PIN 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.

Perumpulli Hewage Piyasena,
Sagama Road,
Akkaraipattu-8.

Petitioner

SC Application Special
[Expulsion] No. 03/2010

Vs.

1. Ilankai Tamil Arasu Kadchi
   ITAK Office,
   16 (30), Martin Road,
   Jaffna.

2. Rajavarothayan Sampathan,
   Leader,
   Ilankai Tamil Arasu Kadchi
   ITAK Office,
   16 (30), Martin Road,
   Jaffna.

3. Mawai S. Senathirajah,
   General Secretary,
   Ilankai Tamil Arasu Kadchi
   ITAK Office,
   16 (30), Martin Road,
   Jaffna.

4. Dammika Kitulgoda,
   Acting Secretary General of Parliament,
   Parliamentary Complex,
   Sri Jayawardenapura,
   Kotte.

5. Dayananda Dissanayake,
   Commissioner of Elections,
   Elections Secretariat,
   Sarana Mawatha,
   Rajagiriya.

Respondents

APPLICATION under and in terms of Article 99(13)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

BEFORE	:	Hon. Saleem Marsoof, P.C., J., Hon. K. Sripavan, J., Hon. R. K. S. Suresh Chandra, J.
COUNSEL	:	D.S. Wijesinghe, P.C with N.M. Saheed, Shantha Jayawardena, Kaushalya Molligoda, Chamila Talagala and Isuru Somadasa for the Petitioner K. Kanag-Isvaran, P.C with Viran Corea, Lakshmanan Jayakumar, Niran Anketell and Juanita Arulanantham for the 3rd Respondent Shavindra Fernando, Deputy Solicitor General, with Nerin Pulle, State Counsel for the 4th and the 5th Respondents
Argued on	:	18.1.2011, 24.1.2011 and 25.1.2011
Written Submissions	:	31.1.2011 (Initial Written Submissions) 3.2.2011 (Responses)
Decided on	:	8.2.2011

SALEEM MARSOOF, J.

The Petitioner has filed this application in terms of the proviso to Article 99(13)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, as subsequently amended, challenging his purported expulsion from the Ilankai Tamil Arasu Kadchi (ITAK), which is a recognized political party on whose nomination paper his name admittedly appeared at the time of his election as a Member of Parliament for the Digamadulla District at the April 2010 General Election. By his Petition dated 10th December 2010, the Petitioner has challenged on the various grounds set out therein, his purported expulsion from the said party as communicated to him by the letter dated 28th November 2010 'P12' under the hand of the General Secretary of the party, which reads as follows:-

இலங்கைத் தமிழரசுக் கட்சி

ILANKAI TAMIL ARASU KADCHI

இ.த.அ.க.அலுவலகம்:
16 (30) மார்டின் வீதி,
யாழ்ப்பாணம்இ இலங்கை

ITAK Office,
16 (30) Martin Road,
Jaffna, Sri Lanka.

Registered Post
P.H.Piyasena Esq.,
Sagama Road,
Akkaraipattu 8.

28th November 2010

Dear Mr. Piyasena,

Expulsion from the membership of the ITAK

This refers to the disciplinary proceedings initiated against you for acting against the party discipline.

The *Disciplinary Committee* of the ITAK that met today (28.11.2010) has *unanimously recommended* that you be expelled from the party membership forthwith.

Accordingly, *you are hereby expelled* from the membership of the political party, Ilankai Thamil Arasu Kadchi (ITAK).

Yours sincerely,
Sgd./ Mawai S. Senathirajah
General Secretary,
Ilankai Thamil Arasu Kadchi
(italics added by me for emphasis)

In his Petition, the Petitioner has prayed for a declaration that the said decision to expel him from the ITAK as communicated by 'P12' is invalid and of no force or avail in law and for a determination that the said expulsion was invalid. He has also prayed for an order declaring that the Petitioner has not ceased to be a Member of Parliament and that he continues to be and remains a Member of Parliament.

Preliminary Objection

A preliminary objection was taken at the outset to the maintainability of this application on the basis that the Petitioner was not entitled to the relief prayed for by him in view of the alleged suppressions and misrepresentations of material facts contained in the Petition filed by the Petitioner, and his alleged failure to discharge the duty of full disclosure of all material facts imposed by law on any person invoking the jurisdiction of court for the grant of injunctive and discretionary relief. As the said objection involved mixed questions of facts and law, and in view of the time constraints imposed by Article 99(13)(a) of the Constitution, after hearing submissions of all learned Counsel on this objection, the decision of court was deferred until after

all matters arising for determination are argued in full. It is therefore necessary to deal with the said preliminary objection at the very commencement of this determination.

Learned President's Counsel for the 3rd Respondent, the General Secretary of ITAK, prefaced his submissions on the preliminary objection with the observation that the effect of the lodging of an application in terms of the proviso to Article 99(13)(a) of the Constitution, is to postpone the date on which a Member of Parliament would cease to hold office as such, by a period not exceeding two months pending the determination of this Court on the validity of his expulsion. Learned President's Counsel submitted that whenever a litigant seeks a remedy which is discretionary in nature by reason of its injunctive effect, he has a duty to come to court with "clean hands", and that the Petitioner has breached the duty of *uberrima fides* or utmost good faith, which circumstance precludes him from any relief as a matter of law. He relied for this purpose on the *dicta* of Pathirana J. in *W. S. Alphonso Appuhamy v. L. Hettiarachchi*, (1973) 77 NLR 131 at 135 which emphasized the "necessity of a full and fair disclosure of all the material facts to be placed before the Court". Learned President's Counsel further submitted that the Petitioner has suppressed and misrepresented material facts and documents from this Court, which disentitled him to the grant of relief as prayed for, and which justified the dismissal of the application of the Petitioner *in limine*.

Four specific allegations of suppressions and misrepresentations were highlighted by learned President's Counsel for the 3rd Respondent in the course of his lengthy oral and written submissions before this Court. The alleged suppressions adverted to by the learned President's Counsel for the 3rd Respondent relate to the omission to disclose in his Petition filed by the Petitioner in this Court, the amendment to the Constitution of the ITAK which allegedly came into effect on 3rd August 2008 and a copy of which was produced by the 3rd Respondent marked 'R4A', and the alleged declaration of allegiance to the Parliamentary Group of the ITAK, a copy of which was produced by the said Respondent marked 'R7E'. The alleged misrepresentations adverted to by learned President's Counsel relate mainly to paragraph 11 of the Petition filed in this Court in which the Petitioner has stated that he opposed the decision taken at the meeting of the Parliamentary Group of ITAK held on 6th September 2010 to vote against the 18th Amendment to the Constitution and certain positions taken by the Petitioner in DC Jaffna case No. 38/2010 (Misc), in which he had sought albeit with no apparent success, certain enjoining orders and injunctions to restrain the disciplinary proceedings which ultimately resulted in the expulsion of the Petitioner from the ITAK.

Learned President's Counsel for the Petitioner has also made extensive submissions, both oral and written, with the object of showing that the Petitioner has not suppressed or misrepresented any facts or documents to this Court or to the District Court of Jaffna, and sought to explain in particular, that not being a member of the ITAK, the Petitioner did not attend the National Delegates Convention of the said party at which the said amendment appears to have been enacted, and that he was not in any event, privy to the fact of any amendment having ever been made to the Constitution of the party. He also submitted that the certified copies of the Tamil and

English versions of the ITAK Constitution which the Petitioner filed with his Petition marked respectively 'P1' and 'P1A', which admittedly did not include the provisions of the said amendment, were obtained by him from the 5th Respondent Commissioner of Elections, after the 3rd Respondent refused in writing to issue him with copies of the same, which position, of course, was denied by the 3rd Respondent.

In regard to the other allegation of suppression related to the alleged declaration of allegiance marked 'R7E', which the Petitioner had admittedly signed at the time his name was included in the nominations of the ITAK for the Digamadulla District, learned President's Counsel for the Petitioner submitted that at the same time when the Petitioner was required to sign 'R7E', the other candidates whose names were included in the said nominations were also required to sign similar declarations marked respectively 'R7A' to 'R7D', 'R7F' and 'R7G', and those of who signed same having read and understood the contents thereof, simply agreed to "faithfully abide by the discipline of the Parliamentary Group of the Ilankai Tamil Arasu Katchi" and in the event of being elected as a Member of Parliament, to "represent the Ilankai Tamil Arasu Katchi". However, it is significant to note that 'R7A' to 'R7G', also contain the following declaration:-

> I also state that, should there arise an instance where I speak, act or do any other act of commission or omission against the collective decision of the Parliamentary Group of Ilankai Tamil Arasu Katchi at any time, I will forthwith cease to be a member of Parliament and will communicate my resignation as an MP to the Secretary General of Parliament and to the General Secretary, Ilankai Tamil Arasu Katchi. I do hereby authorize the General Secretary of the Ilankai Tamil Arasu Katchi to use this document itself as my letter of resignation in the event of the Parliamentary Group determining that I have violated the collective decision of the Parliamentary Group as stipulated above.

The explanation of the learned President's Counsel for the Petitioner was that at the same time the Petitioner was required to sign 'R7E', he was also required along with the other candidates, to sign several blank papers, and that in any event, 'R7E' was in the English language, which he did not understand at all. Learned President's Counsel for the Petitioner stressed that the Petitioner was the only ITAK candidate for the relevant district who had signed the alleged declaration in Tamil, and that except for any official or legal correspondence, which were drafted by others including his lawyers, he usually communicated in the Tamil language, in which he was very fluent. He submitted that the Petitioner was not aware of the contents of, and even the very existence of, 'R7E' until a copy of the same was produced with the objections of the 3rd Respondent and the same was explained to him by his lawyers. He stressed that although it appears that 'R7E' had been signed before a Justice of the Peace, there is no attestation clause, and no indication that its contents in English were read over and / or explained to the Petitioner.

It was the contention of the learned President's Counsel for the Petitioner that there was no intention on the part of the Petitioner to suppress from Court, the documents marked 'R4A' and 'R7E', which were omitted from the Petition only by reason of the fact that the Petitioner was not aware of their existence, in the circumstances outlined

above. Similarly, in regard to the alleged misrepresentations adverted to by the learned President's Counsel for the 3rd Respondent, learned President's Counsel for the Petitioner was equally persuasive, and made detailed submissions to show that they involved contested facts and the Petitioner's conduct was *bona fide* and in accord with his obligations of *uberrima fides.*

It is, however, unnecessary to probe deep into the submissions and counter submissions of learned Counsel on these contentious matters, as in my considered opinion, the jurisdiction of this Court 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, and does not necessitate any inquiry into the conduct of the person invoking the said jurisdiction. Indeed, the mechanism provided by the said Article to an expelled Member of Parliament, to effectively have the date of vacation of his seat postponed for a further period not exceeding two months pending the determination by this Court of its validity or invalidity, does not necessarily confer on it a discretionary character as contended by the learned President's Counsel for the 3rd Respondent, as that is an automatic stay of vacation of seat mandated by the Constitution, and is not dependent on the exercise of any discretion by Court. This stay of vacation of seat is not granted by Court, but is conferred by the Constitution itself.

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 thereunder merely on the ground of suppression or misrepresentation of material facts, as in cases involving injunctive relief or applications for prerogative writs. 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-

> 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.

On the other hand, it is expressly provided in the proviso to Article 99(13)(a) that-

> ....in the case of the expulsion of a Member of Parliament *his seat shall not become vacant if* .....he applies to the Supreme Court by petition in writing, and *the Supreme Court upon such application determines that such expulsion was invalid.....(emphasis added).*

The only matter for determination by this Court in terms of the proviso to Article 99(13)(a) of the Constitution is the validity or otherwise of the expulsion of the applicant Member of Parliament, and his conduct subsequent to his expulsion is altogether irrelevant. Learned President's Counsel for the Petitioner has invited the

attention of Court to Section 63 of the Provincial Councils Act No. 2 of 1988, which contains provisions which are substantively similar to those of Article 99(13)(a) of the Constitution, subject to the variation that the court that is required to inquire into and determine the validity of the expulsion is the Court of Appeal, and the decision of that Court in *Gooneratne v. Premachandra* [1994] 2 Sri LR 137. The order of that Court, which was read by S.N. Silva, J (P/CA), as he then was, at page 160 dealt with the submissions of Counsel in regard to the conduct of the Petitioners in that case, in the following manner:-

> As observed earlier, the burden of satisfying this court that the expulsion of the petitioners was valid lay on the respondents. They sought to discharge this burden, mainly by *harping on the conduct of the petitioners after their expulsions*. *This court is concerned only with the validity of the expulsion as it stood on that date.* This necessarily means that the reasons that have to be considered by this court are those that have been adduced prior to the expulsion only." *(emphasis added).*

Although that was a decision of the Court of Appeal on a similar provision found in the Provincial Councils Act, it is of high persuasive value, and is fully in accord with the objective of the said legislation, which is the same as the objective of Article 99(13)(a) of the Constitution, namely, to provide the expelled member a meaningful and effective remedy against arbitrary removal.

I am therefore of the opinion that even in a case where there is cogent evidence to establish that an expelled Member of Parliament did not come to Court with clean hands, if this Court finds that the purported expulsion is invalid, "his seat shall not become vacant" and he will continue to hold office, and this Court does not have the discretion to make a contrary determination on the sole ground of suppression or misrepresentation of material facts, or dismiss the application *in limine*. I am of the opinion that it is therefore not necessary to make any findings with regard to the question of whether the Petitioner has suppressed or misrepresented any material facts in his Petition or in the course of the hearing, and accordingly, the preliminary objection raised by the 3rd Respondent has to be overruled.

Is the Petitioner amenable to the Disciplinary Control of ITAK?

This brings me to the consideration of the question whether the Petitioner was validly expelled from the membership of the ITAK through the process which culminated in the communication marked 'P12'. For this purpose, before considering the grounds set out in paragraph 29 of his Petition dated 10th December 2010 for challenging his expulsion, it is necessary to consider whether, in the first place, the Petitioner was amenable to the disciplinary control of ITAK. This is a matter of fundamental importance which involves another important question, namely, whether the Petitioner is or was a member of ITAK, because it is obvious that only a member of a political party that can be dealt with by that party for any breach of discipline. While, learned President's Counsel for the Petitioner strenuously contended that the Petitioner was not a *de jure* member of ITAK, and was therefore not amenable to its disciplinary control, learned President's Counsel for the 3rd Respondent has contended with equal force that he was.

Learned President's Counsel for the Petitioner has referred in the course of his submissions to several decisions of this Court including the decisions in *Ediriweera Premaratne v. Srimani Athulathmudali and Others* (SC Special 1/1996, SC Minutes of 27.2.1996), *Galappaththi v. Arya Bulegoda and Another* [1997] 1 Sri LR 393, *Basheer Segu Dawood v. Ferial Ashraff and Others* [2002] 1 Sri LR 26 and *Ameer Ali and Others v. Sri Lanka Muslim Congress and Others* [2006] 1 Sri LR 189 for the proposition that a recognised political party such as ITAK cannot lawfully expel a Member of Parliament if he was not a member of the party in question, and if it purports to do so, the fact that he was not a member of the party would not prevent him from invoking the jurisdiction of this Court under Article 99(13)(a) of the Constitution. In particular, learned President's Counsel relied on the following *dicta* of Amarasinghe, J. in *Basheer Segu Dawood*'s case at page 31 –

> Where there is a purported expulsion of a Member of Parliament such member is entitled, under Article 99(13)(a) of the Constitution, to invoke the jurisdiction of this Court to determine whether such expulsion was valid. In order to invoke the jurisdiction of this Court, *a petitioner is not required to establish that he was a member of a recognized political party on whose nomination paper his name appeared at the time of becoming such Member of Parliament*. Members of Parliament who are 'elected' are *candidates* whose names appear on the nomination papers of recognized political parties. *There is no requirement that such candidates shall also be members of such parties*. *(emphasis added).*

The Petitioner in the *Basheer Segu Dawood*'s case was a member of the Sri Lanka Muslim Congress (SLMC), which party together with another party, formed a political alliance called the 'National Unity Alliance' (NUA). The Petitioner's name appeared on the nomination paper of NUA, but since he did not secure sufficient number of preference votes to be declared elected as a Member of Parliament on the basis of the results of the election, he was eventually returned to Parliament on the National List of NUA. Sometime later NUA purported to expel him, and he invoked the jurisdiction of this Court under Article 99(13)(a) of the Constitution. In the course of his judgement Aramarasinghe, J. also made the following pertinent observation at pages 31 and 32 of the judgement -

> Of course, political parties and alliances of political parties may have members who can be expelled. In fact, the new Constitution of the NUA does provide for "Founder Members", namely, the SLMC and the SLPF and individuals. But, as far as the petitioner is concerned he was and remains a member of one political party, namely, the SLMC, and that party alone, although he was a candidate nominated by the NUA for election to Parliament in terms of Article 99A of the Constitution.…….*The Petitioner, not being a member of the NUA could not be expelled from it.* I therefore, hold that the purported expulsion of the petitioner, Mr. Basheer Segu Dawood, was invalid since it was null and void and of no force or avail in law; the purported expulsion by the first respondent is of no value or importance: It amounts to nothing and shall be treated as non-existent for the purposes of Article 99(13)(a) of the Constitution. *(emphasis added).*

In the light of the aforesaid decisions of this Court, it is vital to determine whether the Petitioner is, or at least was at the time his name was included in the ITAK nomination paper, a member of ITAK. He has in fact, asserted in no uncertain terms that he is a member of ITAK in paragraph 10 of the Petition filed by him in this Court and the corresponding paragraph 12 of his affidavit dated 10th December 2010. In the said affidavit, the Petitioner has averred as follows:-

> 12. I state that from *the inception of my political career as a member of ITAK*, I have been a staunch supporter of the programmes and policies of the said Party. I state that although my relationship with the party is relatively new, *having joined the party just over four and a half years ago*, I have always endeavoured to serve the Party with the utmost dedication, commitment and unreserved loyalty. *(emphasis added).*

However, in paragraphs 7 (d) and (e) of his counter affidavit dated 18th January 2011, the Petitioner has taken the somewhat inconsistent stand that he is only a *de facto* member of ITAK and not a *de jure* member thereof. He has averred that:-

> (d) I state that to the best of my knowledge I have not tendered an application for membership in the 1st Respondent Party, nor have I ever paid any membership fee nor taken a membership pledge in terms of the Constitution of the 1st Respondent Party [P1 and P 1A] – *and in the light of the revelation now made that I have only made a declaration pledging allegiance to the Parliamentary Group of the 1st Respondent party,* I am advised to state and do hereby state that I am only a *de facto* member of the 1st Respondent Party and not a *de jure* member, in terms of its Constitution and that I am accordingly not bound by the said Constitution.
>
> (e) I am also advised to state and do hereby state that in view of the fact that I am only a *de facto* member of the 1st Respondent party, and not bound by its Constitution, I could not have been expelled from the 1st Respondent party, and therefore, my purported expulsion from the 1st Respondent party is illegal and is of no force or avail in law. *(emphasis added)*.

Learned President's Counsel for the 3rd Respondent has vehemently objected to this change of stance on the basis that the Petitioner cannot be permitted to blow hot and cold at the same time. While I must confess that I am not entirely unimpressed by the ingenuity of the legal advisors of the Petitioner, it is not possible to overlook the fact that the Petitioner sought to invoke the jurisdiction of this Court clearly on the basis that he was a member of ITAK, which recognised political party he joined "just over four and a half years ago", which approximates with the time he would have joined ITAK which led to his name eventually being included as an ITAK candidate for the Alayadyvembu Pradeshiya Sabha in March 2006, as disclosed in paragraph 8 of the Petitioner's affidavit dated 10th December 2010. The position subsequently taken by the Petitioner, no doubt on the advice of his legal advisors, that he is not a *de jure* member of ITAK, is to my mind, altogether unconvincing as it seems to have been prompted by the fact that only the purported declaration marked 'R7E' was produced with the objections of the 3rd Respondent linking the Petitioner to ITAK, and the apparent dearth of other material to establish that the Petitioner was a member of ITAK.

However, it needs to be observed that since the Petitioner had come to Court on the basis that he was a member of ITAK and that certain provisions of the ITAK Constitution, which he himself produced marked 'P1' and 'P1A', have been violated by the Respondents, it was not incumbent upon the Respondents to produce any documents to substantiate the fact of his membership of the party, and the objections of the 3rd Respondent have been formulated on the assumption that he was a member of the party. This being the case, I am clearly of the opinion that the Petitioner cannot in these proceedings take up an inconsistent stand and assert that he is not a *de jure* member of ITAK and is therefore not bound by the provisions of its Constitution and the disciplinary procedure laid down in that Constitution.

In view of this finding, the decision in *Basheer Segu Dawood v. Ferial Ashraff and Others* [2002] 1 Sri LR 26, and other similar decisions adverted to by learned President's Counsel for the Petitioner, are altogether irrelevant to the determination that this Court is required to make in this case in terms of Article 99(13)(a) of the Constitution. I am therefore of the opinion that the application of the Petitioner has to be considered further on the basis that the Petitioner is a member of ITAK.

Validity of the Disciplinary Proceedings against the Petitioner

It is manifest from paragraph 29 of the Petition dated 10th December 2010 filed by the Petitioner to invoke the jurisdiction of this Court in terms of Article 99(13)(a) of the Constitution that he has challenged his purported expulsion from ITAK as being *ex-facie* illegal and contrary to the provisions of the Constitution of ITAK, as well as the provisions of the Constitution of the Democratic Socialist Republic of Sri Lanka, on the basis it is contrary to natural justice, unreasonable, capricious and vitiated by demonstrable *mala fides*. These grounds have been set out in greater detail in sub-paragraphs (a) to (h) of paragraph 29 of the Petition. The aspect of procedural impropriety stressed by learned President's Counsel for the Petitioner in the course of his submissions have been encapsulated into sub-paragraphs (a) and (b) which are quoted below for convenience:-

> (a) The said purported decision to expel him from the party is *ex-facie* illegal in as much as it has been made by the 3rd Respondent based on a purported recommendation of the Disciplinary Committee of the ITAK and not by either the Central Committee or the General Working Committee of the Party, which are the only bodies vested in terms of the Constitution of the ITAK, with the power to take disciplinary action against members of ITAK;
>
> (b) The purported disciplinary procedure which has culminated in such decision to expel him is *ex-facie* illegal and contrary to the provisions of the Constitution of the ITAK, in as much as such proceedings had been initiated by the 3rd Respondent-General Secretary [vide P3] and/or the Disciplinary Committee of the ITAK [vide P6, P7 and P9] and not by the bodies vested with such power by the Constitution of the ITAK- being the Central Committee or the General Working Committee of the party.

In this context, it has to be mentioned that the constituent bodies of ITAK are the General Working Committee, the Central Committee, District Committees, Party Branches and the National Conventions of the party constituted by the members thereof. The applicable disciplinary procedure applicable in the case of members of ITAK is generally laid down in Articles 8(c)(3), 8(d), 8(e), 8(f) and 8(g) of the ITAK Constitution, copies of which were produced by the Petitioner marked 'P1' and 'P1A', and the authenticity of which was not disputed by the Respondents, except that they relied on a subsequent amendment which will be adverted to later. These provisions are reproduced below for ease of reference, from the English version of the said Constitution marked 'P1A':-

ARTICLE 8

(c) The Central Committee has the power to put into action the objectives of the Party as directed by the National Convention and decided by the General Working Committee. It is accountable to the National Convention. It has the power to implement the decisions, programmes and policies formulated from time to time by the General Working Committee and the National Convention. Without prejudice to the general power enjoyed by the Central Committee, it has the following powers as well:-

1. ……..
2. ……..
3. Disciplinary action against and expulsion of members for irregularities, disobedience and lack of loyalty.
4. ……....
5. ……
6. …….

(d) Anyone aggrieved on account of the exercise of powers as mentioned above in sub-sections (c) 3 and 4 can submit a complaint of objection to the General Working Committee within one month of such decision. Such complaints shall be included in the agenda of the first next meeting of the General Working Committee. Until such time as the General Working Committee takes a decision on the matter, the decision of the Central Committee will be valid.

(e) The decision of the Central Committee is final and conclusive in matters of interpretation regarding the provisions of the party constitution or any sub-legislation.

(f) In order to be lawful, at least eleven members of the Central Committee must be present. A member who has failed to attend three consecutive meetings of the Central Committee without acceptable reason shall be deemed to have lost his membership. Accordingly he will be announced as having lost his membership by the General Secretary.

(g) Whenever the need arises, the Central Committee may appoint sub-committees, Committees of Inquiry etc. For those reasons it may grant specific powers to such committees.

It is important to note in regard to disciplinary action and expulsion of office bearers, the disciplinary authority as provided in Article 7(d) of the ITAK Constitution is the General Working Committee of ITAK, and with respect to members of ITAK the disciplinary authority is the Central Committee as provided in Article 8(c), which power is subject to review by the General Working Committee of ITAK in terms of Article 8(d) of the ITAK Constitution. There is no reference at all in the Constitution of ITAK produced by the Petitioner marked 'P1' and 'P1A', to any Disciplinary Committee, the only express reference being in Article 8(g) to sub-committees and committees of inquiry to which the Central Committee may grant specific powers.

In this backdrop, it is necessary to focus once again on the letter of expulsion dated 28th November 2010 ('P12'), which was quoted fully at the very commencement of this determination, by which the Petitioner was informed by the General Secretary of ITAK that the Disciplinary Committee of ITAK that met on the very same day, namely 28th November 2010, has "unanimously recommended" that the Petitioner be expelled from the party membership forthwith. The said letter thereafter proceeds to inform the Petitioner that he is "hereby expelled" from the membership of ITAK. It has been submitted by learned President's Counsel for the Petitioner that it is clear from the said letter that the ultimate decision to expel the Petitioner was not taken by the Central Committee of ITAK as it should have been, but what is embodied in 'P12' is the decision of the General Secretary of ITAK, who was not the authority empowered by the Constitution of ITAK to make such an important and serious decision.

It is however important to note that the 3rd Respondent has attempted to show that the said Constitution was amended with effect from 3rd August 2008 by 'R4', having been approved by the National Delegates Convention held in Jaffna on 10th January 2010 after it was allegedly passed by the General Working Committee of ITAK on 17th April 2008 in Jaffna and on 23rd August 2008 at Colombo and approved by the "General Council" on 9th January 2010 as set out in the 3rd Respondent's communication addressed to the Commissioner of Election marked 'R4B'. The Petitioner has expressly pleaded ignorance of the said amendment marked 'R4', and learned President's Counsel appearing for the Petitioner has, without conceding its authenticity or validity, submitted that even the procedure laid down in that so called "amendment" has not been complied with. The Tamil version of the new provision, of which much has been said in the course of submissions, provides as follows:-

> 8.(ஏ) மத்திய செயற்குழு ஆனது அரசியற் குழு, நாடாளுமன்ற உறுப்பினர் குழு, மாகாணசபை உறுப்பினர் குழு, உள்ளூராட்சி மன்ற உறுப்பினர் குழு, தேர்தல் வேட்பாளர் நியமனக்குழு, ஒழுக்காற்று நடவடிக்கைக்குழு என்பனவற்றை நியமனம் செய்வதுடன் அவற்றிற்கான வழிகாட்டு விதிகள் மற்றும் ஒழுக்காற்றுக்கோவை என்பனவற்றை வழங்குதலும் வேண்டும். ஆந்தந்த குழுக்களுக்கான அங்கத்தவர் எண்ணிக்கையை மத்திய செயற்குழு தீர்மானிக்கும்

When translated into English, the provision reads as follows:-

> 8(h) The Central Committee shall appoint a Political Committee, Parliamentary Membership Committee (Parliamentary Group), Provincial Council Membership Committee, Local Authorities Membership Committee, Nomination Committee and Disciplinary Committee, and provide the Guidelines and Disciplinary Code

for these Committees. The Central Committee shall also determine the number of members of each such Committee.

There are several difficulties in regard to this purported amendment which have to be noted. Firstly, learned President's Counsel for the 3rd Respondent could not refer us to any express provision in the original ITAK Constitution marked 'P1' and 'P1A', which laid down the procedure for amendments of the Constitution. Secondly, no explanation was provided as to how an amendment to a Party Constitution which according to 'R4B' was only approved by the National Delegates Convention on 10th January 2010 and intimated to the Commissioner of Elections on 12th January 2010, could have been in force from 3rd August 2008. Thirdly, it is uncertain as to whether even at the time of the purported expulsion of the Petitioner, the new provision which had allegedly been incorporated into the ITAK Constitution as Article 8(h) has been fully implemented by the party. There has been no material produced by any of the parties to show whether the number of members to serve in any of the Committees contemplated by the above-quoted provision had been determined by the Central Committee, or whether any such Committees had in fact been appointed. Nor is there any evidence in regard to whether the Guidelines and Disciplinary Code applicable to the Disciplinary Committee had been formulated as required by Article 8(h) of the purported amendment. It is also important to note that although the grounds for disciplinary action as set out in Article 8(c)(3) of 'P1' and 'P1A', which have not been added to or modified by the alleged amendment 'P4', are " irregularities, disobedience and lack of loyalty" none of these words are used in 'P12', which simply refers to disciplinary proceedings alleged to have been initiated against the Petitioner "for acting against the party discipline".

It is common ground that the Petitioner voted in favour of the 18th amendment to the Constitution on 8th September 2010, although the parties are at variance in regard to whether the Petitioner had opposed the decision of the Parliamentary Group of ITAK to vote against it. It is also common ground that on 17th October 2010 the Central Committee met at No. 32 A, Retreat Road, Bambalapitiya, presided over by Mr. R. Sampanthan, M.P. and passed a resolution generally to deal with the Petitioner for acting against party discipline. The Tamil version of the said resolution was produced marked 'R5A' with the objections of the 3rd Respondent, and reads as follows:-

பாரளுமன்ற உறுப்பினர் திரு. பியசேனாவுக்கு எதிரான ஒழுங்கு நடவடிக்கை பற்றி ஆராய்ந்த சபை ஈற்றில் திரு. கனகசபாபதி அவர்களால் பிரேரிக்கப்பட்டு திரு. வர்ணகுலநாதன் அவர்களால் ஆமோதிக்கப்பட்ட பின்வரும் பிரேரணையை ஒருமனதாக ஏற்றுக்கொள்ளப்பட்டது. பிரேரணை: "திரு P.H. பியசேனா பா.உ. அவர்கள் பாராளுமன்றக் குழுத் தீர்மானத்திற்கும் கட்சித் தீர்மானத்திற்கும் எதிராக அரசுக்கு ஆதரவாக 18வது அரசியலமைப்புத் திருத்தத்திற்கு ஆதரவாக வாக்களித்ததுடன், அரசாங்கத் தரப்பிற்கு மாறி அரசாங்கத்துடன் இணைந்துவிட்ட காரணத்தால் அவருக்கு எதிராக ஒழுக்காற்று நடவடிக்கை எடுக்க *வேண்டுமென்றும் அதற்குப் பொருத்தமான நடவடிக்கை எடுப்பதற்கு* பொதுச்செயலாளருக்கு கட்சியின் இம் மத்திய செயற்குழு அதிகாரமளிக்கிறதெனத் தீர்மானிக்கின்றது."

This may be translated into English as follows:-

In view of the fact that Mr. Piyasena, M.P. voted in favour of the 18th Amendment, crossed over and joined the Government in contravention of the Parliamentary Group decision and Party decision, the Central Committee hereby resolves this disciplinary

action be taken against him and authorizes the General Secretary to take such appropriate action in that regard.

It has to be observed that on a careful reading of the Minute Book maintain by ITAK from which the Tamil original of 'R5A' appears to have been extracted from page 29 thereof, the words that have been underlined in the above extracts as well as the English translation thereof had been interpolated in between the lines. While the learned President's Counsel for the Petitioner has vehemently objected to the reception in evidence of these Minutes on the basis that they have only been signed by an Administrative Secretary and have not been certified on the original of the Minute Book by the 3rd Respondent General Secretary, who is in terms of the ITAK Constitution vested with the responsibility of maintaining such minutes, it is also necessary to observe that even the fairly extensive interpolations made throughout in those minutes have not been countersigned or certified by any responsible office bearer or by even the Administrative Secretary.

In any event, it is my considered opinion that the extract produced as 'R5A' only shows that the Central Committee authorized the 3rd Respondent to take steps towards initiating disciplinary action against the Petitioner, and did not empower to take disciplinary action against the Petitioner functioning as the disciplinary authority. This becomes apparent from the fact that, a Disciplinary Committee consisting of 5 senior members of the party, namely, Messrs. R. M. Imam, Thurairatnasingham, Thurairajasingham, C.V.K. Sivagnanam and David Naganathan persons had been appointed to inquire into the matter. The fact of the appointment of the said Disciplinary Committee was brought to the notice of the Petitioner by the 3rd Respondent General Secretary himself by his letter dated 23rd October 2010 ('P7') paragraphs 5, 5(a) and 5(b) thereof are reproduced below:-

5. தங்கள் 10.10.2010 கடிதத்தின் 2ஆம் பந்தியில், தாங்கள் பாராளுமன்றத்தில் 08.10.2010 அன்று, தமிழரசுக்கட்சி / தமிழ் தேசியக்கூட்டமைப்புப் பாராளுமன்றக்குழுவின் தீர்மானத்திற்கு மாறாக 18ஆவது அரசியலமைப்புத்திருத்தத்திற்கு ஆதரவாக வாக்களித்திருந்தமையும், அது தொடர்பில் தங்கள் நடவடிக்கைகளையும் ஏற்றுக்கொண்டுள்ளீர்.

5(அ) எனவே தங்கள் மீது எம்மால் சுமத்தப்பட்டுள்ள குற்றங்களையும், தங்கள் பதிலையும் இ.த.அ.கட்சியின் ஒழுங்கு நடவடிக்கைக் குழுவுக்குப் பாரப்படுத்தியுள்ளேன்.

5(ஆ) 5(அ)வில் குறிப்பிட்டுள்ளவாறும், இ.தஅ.கட்சியின் மத்திய செயற்கு ழுத்தீர்மானித்தவாறும் கட்சியின் ஒழுங்கு நடவடிக்கைக்குழு தங்கள் மீது பொருத்தமான ஒழுக்காற்று நடவடிக்கையை எடுக்கும் என்பதைத் தெரிவித்துக் கொள்கின்றேன்.

The English rendering of the aforesaid has been provided by the Petitioner marked 'P7A' which is reproduced below:-

5. Second paragraph of your letter dated 10.10.2010 says that you have admitted that you have voted against the decision of Tamil Arasu Kadchi / TNA parliamentary committee at the parliament on 8.1.2010. You have also admitted my action on this regard.

5(a) Therefore, our allegations against you and your related response are forwarded to the Disciplinary Committee, Ilankai Tamil Arasu Kadchi.

5(b) As stated in 5(a), I wish to inform you that *the disciplinary committee will take appropriate action* as per the decision taken by the central action committee, Ilankai Tamil Arasu Kadchi. *(emphasis added).*

It is significant to note that it is clear from the aforesaid communication signed by the 3rd Respondent General Secretary of ITAK, that the intention was for the Disciplinary Committee to first inquire into the facts and circumstances relating to the charge against the Petitioner, which is presumably what was intended by the phrase "appropriate action" in the words highlighted in 'P7' and 'P7A'. What followed thereafter has also given rise to controversy, as it would appear that the findings of the Disciplinary Committee which are contained in the purported report of the said Committee which was originally produced with the objections of the 3rd Respondent marked 'R6', excluding page 4 thereof which was only made available to Court with a subsequent motion marked 'R6 Part' to which the learned President's Counsel for the Petitioner has taken objection.

To make things worse, the said report is signed only by four members of the Committee, and although it is stated in the subsequently produced page of the report that the member who omitted signing the document had been in communication with the other members by telephone, and had in fact concurred with the findings of the other members, no affidavit from the said member has been tendered to Court. In any event, it is also clear from the said report that the Disciplinary Committee has only made its recommendation, which presumably had to be confirmed by the disciplinary authority which is the Central Committee of ITAK with the possibility of review by the General Working Committee. The final part of the said report marked 'R6' is quoted below:-

> எமது இந்த ஏகமனதான தீர்மானம் ஆவது:-
> கௌரவ பொ. பியசேன அவர்கள் இலங்கைத் தமிழரசுக் கட்சியின் தீர்மானத்திற்கு எதிராக பாராளுமன்றத்தில்
>
> 1) உரையாற்றி
> 2) செயற்பட்டு - அதாவது, அரசாங்கக் கட்சிக்கு மாறிச் சென்று
> 3) வாக்களித்ததன் மூலம் இலங்கைத் தமிழரசுக் கட்சியின் அமைப்புவிதிகளின் - விதி 8 (இ) 3 இற்கு முரணாக செயற்பட்டதன் காரணத்தினால் அவரை உடனடியாக இலங்கை தமிழரசுக் கட்சியின் உறுப்புரிமையிலிருந்து நீக்கும்படியாகவும் அப்படியாக அவர் நீக்கப்படுவதை பாராளுமன்ற செயலாளர் நாயகத்திற்கும் தேர்தல்கள் ஆணையாளர் நாயகத்திற்கும் அறிவிக்கும்படி இக்குழு இத்தால் பரிந்துரைக்கின்றது.

The submission made by learned President's Counsel for the 3rd Respondent that the word "பரிந்துரைக்கின்றது" used in the above report is a direction and not a recommendation has not been entirely convincing, and this Court is of the view that it has to give preference to the rendering of the said Tamil word by the General Secretary of the Ilankai Tamil Arasu Kadchi himself in 'P12', which is fully in accord with the meaning of this word in ordinary parlance. We are therefore not persuaded by the submission of learned President's Counsel for the 3rd Respondent that the Central Committee had delegated its disciplinary authority to the General Secretary of ITAK. Accordingly, when the final paragraph of P6 is translated into English, it should read as follows:-

Our unanimous decision is as follows:
As Mr. Piyasena, acted contrary to the resolution of ITAK by
1 Speaking;
2 Acting – that is to say, crossing over to the Government; and
3 Voting,
thereby violating Article 8(c)(3) of the Constitution of ITAK, we *recommend* that he be expelled from party membership, and this be communicated to the Secretary General of Parliament.

It is the considered opinion of this Court that it is the Central Committee of the ITAK that has disciplinary authority over the Petitioner, and it is that Committee which had in fact initiated a disciplinary process by appointing a Disciplinary Committee. It is not possible for only four members of the Committee to arrive at findings, and the purported report of the Committee marked 'R6', which does not bear all the signatures of its members, is incomplete and cannot be acted upon. In any event, the final decision in regard to a disciplinary matter involving a member of ITAK has to be taken by the Central Committee, subject to review in appropriate cases by the General Working Committee. In the circumstances, I hold that the decision to expel the petitioner from the membership of ITAK on a purported decision of the Disciplinary Committee by the letter dated 28th November 2010 marked 'P12' is *ex-facie* illegal in as much as it has not been made by the appropriate disciplinary authority in terms of the ITAK Constitution. In these circumstances, it is not necessary to go into any of the other grounds urged in paragraph 29 of the Petition.

Conclusion

For all the aforesaid reasons, I determine that for the purposes of Article 99(13)(a) of the Constitution, the purported expulsion of the Petitioner Perumpulli Hewage Piyasena, was invalid. In all the circumstances of the case, I make no order as to costs.

JUDGE OF THE SUPREME COURT

SRIPAVAN, J.
I agree.

JUDGE OF THE SUPREME COURT

SURESH CHANDRA, J.
I agree.

JUDGE OF THE SUPREME COURT