

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

In the matter of an application for under and in terms
of Article 99(13) of the Constitution

Safiul Muthunabeen Mohamed Muszhaaraff
Lake View, 418, Vaathiya Road,
RM Nagar, Pottuvil-27

Petitioner

vs

SC Expulsion No. 02/2022

1. S. Suairdeen
Secretary General,
All Ceylon Makkal Congress
2. Rishad Bathiudeen,
Leader,
All Ceylon Makkal Congress
3. N. M. Shaheid, Attorney-at-Law
4. M. S. S. Asmeer Ali
5. Hussein Bhaila
6. Y. L. S. Hameed
7. M. H. M Navavi
8. Hon. Ishak Rahuman

9. Dr. M. S. Anees
10. Abdullah Mahroof
11. K. M. Abdul Razzak
12. M. I. Muththu Mohamed
13. Dr. A. L. Shajahan
14. A. J. M. Faiz
15. M. N. Nazeer
16. M. A. M. Thahir
17. M. A. Anzil
18. Rushdy Habeeb, Attorney-at-Law
19. Dr. Y. K. Marikkar
20. M. R. M. Hamjath Haji
21. R. M. Anwer
22. I. L. M. Mahir
23. I. T. Amizdeen
24. Januafer Jawahir
25. S. H. M. Mujahir

26. Hon. Ali Sabry Raheem

27. All Ceylon Makkal Congress

(The 1st to 27th Respondents all of No. 23/4,
Charlemont Road, Colombo 06)

28. Dhammika Dasanayake
Secretary General of Parliament
Parliament of Sri Lanka
Sri Jayewardenepura Kotte

29. Mr. Nimal Punchihewa
Chairman,
Election Commission
Election Secretariat,
P. O. Box 02, Sarana Mawatha,
Rajagiriya.

Respondents

Before : Priyantha Jayawardena PC, J
: A. L. Shiran Gooneratne, J
: Arjuna Obeyesekere, J

Counsel : Dr. Romesh De Silva PC with Uditha Egalahewa PC, Niran Anketell,
Harith De Mel and N. K. Ashokbharan for the Petitioner.

: Mr. M.A. Sumanthiran PC with H. Hisbullah and Suren Fernando for
the 1st to 7th Respondents.

: Mr. M.A. Sumanthiran PC with D. Mascrange for the 8th Respondent.

: Mr. M.A. Sumathiran PC with K. Wickramanayake for the 9th to 18th Respondents.

: Mr. Hejaaz Hizbullah with Chalana Perera for the 19th, 20th, 22nd to 25th and 27th Respondents.

: Indumini Randeny, SC for the 28th and 29th Respondents.

Argued on : 14th February, 2023

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

Facts of the application

The petitioner is a member of Parliament elected from the Digamadulla District at the General Election in August, 2020 from the All Ceylon Makkal Congress (hereinafter referred to as the “ACMC”).

The petitioner stated that he was expelled from the party on the allegation that he voted for the 2nd and 3rd reading of the Budget 2022 in defiance of the party decision not to vote for the said Budget. He stated that the said decision to expel him from the party is unlawful and violates the principles of natural justice as he was not given an opportunity to Show Cause in respect of the charges levelled against him and a proper disciplinary inquiry was not held prior to expelling him.

The petitioner further stated that on the 29th of November, 2021, he received a Show Cause Notice dated 26th of November, 2021 from the 1st respondent stating that as he had voted for the Budget 2022 against the decision of the ACMC and therefore, disciplinary action would be taken against him by the Political Authority. Further, it was stated that if no written explanation

was sent within 14 days, it would be considered that he has no cause to show and he would be expelled from the party. Thereafter, on the 8th of December, 2021, he replied to the said letter stating that he was unaware of the decision referred to in the same letter.

Furthermore, the decision to vote against the Budget 2022 was decided by the Political Authority at the meeting held on the 21st of November, 2021, when the petitioner was absent. The petitioner stated that he did not read the WhatsApp messages, nor the other forms of communication alleged to have been sent to him by the Political Authority informing him not to vote for the Budget 2022. Hence, he was not aware of the said decision.

The petitioner stated that he and the 1st respondent exchanged several letters, consequent to which, a purported inquiry was scheduled to be held on the 23rd of May, 2022. The petitioner also stated that the purported Disciplinary Committee of the party has no jurisdiction to make a decision to expel him from the party. In any event, he informed the 1st respondent that the allegations levelled against him were baseless, and that he was not aware of any decision to vote against the Budget. He further stated that he requested for the minutes of the meetings of the Political Authority held on 21st of November, 2021, 22nd of November, 2021, and 12th of March, 2022 in order to get ready with disciplinary inquiry.

He further stated that on the 23rd of May, 2022, he attended the inquiry with his lawyers and requested that the minutes of the said meetings be handed over to them prior to the reading of the charges. Accordingly, the minutes of said meetings were handed over at the inquiry. However, those minutes were in the Tamil language and his lawyer could not read them as he was not conversant in the Tamil language. Hence, the counsel for the petitioner requested for additional time to translate the said minutes and study them. However, the said request was refused, and the charges were read out to him immediately despite the objections raised by them. Thereafter, the 3rd respondent re-fixed the inquiry for the 31st of May, 2022.

Furthermore, the petitioner stated that a stenographer was not present at the inquiry held on the 23rd of May, 2022, but the proceedings were video recorded. Later, the transcript of the said proceedings was emailed to the petitioner's Attorney-at-Law. However, the petitioner stated that the transcript was inaccurate and distorted. Further, it did not reflect some of the proceedings that took place at the said inquiry. Hence, he requested, *inter alia*, that a stenographer be arranged for the next date of inquiry and that a copy of the videotaped

proceedings of the meeting be handed over in order to correct the transcript of the proceedings held on the 23rd of May, 2022.

Moreover, two other members of the party, Ali Sabry Raheem and Ishak Rahuman, facing inquiries on similar charges, were represented by the same counsel. Similar to the petitioner, their inquiries were held initially on the 23rd of May, 2022 and then postponed for the 31st of May, 2022.

The petitioner stated that at the inquiry held on the 31st of May, 2022, the petitioner's counsel commenced submissions and raised several preliminary objections. The counsel further stated in his objections that the Disciplinary Committee has no jurisdiction to expel the petitioner. Moreover, the said Disciplinary Committee comprised of the Political Authority. In that capacity, they had not only framed the charges and issued the Charge Sheet to the petitioner, but they were also holding the inquiry and would make the final determination on the said charges. However, halfway through the proceedings, the 3rd respondent terminated the proceedings without making a ruling on the said preliminary objections and informed that the Political Authority will communicate the final decision to the petitioner later.

Subsequently, on the 1st of June, 2022, the petitioner was informed via WhatsApp that he was expelled from the party. Further, on the 14th of June, 2022, a document containing the purported reasons for the decision to expel him from the Party was sent to him.

It was further stated that no disciplinary action was taken against the other two Members of Parliament who voted for the 2nd and 3rd reading of the Budget 2022. Thus, the petitioner stated that the 1st to 26th respondents were biased and acted with *mala fides* against him.

The petitioner stated that in the circumstances, the respondents violated his right to be heard and to face a proper disciplinary inquiry before he was expelled from the party. Further, the petitioner stated that the said disciplinary inquiry was not held according to the principles of natural justice and the Constitution of the ACMC. In the circumstances, the petitioner stated that his expulsion from the party was unlawful, *void ab initio* and without force or effect in law. Furthermore, the decision to expel him from the party was unreasonable, irrational and capricious.

Objections of the 1st to 7th, the 9th to 18th, the 19th, 20th, 22nd to the 25th and the 27th respondents

The respondents filed objections and stated that during the campaign for the 2020 general election, the ACMC heavily campaigned against the policies of the Sri Lanka Podujana Peramuna (SLPP). As a party member, the petitioner was expected to act in accordance with the mandate received by the ACMC and the policies which they campaigned for at the said election.

Further, on the 14th of November, 2021, the petitioner was notified that an important meeting of the party was to be held on the 21st of November, 2021. However, on the 20th of November, 2021, the petitioner informed that he will not be able to attend the meeting due to “*impromptu matters of grave urgency*”. Thereafter, on the 21st of November, 2021, the meeting was held, and it was unanimously decided to vote against the Budget 2022.

Hence, by letter dated 21st of November, 2021, the political authority informed the petitioner of the said party decision. The said letter was delivered by hand to the petitioner by the 8th respondent, prior to the vote on the Second Reading of the Budget. However, acting contrary to the decision of the ACMC, on the 22nd of November, 2021, the petitioner voted in favour of the Budget 2022 at the Second Reading of the Budget.

The respondents further stated that the petitioner acted against the best interests of the country and against the best interests of the ACMC by voting for the Budget against the said decision of the party. Moreover, the petitioner acted in his personal interests by voting in favour of the said Budget.

The respondents stated that in an interview published in a Tamil language newspaper on 19th of November, 2021, the petitioner had stated that those who love the country cannot oppose the Budget 2022. He further justified his support for the Budget 2022 and criticised the opposing parties.

It was further stated that on the 26th of November, 2021, the Political Authority issued a Show Cause Notice requesting a written explanation from the petitioner with regard to his voting in favour of the Budget 2022 at the Second Reading. However, by letter dated 8th of December, 2021, the petitioner informed that he was unaware of the aforesaid decision of the Political Authority and sought further time to respond to the said Show Cause Notice.

Thereafter, prior to the Third Reading of the Budget, by letter dated 3rd December, 2021, the petitioner was informed not to vote for the Budget at its Third Reading. However, the petitioner voted in favour of the Budget 2022 at the Third Reading on the 10th of December, 2021.

It was further stated that the petitioner at no time, either prior to the Second Reading of the Budget 2022 or the Third Reading, expressed any view to the ACMC that he or the Party should vote in favour of the Budget.

In the circumstances, on the 25th of April, 2022, the petitioner was informed that he has not shown sufficient cause, and as such, it was decided to hold a disciplinary inquiry against him on the 23rd of May, 2022.

Moreover, the respondents stated that on the 23rd of May, 2022 at the inquiry, as requested, the petitioner was furnished with the copies of the minutes of the meetings of 21st of November, 2021, 22nd of November, 2021, and 12th of March 2022. However, the petitioner did not inform the Disciplinary Committee that he would be represented by lawyers and an English translation of the said minutes were not requested. Hence, the said minutes of meetings were provided in Tamil as the political party conducts its proceedings and keeps the minutes of its meetings in Tamil. Moreover, as the petitioner understands Tamil, the Disciplinary Committee provided extra 15 minutes to the petitioner to discuss the minutes with his counsel.

Furthermore, it was stated that the Charge Sheet in Sinhala, Tamil and English languages were handed over to the petitioner at the inquiry. Thereafter, the charges were read out at the inquiry, but the petitioner did not plead to the charges. Nevertheless, at the request of counsel for the petitioner, a further date was granted and the inquiry was adjourned to the 31st of May, 2022.

The respondents stated that as per the petitioner's request, a stenographer was made available at the proceedings held on the 31st of May, 2022. However, at the inquiry, the counsel for the petitioner stated that the transcripts of proceedings held on the 23rd of May, 2022 were inaccurate and requested for the video recordings of the said inquiry. The 3rd respondent rejected the said request and asked the petitioner to plead for the charges and continue with the proceedings. Further, the 3rd respondent offered to read out the charges again on the 31st of May, 2022. However, the petitioner did not agree for it.

Moreover, the counsel for the petitioner raised objections alleging that the members of the Political Authority were not in fact members of the Political Authority. However, the

respondents stated that the petitioner having participated at the meetings of the party as an ex officio member of the Political Authority along with the 1st to 26th respondents, he was estopped from disputing the composition of the Political Authority. Thus, it was stated that the petitioner cannot now request the respondents to furnish details as to the validity of their appointments. It was further stated that the petitioner's contention that he did not know the composition of the Political Authority is false.

Furthermore, the respondents stated that the disciplinary inquiry was conducted in accordance with the Constitution of the Party and was not contrary to the principles of natural justice. Moreover, the 3rd respondent terminated the disciplinary inquiry proceedings stating that the petitioner was not cooperating. Further, he stated that the petitioner "*does not want to plead to the Charge Sheet and make his defense*". Moreover, the 3rd respondent stated that the petitioner was raising various technical objections with the intention of delaying the proceedings. Hence, the petitioner was informed that the Political Authority will take a decision and communicate it to him.

Thereafter, the petitioner was informed of the final decision of the party by letter dated 1st of June, 2022. The petitioner was also provided with the reasons for the decision by the document delivered on the 14th of June, 2022. Furthermore, it was stated that the expulsion of the petitioner was lawful and justified. The respondents stated that the application of the petitioner is misconceived in fact and law and that the petitioner is not entitled to maintain the instant application or to obtain the relief prayed for.

Allegation of suppression and misrepresentation of facts by the petitioner

The respondents stated that the decision to vote against the Budget 2022 was taken at the Political Authority meeting of the APMC on the 21st of November, 2021, in which the petitioner was absent. The said decision was communicated to the petitioner by email and SMS on the 21st of November, 2021. However, the said materials were not produced by the petitioner along with his application. Further, the petitioner is guilty of suppression and misrepresentation as the petitioner denied the knowledge of the decision of the party to vote against the Budget for the year 2022, notwithstanding the fact that the petitioner was informed several times of the said decision. Hence, the instant application should be dismissed in *limine*.

Article 99(13)(a) of the Constitution states;

“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.”*

[emphasis added]

The jurisdiction of this court under Article 99 (13)(a) of the Constitution is *sui generis*, original and exclusive. Further, an application filed under the said Article 99 (13)(a) of the Constitution acts as a right of appeal provided to a Member of Parliament who was expelled from a Party. Therefore, such an application should not be dismissed in *limine* without considering the merits of the application.

A similar view was expressed in ***Peramulli Hewa Pivasena v. ITAK SC Special (Expulsion) 3/2010 at pages 6, 7***, where Justice Marsoof held;

“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.”

....

....

*“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 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 in regard to the question 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.”*

[emphasis added]

In view of the above, the application of the respondents to reject/dismiss the instant application of the petitioner on the alleged suppression and misrepresentation of facts is overruled.

Were the principles of Natural Justice adhered to at the disciplinary inquiry?

Members of the Parliament exercise the sovereignty of the People. Further, they represent the voters/people in the country in Parliament. However, if a Member of Parliament is expelled from the party, he will lose his seat in Parliament. Hence it is imperative to hold a proper disciplinary inquiry before a decision is taken to expel a member from a political party. Furthermore, it is necessary to give a fair hearing to the member at the disciplinary inquiry. Further, it does not matter that the outcome of the inquiry may be obvious or may not be different. In the circumstances, it is essential that the petitioner was given a fair hearing to justify his actions before being expelled from the party or being subjected to any other punishment by the political party.

A similar view was expressed in *Tissa Attanayake v. United National Party and Others* (2015) 1 SLR 319 at page 331 where it was held;

“Admittedly, the opportunity of a fair hearing may be limited in the circumstances. For instance, the time for responding to a charge sheet or making submissions may be reduced. Yet, the person is entitled to be told what he is charged with and

afforded some opportunity of explaining himself. The Petitioner is a Member of Parliament and expulsion could lead to lose his seat. The very gravity of the matter required that at least a limited hearing ought to be given to the Petitioner.”

[emphasis added]

Similarly, in ***General Medical Council v. Spackman (1943) AC 627 at page 644*** it was held;

“If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision”

However, at the inquiry under consideration, the petitioner was not given an opportunity to present his case. Only preliminary objections raised on his behalf were heard at the said inquiry. However, no decision was made in respect of the preliminary objections raised by the petitioner. Further, a Charge Sheet was issued to the petitioner and the charges were read at the inquiry. Thereafter, the proceedings were terminated abruptly.

The disciplinary inquiry proceedings marked as ‘IR15’ by the respondents contain the following statement made by the 3rd respondent, the Chairperson of the disciplinary inquiry panel;

“The Political Authority is of the opinion that the Hon. Member though given an opportunity does not want to plead to the Charge Sheet and make his defense. At this stage he is trying to make various objections with the deliberate intention of delaying these proceedings, which the Political Authority is not prepared to accommodate. In the circumstances, I would like to inform the Member since he has not cooperated and his attitude and his representatives who made submissions before this Political Authority, do not in any way could be justifiably accommodated. In the circumstances the Political Authority will retire and make a decision, a final decision of the Political Authority.”

The failure to proceed with the disciplinary inquiry deprived the petitioner of explaining his actions at the disciplinary inquiry. Thus, it violates the principle of natural justice i.e., *audi alteram partem*.

In *Tissa Attanayake v. United National Party and Others* (supra) at **page 334**, a similar view was expressed. i.e.;

“...the observance of natural justice depicted in the maxim Audi Alteram Partem provides the foundation for the manner and form in which Administrative Law is applied. Whether or not the other party has reasons or defences to submit is not the issue. The basic issue is to provide the other party an opportunity to explain himself.”

Moreover, no evidence was led at the inquiry to establish the charges levelled against the petitioner. Thus, the decision to expel the petitioner from the party is not based on the evidence led at the disciplinary inquiry and therefore, the said decision to expel the petitioner is arbitrary and capricious.

Was the decision to expel the petitioner valid in law?

By the letter dated 1st of June, 2022, (marked and produced as ‘P10’), the petitioner was informed that a decision has been taken to expel him from the party by the Political Authority at the meeting held on the 31st of May, 2022. The said letter, *inter alia*, states;

“This is further to the disciplinary inquiry held against you on May 23rd, 2022 and May 31st, 2022.

*I write to inform you that **the Political Authority of the All Ceylon Makkal Congress at its meeting held on May 31st, 2022 has decided to expel you from the party and you shall forthwith cease to be a member of the party. As such, you are requested not to hold out or claim that you are a Member of the All Ceylon Makkal Congress hereinafter.***

A written report with reasons will be sent to you during the course of this week.”

[emphasis added]

However, the final page of the document which contained the reasons to expel the petitioner, which was marked and produced as ‘P11’ stated;

“At the meeting of the Political Authority held on June 01st, 2022 all members present agreed that Hon Mr Muszhaaraff ought to be expelled from the Party. All members present except Mr Hussain Bhaila also approved this order. Mr Bhaila requested further time to consider the same and convey his position. He conveyed his consent to this order on June 11th, 2022.”

[emphasis added]

The aforementioned vital discrepancy in the dates which refers to the purported expulsion of the petitioner prevents considering the contents of the said documents as it not clear whether in fact, a decision was taken by the Political Authority to expel the petitioner. Furthermore, the respondents did not produce the minutes of the meeting which is alleged to have taken the decision to expel the petitioner from the party. Thus, it is uncertain whether a meeting to expel the petitioner had ever taken place.

A similar view was expressed in *Ameer Ali and Others v. Sri Lanka Muslim Congress and Others* (2006) 1 SLR 189 at pages 198, 200 where it was held;

“Since the final decision to expel the Petitioners is said to have been made at this meeting it was essential for the Respondents to have produced the minutes of the meeting that indicate the persons who were present and the manner in which the serious issues raised by the Petitioners were considered before a final decision was made.”

...

...

“The burden of proof is on the Respondents to satisfy the Court as to the competence of the expelling authority, being in this instance the High Command of the Party. To get to this point it is the burden of the Respondents to establish that the validly constituted High Command convened and took the decision reflected in the several letters written by the General Secretary. At the least, the Respondents should have produced the book containing minutes of the meeting of the High Command that include the minutes of the relevant meetings. They have failed to produce even such prima facie evidence of the meetings. It is also the burden of the Respondents to satisfy this Court that the High Command considered the evidence and the relevant

material in respect of the charges that have been made against the Petitioners in the light of the matters urged by the Petitioners (in their reply to the show cause notice) and came to findings adverse to petitioners from the perspective of the overall interests of the Party and its electorate.”

[emphasis added]

Moreover, the petitioner was informed by letter dated 1st of June, 2022 that the Political Authority had decided to expel him from the Party. Thereafter, the petitioner was provided with the reasons for the decision to expel him by the document delivered on the 14th of June, 2022. The said document containing the reasons to expel the petitioner was signed by N. M. Shaheid, the 3rd respondent on the 1st of June, 2022 and by S. Suairdeen, the 1st respondent on the 12th of June, 2022.

Further, the said document appears to have been printed on a computer and thereafter signed twice on two separate dates. However, both signatures cannot appear on the last page if the signatures were placed on the paper on two separated dates; one on the 1st of June, 2022 and the other on the 12th of June, 2022. Moreover, the said discrepancy cast a doubt on the authenticity of the document.

Moreover, the respondents have not produced materials to prove that they have considered the relevant material and taken a decision to expel the petitioner. Accordingly, I hold that the expulsion of the petitioner is invalid.

Judge of the Supreme Court

A. L. Shiran Gooneratne, J

I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J

I agree

Judge of the Supreme Court