that in the above circumstances, the UNP had sufficiently complied with the Rules of Natural Justice and therefore the expulsion was valid and proceeded to comment on this aspect in those separate judgments to which I would now turn.

Fernando J in *Jayatillake's* case, holding that in the context of all that happened in December 1991, the four days allowed to the petitioners (of which they needed only three) were sufficient to state their case and the manner in which they did so, had a direct bearing on the further question whether Natural Justice required an oral hearing and additional evidence to be placed in that case, proceeded to hold as follows:

> *"Those were cases of re-hearing by the same authority. The principle that a failure of Natural Justice at the original hearing may sometimes be cured by a "full re-hearing" by another body was recognised by the Privy council in Pillai v. Singapore City Council. Having held that the rules of Natural Justice did not apply to the first tribunal, yet the Privy Council observed that even if they did apply, the subsequent proceedings cured the defect. Although they were by way of "appeal", those proceedings were in the nature of a re-hearing and evidence was called de nova. This was followed in Stringer v. Minister of Housing. In Calvin v Carr, the Privy Council dealing with an appeal from New South Wales, recognised that there was no absolute rule, either way, as to whether defects in Natural Justice at an original hearing can be cured through proceedings by way of appeal or re-hearing (at pp. 447-448); everything depends on whether after "examination of the hearing process, original and appeal as a whole", the Court is satisfied that "there has been a fair result, reached by fair methods"; whether "the appellant's case has received, overall, full and fair consideration", (pp. 448, 449, 452).*
>
> *Applying these principles, (a) the initial breach of Natural Justice was not deliberate; (b) action was not taken to enforce, or to make legal consequences flow from, the order of expulsion, and the fact that the Petitioners participated in the subsequent proceedings gave the Working Committee a locus poenitentiae; (c) the allegations were fairly and adequately, though not fully and precisely, communicated; and (d)*

a fair opportunity was given to the Petitioners to state their case, and an oral hearing became unnecessary as the facts were " undisputed in consequence of their replies. I hold that the Petitioners, case had received - overall - full and fair consideration, and that there had been a fair result, reached by fair methods".[40]

Kulatunga J (Wadugodapitiya J agreeing) in *Jayatillake's* case, in his judgment rejecting the allegation that the expulsion of the petitioners was invalid for contravention of Rules of Natural Justice proceeded to hold as follows:

"I am of the view that the Working Committee had done everything possible to hold a full and fair hearing on the second occasion. The petitioners, however had defected from the Party and were irreconcilable. They were not interested in answering the allegations adequately and relied on mere jurisdictional grounds and bald denials. The learned President's Counsel for the petitioners told us that the petitioners were not bound to disclose their material or to disclose the reasons for their failure to attend Parliament on 10.10.91. If so, the petitioners are themselves to blame for their predicament. I have taken this view in the light of the following considerations:-

a) *The rights of the petitioners to Party membership are contractual. At the time of their expulsion, they had repudiated the UNP and were de facto members of the DUNF; and their expulsion constituted nothing more than the severance of the formal link between them and the Party. It follows that if they wished to remain in the Party they should have taken the initiative and cooperated with the Party by making a full and frank disclosure of their defence. If they failed to do so, they must take the consequences.*

b) *In handling a crisis of the magnitude faced by the respondents and in dealing with men of the petitioners' calibre, a political party must be allowed a discretion to decide what sanctions are appropriate for violations of Party discipline; and if the Party decides, bona fide, to expel any member guilty of repudiating the Party, as the petitioners have done, this Court will not in the exercise of its constitutional jurisdiction impose such member on the Party. If that is done, Parliamentary Government based on the Political Party System will become unworkable.*

I am satisfied that the disciplinary proceedings against the petitioners were, in all the circumstances, fair".[41]

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[40] At page 357.
[41] At page 399.

Mr. Sumanthiran PC, appearing for the 1st, 2nd and 8th Respondents (i.e., the SLMC, its Leader, its Secretary respectively) conceded that the SLMC had not held a formal inquiry against the Petitioner before issuing **P15**. However, it was his submission that the Petitioner has failed first to show cause that he has a prima facie tenable explanation, which he is bound to tender in the first place, as response to **P9**.

Finally, Mr. Sumanthiran, PC, also submitted that the antecedent hearing that the Supreme Court has given to the Petitioner on the totality of the case would satisfy the compliance of Rules of Natural Justice (Principle of 'Audi Alteram Partem') as far as the validity of the Petitioner's expulsion from the party is concerned. It was therefore his submission that even on that ground the absence of a formal inquiry the instant case would not vitiate the decision of the SLMC to expel the Petitioner.

Let me now consider whether the absence of a formal inquiry has vitiated the decision of the SLMC to expel the Petitioner in the instant case. In order to consider this aspect of the case, let me first outline the sequence of events which had led to the High Command of the SLMC to unanimously resolve to expel the Petitioner from party membership with immediate effect. The SLMC has called for a written explanation from the Petitioner by the letter dated 27-11-2021 (produced marked **P9**) signed by the Respondent who is the Secretary of the SLMC. This letter is as follows,

> *"As you are aware, the Party called for a high command meeting on 21.11.2021 at the Party headquarters "Dharussalam', to discuss and decide on the Party stand vis-a-vis the 2022 Budget (The Appropriation Bill).*
>
> *You are also aware that at this meeting, it was decided unanimously, that Members of Parliament being members of the Sri Lanka Muslim Congress, shall not vote in favour of the budget at it's second reading vote on 22.11.2021 and shall not vote in favour at the third reading vote as well.*
>
> *You, however, on 22.11.2021 voted in favour of the said Budget at its second reading, in blatant violation of the said decision of the High Command.*
>
> *In doing so, you have acted in breach of the party decision while holding a senior and substantial position in the party high command namely, Deputy Leader.*
>
> *In the circumstances, the party leader, exercising his powers under the party constitution, has decided to suspend you from the High Command position held by you and to call for explanation on the said breach of the party decision.*
>
> *Therefore, as instructed by the Leader, I do hereby call for your explanation of your decision to vote in favour of the 2022 Budget in violation of the party decision.*

Your explanation in writing in the form of an affidavit should reach me within fourteen days from the date of the receipt of this letter.

Failure to do so will compel the party to arrive at the conclusion that you have no cause to show against the said violation of the party decision by you."

Replying to **P9** the Petitioner by letter dated 10-12-2021 (produced marked **P10**), had communicated to the SLMC stating the followings:

i. He could not attend the meeting of the High Command scheduled for 21-11-2021 at party headquarters, as it had been summoned at very short notice and hence, he was not able to attend the meeting due to reasons beyond his control which he had duly notified to the secretary of the SLMC.
ii. He did not receive any communication as to whether the meeting was held or postponed or any decision taken at the meeting.
iii. He requires a period of one month to furnish his response to the 'show cause letter' dated 27-11-2021, which he had received.
iv. He requests to let him know the relevant provisions in the party constitution under which the leader is said to have exercised his powers to suspend him from the High Command position.
v. He also requests a copy of the party constitution.

The secretary of the SLMC by letter dated 22-12-2021 produced marked **P11**, has clearly allowed the further period of one month requested by the Petitioner to tender his response to the 'show cause letter'. The Petitioner himself in his petition has admitted that he had received **P11** as a response to his letter dated 10-12-2021 (**P10**), from the secretary of the SLMC which had granted him a further period of one month to tender his response.[42] That is also the position of the SLMC and hence it is common ground that the SLMC has clearly allowed the further one-month period requested by the Petitioner to tender his response to **P9**, the 'show cause letter'.

Then the Petitioner has written the letter dated 04-01-2022 produced marked **P12**, thanking the SLMC for granting the further one-month period requested by him to tender his response to **P9** while also repeating the same request again, namely, the request for a copy of the latest party constitution and the sections under which the Secretary of the SLMC had called for his explanation. **P12** is a short three-line letter which is as follows:

[42] Paragraph 46 of the petition dated 20th May 2022.

"Thank you for your letter dated 22-12-2021 allowing a month's time for my response. Please send me a copy of the latest party Constitution & the sections under which you have called for my response at your earliest convenience."

The Secretary of the SLMC by letter dated 14-03-2022 (produced marked **P13**), had once again informed the Petitioner to submit his explanation by 15-04-2022. The Petitioner has admitted that he was in receipt of **P13** which had extended the time to submit his explanation until 15-04-2022. Indeed, **P13** is a document produced by the Petitioner himself. Reading of both **P12** and **P13** together would show that the SLMC had extended time until 15-04-2022 by **P13** even without any request made in that regard by the Petitioner in **P12**. Indeed, the Petitioner in **P12** had continued to maintain his silence on tendering his explanation.

Replying to **P13**, the Petitioner by the letter dated 07-04-2022 (produced marked **P14**), has repeated his request for a copy of the party constitution. It is worthwhile producing this letter **P14** as it is. It is as follows,

"I am in receipt of your letter dated 14.03.2022

In my response letter to you dated 10.12.2021, I had explained as follows:

You also refer to a meeting of the High Command scheduled for 21.11.2021 at the party headquarters, which I could not attend. You are aware, the said High Command meeting had been summoned at very short notice and I was not able to attend the said meeting due to reasons beyond my control which I had duly notified to you. I did not receive any communication whether the meeting was held or postponed or of any decision taken at the meeting."

" Meanwhile please let me know the relevant provisions in the party Constitution under which the Leader is said to have exercised his powers to suspend me from the High Command position together with a copy of the relevant Constitution."

You will note that you have not made available the relevant information and a copy of the relevant Constitution as yet. I shall therefore request you to furnish me with the relevant Information and a copy of the relevant Constitution which are undoubtedly available to you, at your earliest convenience, to enable me to furnish a more detailed response further to your request."

With the receipt of the letter **P14** from the Petitioner, the SLMC by letter dated 23-04-2022 (produced marked **P15**), had communicated to the Petitioner the following,

*"**Disciplinary Action - Expulsion from the Party (Sri Lanka Muslim Congress) Membership.***

I received your letter dated 7th April 2022.

Your letter was placed before the High command of the party which met on 22.04.2022.

The High Command noted that you have not given any reason for violating the party decision taken at the High Command meeting held on 21.11.2021, except to plead your purported ignorance of the said decision.

High command noted that the said decision was not only conveyed to you by the leader but also it was given a huge publicity through the media.

The High Command also noted that;

1. *you are well aware the said meeting on 2.11.2021 was summoned for the specific purpose of taking a decision as to the party's stance on the government's proposed Appropriation Bill for the year 2021/2022, as it was spelled out in the invitation SMS sent by the secretary.*
2. *You are also aware that the secretary has not sent any message, cancelling or postponing the meeting. On the contrary you have sent SMS to the secretary, excusing your attendance, which you have admitted in your letter,*

Hence, the High Command proceeded to consider the action to be taken against you on the basis that you have no cause to show.

After due considerations of all these relevant matters the High Command has unanimously resolved to expel you from party membership with immediate effect. Accordingly, on the instructions of the party I do hereby communicate that your party membership from Sri Lanka Muslim Congress is duly terminated and as a result you have ceased to be a member of the Sri Lanka Muslim Congress the political party from which you were elected to the present Parliament."

Let me digress a bit from the sequence of events at this stage to again refer to *Gamini Dissanayake's* case. In that case, Kulatunga J having considered many authorities cited before him, stated as follows:

> *"I appreciate that it is not possible to come to a finding on the contentions advanced before us on a piece-meal approach with reference to this authority or the other. In my view our decision rests on an application of more than one principle, cumulatively, to the facts and circumstances of this case bearing also in mind the legal safeguards to which the petitioners are entitled".*[43]

Thus, with that in mind let me further probe into the afore-stated sequence of events which took place before the decision of the SLMC to expel the Petitioner from the party.

[43] at page 239.

It is Mr. Sumanthiran PC's position that since the Petitioner has failed to show any cause as to why he had breached the decision of the party and voted in favour of the Appropriation Bill (2022 Budget), the disciplinary authority is entitled to proceed on the basis that the Petitioner has no cause to show. Indeed, this is what **P9** in its last line has stated. The relevant part is as follows:

> *"…Your explanation in writing in the form of an affidavit should reach me within fourteen days from the date of the receipt of this letter.*
>
> *Failure to do so will compel the party to arrive at the conclusion that you have no cause to show against the said violation of the party decision by you…"*

The letter **P9** which called for a written explanation from the Petitioner is dated 27-11-2021. Time granted for the Petitioner for that purpose is fourteen days. It is important to note, that the first response by the Petitioner to **P9**, which is the letter **P10** is dated 10-12-2021. That date is the 14th day since the date of **P9**. Therefore, as per **P9**, it is the last day of the deadline given for the Petitioner to submit his explanation.

In the meantime, the Petitioner having accepted the cabinet portfolio was appointed as the cabinet minister in charge of environment, on 28-04-2022. Although the Petitioner has stated in his petition that this appointment was made on 18-04-2022, the 1st, 2nd and 8th Respondents have brought to the notice of the Court that this appointment was in fact made on 28-04-2022. The relevant Gazette notification has been produced marked **P14(a)**.

When the Petitioner received **P9**, he knew very well that an explanation in writing in the form of an affidavit must be tendered to the secretary of the SLMC within the time designated in that letter. Moreover, he was also aware of the consequences of any failure on his part to tender such explanation in the form of an affidavit within that time. This is because in the last paragraph of that letter, the secretary of the SLMC had clearly communicated to him that any failure on his part to tender such explanation will compel the party to arrive at the conclusion that he has no cause to show against the alleged violation of the party decision taken on 21-11-2021, not to vote in favour of the budget (the appropriation bill 2022) on 22-11-2021 and at the 3rd reading of that bill as well. In his response in **P10** (which is the response of the Petitioner to **P9**) the only reason the Petitioner had adduced was that the Petitioner did not receive any communication as to whether the meeting was held or postponed, or any decision taken at the meeting. Having stated so, the Petitioner had requested a period of one month to furnish his response. He had also requested the relevant provisions in the party constitution under which the leader is said to have exercised his powers to suspend him from the High Command together with a copy of the party constitution.

The SLMC had proceeded to grant the further period of one month requested by the Petitioner by **P10** for which the Petitioner had even proceeded to thank the SLMC for accommodating his request for further time (by **P12**). Thus, the Petitioner does not allege any unfair refusal of his request by **P10** for further time to tender his written explanation. Therefore, on that point we cannot hold that the SLMC had breached the Rules of Natural Justice.

The Petitioner writes **P12** on 04-01-2022. The one-month time granted by **P10** if calculated from the date of that letter i.e., 10-12-2021, must end on 10-01-2022. **P12** is dated 04-01-2022 and it only requests a copy of the latest party constitution and sections under which the SLMC had called for the Petitioner's explanation. The Petitioner does not request for further time by **P12** to tender his explanation. It is thereafter, that the SLMC by letter dated 14-03-2022 (produced marked **P13**) had communicated to the Petitioner, that the Petitioner must tender his explanation before 15-04-2022. The Petitioner replying to **P13** by letter dated 07-04-2022 marked **P14**, had stated the following two things.

i. He did not receive any communication as to whether the meeting was held or postponed or any decision taken at the meeting.
ii. He requests to let him know the relevant provisions in the party constitution under which the leader is said to have exercised his powers to suspend him from the High Command position. He also requests a copy of the party constitution.

The Petitioner himself has admitted that the above two things are a mere reproduction of the contents in **P10**. The Petitioner in the last paragraph of **P14**, had stated that the above would enable him to furnish a more detailed response. It is after consideration of **P14** that the SLMC High Command had made the decision to expel the Petitioner which was communicated by **P15**.

The Petitioner does not challenge his expulsion before this Court on the basis that the SLMC had failed to tender to him a copy of the constitution or its provisions he had requested. Nevertheless, let me now consider whether the Petitioner has satisfied before this court, that he could not have tendered a full response without the SLMC complying with his request for the relevant provisions and a copy of the party constitution.

It is the Petitioner himself who had produced a copy of the SLMC constitution annexed to his Petition marked **P1**. This means either he was in possession of the SLMC constitution or he was capable of easily getting it procured for his use on his own rather than making repeated requests to the party. Admittedly, the Petitioner is an experienced politician, whose political career has spanned over 30 years and at the time of his expulsion form the SLMC, he had held the position of 'Deputy Leader I' of the High Command and the post of the 'Director of

International Affairs', of the party.[44] In my view, such an attitude on the part of the Petitioner cannot be seen as a genuine request made by the Petitioner, the compliance of which by the SLMC should have been necessary as a pre-requisite to tendering the Petitioner's explanation. I am unable to accept that as aground which would vitiate the decision of the SLMC to expel him from the party.

The Petitioner has not challenged his expulsion before this court on the basis that the Leader of the SLMC had no power to suspend him from the High Command position he held. In any case, what the Petitioner had requested from SLMC is to let him know the relevant provisions of the SLMC constitution under which the Leader of the SLMC is empowered to suspend him from his position in the SLMC High Command. As has been already mentioned, the SLMC with or without powers under the SLMC constitution has suspended the petitioner by **P9**. The Petitioner does not seek to challenge **P9** in this proceeding. Moreover, the jurisdiction conferred by Article 99 (13) (a) of Constitution does not empower this court to engage in such exercise of reviewing a decision to suspend a member form the party. The jurisdiction under Article 99 (13) (a) is clear in that it only confers jurisdiction on this court to decide whether the expulsion of a member from a political party is valid or not. That is what the Petitioner had exactly sought to do in this case. Therefore, I hold that the question whether the SLMC leader had power under SLMC constitution to suspend the Petitioner by **P9** or the question whether the SLMC should have complied with the Petitioner's request to let him know the relevant provisions in the party constitution under which the Leader had suspended him from the High Command position, are irrelevant to decide on the validity of the expulsion of the petitioner which only had happened by **P15** which is five months after the date in **P9**.

The above facts show clearly that the SLMC had tried its best to get an explanation form the Petitioner but the Petitioner had not cooperated. In the above circumstances, I am unable to hold that the SLMC had breached the Rules of Natural Justice in the instant case as it had granted ample opportunities for the Petitioner in the instant case to tender his written explanation as to why he had violated the party decision taken at the High Command meeting held on 21-11-2021.

The Petitioner knew very well that his failure to tender written explanation would result in the party concluding that he has no cause to show against the alleged violation of the party decision by him. Despite that, the Petitioner was determined to blatantly ignore the last two paragraphs of **P9**. Thus, the petitioner was determined not to submit himself to the disciplinary proceedings initiated by the party. In such a situation, as Kulatunga J held in

[44] Vide paragraph 12 of the Affidavit of the Petitioner dated 20-05-2022.

Gamini Dissanayake's case there is no force in the Petitioner's complaint that the party had failed to give him a hearing.

Moreover, as the Petitioner had determined not to submit himself to the disciplinary proceedings initiated by the party, he could not have had any legitimate expectation of any formal inquiry. Therefore, as Lord Denning held in *Cinnamond's* case, where there is no legitimate expectation, there is no call for a hearing.

For the foregoing reasons, I hold that the absence of a formal inquiry has not vitiated the decision of the SLMC to expel the Petitioner under the circumstances of the instant case.

IS THE DECISION TO EXPEL THE PETITIONER JUSTIFIED?

Let me now consider whether the decision taken by the SLMC to expel the petitioner is justified on its merits. The main ground on which the Petitioner has sought to canvass his expulsion from the party is the fact that the SLMC did not conduct a formal inquiry according to the law.[45] For the reasons I have already set out above, I have held that the SLMC had not breached the Rules of Natural Justice in the instant case as it had granted ample opportunities for the Petitioner in the instant case to tender his written explanation as to why he had violated the party decision taken at the High Command meeting held on 21-11-2021. I have also held that the absence of a formal inquiry has not vitiated the decision of the SLMC to expel the Petitioner under the circumstances of the instant case. Therefore, the Petitioner is not entitled to succeed on this ground.

Let me now consider the other grounds urged by the Petitioner. The Petitioner in his petition, has stated that his expulsion is capricious, manifestly *mala fide* and is motivated purely by the clear resentment towards the Petitioner arising inter alia, from the Petitioner being appointed as a cabinet minister on 18-04-2022.[46]

Although the Petitioner has stated in some instances that his expulsion was done *mala fide*, the Petitioner has not sought to support any of those allegations with evidence.

Mr. Sanjeeva Jayawardena PC submitted that although it was not only the Petitioner who voted in favour of the aforesaid Appropriation Bill despite the party decision to vote against the same, it was only the Petitioner who was expelled from the party. Let me further probe in to this complaint.

[45] Paragraph 55 (c) and (d) of the petition dated 20th May 2022.

[46] Paragraph 55 of the petition dated 20th May 2022.

Four SLMC members namely, the 6th Respondent Hon. H.M.M. Harees, the 16th Respondent Hon. M.S.M. Thoufeek, the 24th Respondent Hon. Faizal Cassim and the Petitioner had voted in favour of the aforesaid Appropriation Bill 2022. Indeed, the SLMC had called for explanations from all of those who had voted in favour of the Appropriation Bill 2022. It is in evidence that the other members involved in the voting had complied with the directive of the party and tendered their explanations to the SLMC.[47] This also explains as to why the High Command of the SLMC on 22-04-2022 had unanimously resolved (as per the extract from the minutes produced marked **1R1**) to expel the Petitioner from the party membership with immediate effect and to suspend those three members from the party membership and to proceed to hold a formal inquiry against them. This goes on to show that those members had an explanation to be tendered and in fact they did so. However, unlike the other three members who had tendered their explanations, the Petitioner had determined not to submit himself to the disciplinary proceedings initiated by the party. In those circumstances, I cannot resist drawing the inference that the Petitioner in the instant case did not offer any explanation despite repeated requests from the party, solely because he did not have any explanation to be given as to why he had voted in favour of the Appropriation Bill 2022 despite the party decision to vote against **P9**.

Another complaint the Petitioner has made in his petition, is that his expulsion is capricious, manifestly mala fide and is motivated purely by the clear resentment toward the Petitioner arising inter alia, from the Petitioner being appointed as a cabinet minister on 18-04-2022. Even if the date of the Petitioner's appointment as the cabinet minister in charge of environment is taken as 18-04-2022 as stated by the Petitioner, the SLMC had called for a written explanation from the Petitioner by the letter **P9** dated 27-11-2021. Thus, initiating the disciplinary proceedings against the Petitioner had well preceded the event of the Petitioner being appointed as a cabinet minister. It was only after the exchange of several other letters between the SLMC and the Petitioner that the SLMC by the letter **P15** dated 23-04-2022, had communicated to the Petitioner about his expulsion from the party. The SLMC had extended the time for the Petitioner to tender his explanation until 15-04-2022 by **P13**. The Petitioner had replied **P13** by his letter **P14** dated 07-04-2022. Thus, the final deadline for the Petitioner to tender his explanation had ended on 15-04-2022.

On the above facts, I observe that the active part of the disciplinary proceeding against the Petitioner which had led to his expulsion from the party had come to an end well before the date 18-04-2022 on which he claims he was appointed as a cabinet minister.

[47] Paragraph 23(f)-(g) of the affidavit of the 2nd Respondent dated 29th September 2022.

The Petitioner's assertion that this appointment was made on 18-04-2022 is factually incorrect or not supported by evidence he has adduced. The relevant Gazette notification has been produced marked **P14(a)**. This is the Gazette which the Petitioner relies on, to establish that this appointment was made on 18-04-2022. However, as pointed out by Mr. Sumanthiran PC, the relevant Gazette notification is dated 28-04-2022. Thus, The Petitioner has not established before this Court that this appointment was made on 18-04-2022 as claimed by him. The SLMC had communicated to the Petitioner that it has unanimously decided to expel him from the party by **P15** which is dated 23-04-2022. Thus, in this sense, I observe that the whole of the disciplinary proceeding against the Petitioner which had led to his expulsion from the party had also come to an end well before the Petitioner was appointed as a cabinet minister. For those reasons, I am unable to accept the Petitioner's position that his expulsion is manifestly *mala fide* and is motivated purely by the clear resentment towards the Petitioner arising from the appointment of the Petitioner as a cabinet minister.

The Petitioner in his Petition,[48] has also stated that his expulsion is contrary to the provisions of the provisions of Clauses 8.12, 13.1, 13.2, 13.3 and 13.4 of the Constitution of the SLMC. The Petitioner had not sought to substantiate these allegations in any other means other than merely stating in his petition and affidavit that his expulsion is contrary to these clauses of the SLMC constitution. Nevertheless, let me first reproduce Clauses 13.1 and 13.2 of the Constitution of the SLMC.

> *"13.1 Where the High Command of the party is in receipt of any information or complaint, that a member of the Party has committed an act or omission which in its opinion-*
>
> *a) amounts to a failure and /or a refusal to perform any one or more duties of a member or is in conflict with and /or inconsistent with any one or more duties of a member and /or,*
>
> *b) prejudicial to the interests and reputation of the Party or the collective responsibility of the Party.*
>
> *The member concerned is liable to be dismissed from the membership and expelled from the Party in terms of the Rules of the High Command in respect of Disciplinary actions."*
>
> *"13.2 The High Command shall exercise its summary jurisdiction as provided hereinbefore in respect of disciplinary action in respect of any of its members."*

[48] At paragraph 55 (a) of the Petition.

Both of those Clauses in my view, are not in favour of the case advanced by the Petitioner that the SLMC had wrongly expelled him from the party. This is because any member violating those clauses have been made specifically liable to be expelled from the party. The Petitioner by voting in favour of the Appropriation Bill 2022 has breached his collective responsibility of the party which he has already willingly undertaken by virtue of signing **P5**. Then Clause 13.1 makes the Petitioner liable to be expelled from the party. The High Command of the party is empowered to exercise its summary jurisdiction in respect of such situation. The said summary jurisdiction is a reference to some earlier provisions in the SLMC constitution. Thus, Clause 8.12 of the SLMC constitution would be relevant in that regard. It is as follows:

> *"Where a member of the Party is deemed to be guilty of misconduct and is liable to be dismissed from the membership and expelled from the party, the High Command in its absolute discretion shall be entitled to adopt any procedure it thinks fit and proper in the circumstances. However, the High Command shall observe the rules relating to the Principles of Natural Justice in exercising such powers."*

This shows that the High Command has been given absolute discretion and powers under the SLMC constitution to adopt any procedure it thinks fit and proper in a given circumstance subject to the condition that it should observe rules of natural justice when exercising such powers. I have already set out above the circumstances prevailed in the instant case. I have also held above that the SLMC has not breached the Rules of Natural Justice. In those circumstances, the procedure adopted by the SLMC for its decision by the High Command to expel the Petitioner from the party, is a procedure well within the Clause 8.12. Clause 13.4 of the SLMC constitution does not apply to the instant case as the SLMC High Command had not delegated its disciplinary powers to a smaller committee.

For those reasons, I am unable to accept that the decision to expel the Petitioner from the SLMC has been done contrary to any of those provisions in the SLMC constitution.

It remains for me only to consider, whether there is merit in the position taken up by the Petitioner that he was not made aware regarding any decision taken by the High Command on 21-11-2021 that SLMC Members of Parliament shall not vote in favour of the Appropriation Bill 2022 at its second reading on 22-11-2021 and at the third reading as well. The 2nd Respondent (the Leader of the SLMC) in his affidavit has categorically asserted that in the morning of 22-11-2021, before the commencement of the proceedings in Parliament, a group meeting of SLMC Members of Parliament was held; the Petitioner was present at the said Group Meeting; the decision that SLMC Members of Parliament shall not vote in favour of the

Appropriation Bill 2022 was re-iterated.[49] This factual position has been corroborated by the followings: the affidavit of the 3rd Respondent (the Secretary of the SLMC) produced marked **1R3**; the Attendance Sheet of the Parliamentary Group Meeting of SLMC held on 22-11-2021 produced marked **1R4(a)** where the Petitioners signature is found; the affidavit of the 16th Respondent produced marked **1R4(b)**; the affidavit of the 24th Respondent produced marked **1R4(c)**. The Petitioner was content with making only a bare denial of his presence at the Parliamentary Group Meeting of SLMC held on 22-11-2021 at the Parliament premises in his counter affidavit.[50]In the course of the oral submissions, the learned President's Counsel who appeared for the Petitioner submitted that the signature of the Petitioner found in **1R4(a)** is a forged signature. However, I observe that the Petitioner had never taken up such a position in his Counter Affidavit. Thus, in my view, the Petitioner himself by taking up the above position which he cannot substantiate, has pushed his assertion that he was not present at the Parliament premises in the Group Meeting of SLMC held on 22-11-2021, beyond my belief. I hold that the Petitioner had in fact been present at the Parliament premises in the Group Meeting of SLMC held in the morning of 22-11-2021 at the Parliament when he was informed (at the Parliament) by the Leader about the decision of the SLMC that the SLMC Members of Parliament shall not vote in favour of the Appropriation Bill 2022. I further hold that the Petitioner has not been truthful with regard to the position he has taken up before this Court in this proceeding.

Let me move further to highlight some of the Petitioner's obligations with regard to the decisions of the Party and his collective responsibility. The Petitioner who was elected to the Parliament at the General Election held on 05-08-2020, has signed **P5** in which he has accepted *inter alia* the followings.

i. He has accepted that the provisions of the constitution, code of conduct and all decisions, resolutions and directives of the High Command, and of the Party would strictly bind him.

ii. He has accepted that any willful contravention or failure to comply with the provision of the constitution, code of conduct and /or decisions, directives or resolution of the High Command, and of the Party shall make him liable to be expelled from the membership of the Party.

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[49] Paragraph 23(a)-(c) of the affidavit of the 2nd Respondent dated 29th September 2022.

[50] Paragraph 11(d) of the Counter Affidavit of the Petitioner dated 25th November 2022.

iii. He has accepted that any refusal to subscribe to the annual special pledge of loyalty shall make him guilty of gross misconduct upon which he shall be liable to be expelled from the membership of the party by the High Command.

iv. He has accepted that he will always vote in Parliament in accordance with the mandate of the Party.

v. He has accepted that he will conduct himself at meetings in Parliament with a sense of collective responsibility and also should on all occasions speak in one voice at such meetings as per the decisions of the Party.

vi. He has accepted that any violation of the accepted norms and general standards of party discipline shall make him liable to be expelled from the membership of the Party.

vii. He has accepted that leaving the island, or being unable to attend the meetings of the Parliament for any specific reason, he should get prior approval from the Leader and/or the Secretary of the Party and his failure to do so would result in disciplinary action being taken against him.

viii. He has accepted that it is his duty to consult the Party leadership, to ascertain the stand of the Party in respect of any matter before casting, abstaining or taking any step at the time of voting in the Parliament.

ix. He has accepted that he will not take a stand against and /or not in conformity and/or not consistent with the policy of the Party.

Moreover, chapter 5 of the constitution of SLMC under the title 'duties of members of the party' (chapter 5) states the followings:

"*The following shall inter alia shall be the duties of every member of the Party.*

a. *Be loyal to the Party and shall recognise honour and submit to the authority of the hierarchy of the Party.*
b. *Abide by and honour the provisions of the Constitution, codes of conduct, decisions, rules, regulations, directives, policies and programmes of the Party as decided by the High Command,*
c. *Propagate and defend in public the policies and programmes of the Party.*
d. *Always conform to the standards laid down in the Code of Conduct of the Party.*
e. *Regularly attend meetings and sessions of the various bodies and committees set up and / or recognized by the High Command.*
f. *Be individually and collectively responsible for his conduct and shall also ensure that his conduct in no way affects the image or reputation of the Party."*

As has already been mentioned earlier in this judgment, the Petitioner himself has admitted that he is an experienced politician whose political career has spanned over 'thirty long years'.[51] He held the position of Deputy Leader I of the party's High Command and Director of International Affairs of the SLMC at the time he was suspended from office by **P9**. I have to note that these are assertions made by the Petitioner himself.

In Paragraph 43 of the Petition, the Petitioner had made it clear, that the Petitioner was not informed of any decision taken at the meeting of the High Command held on 21-11-202. Thus, it is the position of the Petitioner that he had voted in favour of the Appropriation Bill 2022 at its second reading held in Parliament on 22-11-2021 as he was not informed of any such decision taken at the SLMC High Command meeting held on 21-11-2021.

The Petitioner had voted in favour of the Appropriation Bill 2022 at its second reading on 22-11-2021. I note that the first letter **P9**, sent to the Petitioner by the SLMC is dated 27-11-2021. In paragraph 44 of the Petition, the Petitioner has admitted the receipt of said letter. The Petitioner states that he was shocked and surprised to receive such a letter. The Petitioner would have stated so to convince Court that he did not know the existence of any decision taken at the SLMC High Command meeting held on 21-11-2021 not to vote in favour of the Appropriation Bill 2022.

In signing **P5** the Petitioner has undertaken/promised: to vote in Parliament in accordance with the mandate of the Party; to conduct himself at meetings in Parliament with a sense of collective responsibility; to speak on all occasions in one voice at meetings as per the decisions of the Party. He has also accepted that it is his duty to consult the Party leadership, to ascertain the stand of the Party in respect of any matter before casting, abstaining or taking any step at the time of voting in Parliament. It is the Petitioner himself who has produced **P5**. Despite the above acceptances and undertakings, the Petitioner has not adduced any reason as to why he had failed to consult the Party leadership, to ascertain the stand of the Party before voting in favour of the Appropriation Bill 2022 at its second reading in the Parliament.

I also note that the Petitioner had thereafter proceeded to vote at the third reading of the Appropriation Bill 2022 on 10-12-2021. Why did the Petitioner vote at the third reading? Was it because the Petitioner even by that time, did not know that there was a decision made by the SLMC High Command that its members should not vote in favour of the Appropriation Bill 2022? The Petitioner is silent as to why he had voted at the third reading. He also has not adduced any basis as to why he had voted at the third reading.

[51] Vide paragraph 12 of the Affidavit of the Petitioner dated 20-05-2022.

It was on 10-12-2021 that the Petitioner had voted at the third reading of the Appropriation Bill 2022. The SLMC had first called for explanation from the Petitioner by letter **P9**, dated 27-11-2021. The Petitioner has admitted the receipt of **P9**. Then am I to take the unsupported bare averment in the affidavit of the Petitioner that he did not know of any such decision of SLMC High Command taken on 21-11-2021 to be truthful? The answer in the above circumstances, is clearly no. Thus, in my view, what the Petitioner has established according to his own documents before this Court is only the fact that he has not been truthful on this before this Court.

Although the Petitioner at some occasions had sought to challenge the authority of the SLMC to suspend or expel him from the party membership, I observe that by signing **P5**, the Petitioner has clearly accepted the authority of the SLMC and of the party High Command to suspend or expel him from the party membership. Thus, as far as the Petitioner is concerned, the authority of the SLMC is an admitted fact. Then why does he want to rely on the party constitution in that regard? In the same way in view of the undertakings/promises the Petitioner has made in **P5** as shown before in this judgment, the Petitioner has not adduced any basis/reason as to why he would have wanted to rely on the party constitution in that regard.

In the above circumstances, what is the explanation he has tendered as to why he had voted in favour of the Appropriation Bill 2022 at its second reading held in Parliament? I hold that the answer is none. It must be noted that the Petitioner's expulsion as per **P15** had occurred after the lapse of approximately five months from the communication of **P9** calling upon the Petitioner, to show cause. The SLMC had tried its best to get an explanation form the Petitioner but the Petitioner had not cooperated. For the foregoing reasons, I am unable to accept the Petitioners position that his expulsion is completely arbitrary, discriminatory and tainted with serious mala fides.

In *Tilak Karunaratne's* case, Dheeraratna J in the majority judgment of this Court referring to the violation of party discipline within a registered political party, has held as follows:

> *"A political party is a voluntary association of individuals who have come together with the avowed object of securing political power on agreed policies and a leadership. Cohesion is a sine qua non of success and stability whether a political party is in power or in the opposition. To foster party cohesion discipline among its members becomes absolutely necessary. Party disintegration has to be arrested by firm disciplinary measures that include expulsion which Article 99 (13) (a) of our Constitution itself recognizes. The members of a party are bound together by a*

contract which is usually the party constitution, from which arises contractual obligations of the membership. These obligations are either express or implied" .[52]

In *Gamini Dissanayake's* case, Kulatunga J in the majority judgment of this Court having regard to the fact that the UNP Constitution has imposed on all its members obligations such as: the duty to harmonize with the policy and code of conduct of the party; the duty to be bound by the directions of the Leader or the Deputy Leader regarding matters in Parliament; the duty to vote in Parliament according to the Mandate of the Parliamentary Party conveyed through the party whip; observed as follows:

"I can see no illegality in these arrangements for group action. How can any government or opposition function without disruption if the conduct of M.P.s as a group cannot be regulated including in the matter of voting in the House and each M.P. is free to do whatever he pleases? How can the party fulfil its mandate given to it by the electors? Can an individual M.P. who has been elected on the party vote and policy be heard to say " from today I am a free man, the party and the group are secondary and are subordinate to me "? Can Parliamentary business be transacted without the party having some assurance as to how the M.P.s are going to vote? I see no evil in reasonable restrictions on the conduct of M.P.s in Parliament based on group action or in the obligation to harmonize with party policy or in the Whip system all of which have the effect of ensuring the smooth functioning of Parliament itself and peace, order and good government.

In this country the electors elect a government for six years after an election which is often bitterly fought and in recent times in conditions of turmoil and death. It is then the duty of both the opposition and the government, owed to the people, to ensure as far as possible, stable government. The Constitution has frozen party composition in the House for the duration of Parliament and made provision for vacation of seats where a Member of Parliament ceases by resignation, expulsion or otherwise to be a member of the recognized political party or independent group on whose nomination paper his name appeared at the time of his election to Parliament. It is not our function to examine the wisdom of these provisions the object of which, I believe, is to achieve stability of government. Group action, party discipline and the Whip system are complimentary. If we declare these arrangements to be invalid we would be making the Constitution unworkable and

[52] At page 111.

as Sir John Donaldson MR observed in Waltham Forest case (Supra) " We should..... be criticizing the system operating in Parliament itself."

On the other hand, the Petitioner's challenge to his expulsion is not on the basis that he has a right to go against the decision of SLMC High Command made on 21-11-2021 that its members should not vote in favour of the Appropriation Bill 2022. Moreover, the Petitioner has pledged that he would be loyal to the Party; shall recognize honour and submit to the authority of the hierarchy of the Party; abide by and honour its decisions, rules, regulations, directives, policies of the Party as decided by the High Command. But the Petitioner has not only breached this solemn pledge but also has deliberately refrained from giving any explanation for his conduct. He has also determined not to submit himself to the authority of the Party. In those circumstances and for the foregoing reasons, I hold that the decision made by the SLMC to expel the Petitioner from the party by letter **P15** dated 23.04.2022, is valid in law.

I proceed to dismiss this Petition.

JUDGE OF THE SUPREME COURT

S. Thurairaja PC J

I agree,

JUDGE OF THE SUPREME COURT

Samayawardhena J

The gravamen of the Petitioner's complaint is that the decision to expel him from the Party was taken without giving him a hearing in violation of the rules of natural justice – *audi alteram partem*. If it is correct, I accept that "the decision must be declared to be no decision". However, on the facts and circumstances of this case, I cannot subscribe to the assertion that the rules of natural justice were violated.

The Secretary of the Sri Lanka Muslim Congress sent P9 to the Petitioner requiring him to show cause for his decision to vote in favour of the Appropriation Bill for 2022 (Budget) in violation of the decision of the Party High Command taken at the Meeting held on 21.11.2021. P9 dated 27.11.2021 reads as follows:

> *As you are aware, the Party called for a High Command meeting on 21.11.2021 at the Party headquarters 'Dharussalam', to discuss and decide on the Party stand vis-à-vis the 2022 Budget (The Appropriation Bill).*
>
> *You are also aware that at this meeting, it was decided unanimously, that Members of Parliament being members of the Sri Lanka Muslim Congress, shall not vote in favour of the Budget at its second reading vote on 22.11.2021 and shall not vote in favour at the third reading vote as well.*
>
> *You, however, on 22.11.2021 voted in favour of the said Budget at its second reading, in blatant violation of the said decision of the High Command.*
>
> *In doing so, you have acted in breach of the Party decision while holding a senior and substantial position in the Party High Command namely, Deputy Leader.*
>
> *In the circumstances, the Party Leader, exercising his powers under the Party Constitution, has decided to suspend you from the High Command position held by you and to call for explanation on the said breach of the Party decision.*
>
> *Therefore, as instructed by the Leader, I do hereby call for your explanation of your decision to vote in favour of the 2022 Budget in violation of the Party decision.*
>
> *Your explanation in writing in the form of an affidavit should reach me within fourteen days from the date of the receipt of this letter.*
>
> *Failure to do so will compel the Party to arrive at the conclusion that you have no cause to show against the said violation of the Party decision by you.*

The Petitioner was the Deputy Leader of the party at that time. The Petitioner replied to P9 by P10 taking up an unusual position that he was unaware of the Party decision

regarding how to vote at the Budget since he could not attend the said Meeting. P10 dated 10.12.2021 reads as follows:

> *I am in receipt of your letter dated 27.11.2021 informing me that you have been requested by the SLMC Leader claiming to exercise powers under the Party Constitution, has decided to suspend me from the High Command position held by me and to call for my reasons for my voting in favour of the Budget on 22.11.2021.*
>
> *You also refer to a meeting of the High Command scheduled for 21.11.2021 at the Party headquarters, which I could not attend. You are aware, the said High Command meeting had been summoned at very short notice and I was not able to attend the said meeting due to reasons beyond my control which I had duly notified to you. I did not receive any communication whether the meeting was held or postponed or of any decision taken at the meeting.*
>
> *I wish to inform you that I require a period of one month to furnish my response to your queries due to pre-arranged programmes and would thank you to oblige. Meanwhile please let me know the relevant provisions in the Party Constitution under which the Leader is said to have exercised his powers to suspend me from the High Command position together with a copy of the relevant Constitution.*

When P10 is read contextually it is clear that the Petitioner was more concerned about his suspension from the post of the Deputy Leader of the Party than showing cause to the main allegation that he violated the decision of the Party High Command in relation to the voting for the Budget. His request in P10 for a copy of the Party Constitution is related to his removal from the High Command position and is irrelevant to the matter under consideration in this application, which is expulsion. By P10 he sought a period of one month to show cause.

There was some correspondence exchanged between the Petitioner and the Party during that time. He was granted extended time to show cause.

Nearly five months after P10 whereby the Petitioner sought a period of one month to show cause, the Petitioner wrote P14 to the Party Secretary. By P14, the Petitioner did not show cause, which he undertook to do by P10 but merely quoted the contents of

P10 verbatim. He did not seek further time to show cause why he voted in favour of the Budget. P14 dated 07.04.2022 reads as follows:

> *I am in receipt of your letter dated 14.03.2022.*
>
> *In my response letter to you dated 10.12.2021, I had explained as follows:*
>
> *"You also refer to a meeting of the High Command scheduled for 21.11.2021 at the party headquarters, which I could not attend. You are aware, the said High Command meeting had been summoned at very short notice and I was not able to attend the said meeting due to reasons beyond my control which I had duly notified to you. I did not receive any communication whether the meeting was held or postponed or of any decision taken at the meeting."*
>
> *"Meanwhile please let me know the relevant provisions in the party Constitution under which the Leader is said to have exercised his powers to suspend me from the High Command position together with a copy of the relevant Constitution."*
>
> *You will note that you have not made available the relevant information and a copy of the relevant Constitution as yet. I shall therefore request you to furnish me with the relevant information and a copy of the relevant Constitution which are undoubtedly available to you, at your earliest convenience, to enable me to furnish a more detailed response further to your request.*

As indicated in P10, the relevant information and a copy of the relevant Constitution refers to "*the relevant provisions in the party Constitution under which the Leader is said to have exercised his powers to suspend [him] from the High Command position*". As I understand the Petitioner requests "*a copy of the relevant Constitution*" because according to him the Constitution which is available does not have a provision which empowers the Party Leader to suspend him from the High Command position. As I have already stated, this Court is not concerned about suspension but only expulsion.

In my view, if he did not show cause in response to P9, there is no necessity to fix the matter for the formal inquiry. The Petitioner cannot now be heard to say that the failure to hold a formal inquiry is a violation of the rules of natural justice. The rules of natural

justice are not written in stone; whether or not these rules have been violated must be determined based on the unique facts and circumstances of each individual case.

It is after receipt of P14 and "*after due considerations of all these relevant matters*" the High Command has unanimously resolved to expel the Petitioner from Party Membership with immediate effect "*on the basis that you have no cause to show*". This was informed to the Petitioner by P15 dated 23.04.2022, which reads as follows:

> ***Disciplinary Action – Expulsion from the Party (Sri Lanka Muslim Congress) Membership***
>
> *I received your letter dated 7th April 2022.*
>
> *Your letter was placed before the High Command of the Party which met on 22.04.2022.*
>
> *The High Command noted that you have not given any reason for violating the Party decision taken at the High Command meeting held on 21.11.2021, except to plead your purported ignorance of the said decision.*
>
> *High Command noted that the said decision was not only conveyed to you by the leader but also was given huge publicity through the media.*
>
> *The High Command also noted that,*
>
> *1. You are well aware the said meeting on 21.11.2021 was summoned for the specific purpose of taking a decision as to the Party's stance on the government's proposed Appropriation Bill for the year 2021/2022, as it was spelled out in the invitation SMS sent by the Secretary.*
>
> *2. You are also aware that the Secretary has not sent any message, cancelling or postponing the meeting. On the contrary you have sent SMS to the Secretary, excusing your attendance, which you have admitted in your letter.*
>
> *Hence, the High Command proceeded to consider the action to be taken against you on the basis that you have no cause to show.*

After due considerations of all these relevant matters the High Command has unanimously resolved to expel you from Party Membership with immediate effect.

Accordingly, on the instructions of the Party I do hereby communicate that your Party Membership from Sri Lanka Muslim Congress is duly terminated and as a result you have ceased to be a Member of the Sri Lanka Muslim Congress the political Party from which you were elected to the present Parliament.

The Petitioner was aware that the High Command Meeting on 21.11.2021 was to take a decision on how to vote at the Second and Third Readings of the Budget. The Petitioner who was the Deputy Leader of the Party opted not to attend this important Meeting. The First Reading of the Budget was on 22.11.2021 and there was a Parliamentary Group Meeting of the Sri Lanka Muslim Congress held on the morning of 22.11.2021 in the Parliamentary premises just before the First Reading of the Budget. How can the Petitioner make a sweeping statement in P10 that "*I did not receive any communication whether the meeting was held or postponed or of any decision taken at the meeting*" and remain silent? He was not a Party supporter but the Deputy Leader of the Party.

Let me assume for a moment that he was unaware of the Party decision taken on 21.11.2021 before he voted in favour of the Budget on 22.11.2021. What about his voting in favour of the budget at the Third Reading, which happened on 10.12.2021, admittedly after he received P9 dated 27.11.2021 wherein it was specifically mentioned the Party decision that "*Members of Parliament being members of the Sri Lanka Muslim Congress, shall not vote in favour of the budget at its second reading vote on 22.11.2021 and shall not vote in favour* ***at the third reading vote as well****"?* The Petitioner cannot plead ignorance of the Party decision in respect of voting at the Third Reading of the Budget.

I see no reason to interfere with the decision of the Party as reflected in P15. The application of the Petitioner shall stand dismissed. No costs.

JUDGE OF THE SUPREME COURT