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) No: 02/2023

Manusha Nanayakkara,
Maligaspe Gedera,
Panagamuwa,
Wanchawala.

PETITIONER

Vs.

1. Samagi Jana Balawegaya,
   815, E.W. Perera Mawatha,
   Kotte Road,
   Ethul Kotte.

2. Ranjith Madduma Bandara,
   General Secretary,
   Samagi Jana Balawegaya,
   815, E.W. Perera Mawatha,
   Kotte Road,
   Ethul Kotte.

3. Sajith Premadasa,
   President,
   Samagi Jana Balawegaya,
   815, E.W. Perera Mawatha,
   Kotte Road,
   Ethul Kotte.

4. K. A. Rohanadeera,
   Secretary General of Parliament,
   Parliamentary Complex,
   Sri Jayawardenapura, Kotte.

5. R. M. A. L. Rathnayake,
Chairman,
Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.

6. M.A.P.C. Perera,
Member,
Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.

7. A. Faaiz,
Member,
Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.

8. H.M.T.D. Herath,
Secretary,
Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.

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

RESPONDENTS

Before: **Vijith K. Malalgoda, PC, J**
Achala Wengappuli, J
Arjuna Obeyesekere, J

Counsel: Faiszer Musthapha, PC with Shaheeda Barrie and Mehran Careem for the Petitioner

M. A. Sumanthiran, PC with Viran Corea, PC, Ermiza Tegal and Divya Mascranghe for the 1st Respondent

Dr. Jayampathy Wickramaratne, PC with Pulasthi Hewamanne and Sampath Wijewardena for the 2nd Respondent

Hejaaz Hisbullah with Shifan Maharoof for the 3rd Respondent

Sureka Ahmed Jayasinghe, Senior State Counsel for the 4th – 9th Respondents

Argued on: 12th October 2023, 23rd October 2023, 14th November 2023, 17th November 2023, 12th December 2023, 14th December 2023 and 23rd January 2024

Written Submissions: Tendered on behalf of the Petitioner on 2nd February 2024

Tendered on behalf of the 1st Respondent on 5th February 2024

Tendered on behalf of the 2nd Respondent on 5th February 2024

Tendered on behalf of the 3rd Respondent on 7th February 2024

Tendered on behalf of the 4th – 9th Respondents on 2nd February 2024

Decided on: 9th August 2024

Obeyesekere, J

The issue that arises for determination in this application is whether the expulsion of the Petitioner from the Samagi Jana Balawegaya, a registered political party and the 1st Respondent to this application, and on whose nomination paper the Petitioner was elected to Parliament, is valid.

This application was taken up for hearing together with SC (Expulsion) No. 1/2023. While the factual matters in both applications were almost identical, the legal arguments presented by the learned President's Counsel for the Petitioners in each application were different except for the common complaint that the Petitioner was not afforded a fair hearing prior to his expulsion from the 1st Respondent.

The Petitioner

The Petitioner states that he holds a diploma in Communication from the University of Sri Jayawardenapura and is an undergraduate at the Open University. The Petitioner had initially served as the News Manager and the News Director at two leading television broadcasting companies. Having entered active politics, the Petitioner had been elected as a member of the Southern Provincial Council in 2010 and as a Member of Parliament in 2015, on both occasions as a member of the United National Party, also a registered political party. At various times between 2015 and 2020, the Petitioner had served as a Deputy Minister for Telecommunication, Digital Infrastructure and Employment.

The Petitioner states further that the 1st Respondent was formed in March 2020 and that he is a founder member of the 1st Respondent as well as a member of its decision making body known as the Working Committee. The Petitioner had contested the Galle District at the Parliamentary elections held in August 2020 on the nomination paper of the 1st Respondent and having secured 47,399 preferential votes, was elected to Parliament as one of two members elected from the 1st Respondent. It is perhaps important to state that the 1st Respondent is the single largest party in Opposition in Parliament at the moment and that its leader, the 3rd Respondent is the Leader of the Opposition in Parliament.

Political developments in May 2022

The Petitioner states that post Covid-19 and particularly from the early part of 2022, the Country underwent a period of economic hardship hitherto unseen, with shortages in fuel, gas and essential food items. The Petitioner claims that depletion of the foreign currency reserves of the Country led to inflation reaching record numbers culminating with street protests and civil unrest, and that the Country was heading towards a national crisis. The Petitioner claims further that in this backdrop and in order to calm the waters, the then Cabinet of Ministers resigned from office on 4th April 2022. The Petitioner states however that the protests and civil unrest continued unabated and on 9th May 2022, the then Prime Minister too resigned from office. As provided by Article 49(1) of the Constitution, the Cabinet of Ministers stood dissolved with the said resignation.

The Petitioner states that the 3rd Respondent was thereafter invited to accept the post of Prime Minister. This invitation and the situation prevailing in the Country at that time had been discussed at the Working Committee meeting of the 1st Respondent held on 10th May 2022. According to the minutes of the said meeting of the Working Committee [**1R2**] which had been attended by the Petitioner, as borne out by the signature sheet of the list of attendees at the meeting [**1R3**], the 3rd Respondent had informed the membership that various groups had invited the 1st Respondent to form a Government and that the Chief Buddhist Prelates had made a strong request for the 3rd Respondent to accept the post of Prime Minister. After several members had expressed their views, a decision had been taken that no member of the 1st Respondent shall accept office in a Government formed by any person other than its leader the 3rd Respondent. The said decision has been recorded in 1R2 in the following manner:

> "අවසාන වශයෙන් ගරු රාජිත සේනාරත්න මැතිතුමා විසින් කොන්දේසි වලට යටත්ව අග්‍රාමාත්‍ය ධුරය භාරගත යුතු බවත්, අප විසින් ඉදිරිපත් කරනු ලබන කොන්දේසි වලට ජනාධිපතිවරයා එකඟ නොවුණහොත් හෝ වෙනත් හේතුවක් මත වෙනත් අග්‍රාමාත්‍යවරයකු ජනාධිපතිවරයා පත්කළහොත් හෝ **එවැනි අග්‍රාමාත්‍යවරයකු යටතේ පිහිටුවන ආණ්ඩුවක සමගි ජන බලවේගයේ කිසිදු, මන්ත්‍රීවරයකු හෝ සාමාජිකයකු කිසිදු තනතුරක් භාර නොගත යුතු බවට යෝජනා කරන ලද, අතර එකී යෝජනාව සභාව විසින් ඒකමතිකව අනුමත කරන ලදි.**"

On 12th May 2022, the Member of Parliament elected from the United National Party was appointed by the then President as the new Prime Minister. With the Working Committee of the 1st Respondent having already decided on its stance with regard to its members joining a Government of which the 1st Respondent was not a party, the 1st Respondent made a formal announcement by way of a press statement on 16th May 2022 [**1R1**] conveying the following decision taken by the Parliamentary group of the 1st Respondent on that date:

> "ඒ අනුව වත්මන් ආණ්ඩුව විසින් ආර්ථිකය ගොඩනැගීම උදෙසා කරනු ලබන, රටට හිතැති යහපත් කටයුතු වෙනුවෙන්. **එහි තනතුරු ලබා නොගෙන**, පාර්ලිමේන්තු ක්‍රියාවලිය තුළින් සමගි ජනබලවේගයේ පුරණ සහය ලබා දීමට මන්ත්‍රී කණ්ඩායම් රැස්වීමේදී ඒකමතික තීන්දු කරනු ලැබිය."

Having expressed the view that the 1st Respondent would extend its support to restore the economy but that it will not join the Government, the 1st Respondent went on to state in 1R1 that it would withdraw its support in the event an attempt is made to entice any Members of Parliament elected from the 1st Respondent to join the Government. Thus, the position of the Working Committee of the 1st Respondent reached with the participation of the Petitioner could not have been any clearer.

However, that did not deter the Petitioner, although a member of the 1st Respondent which was not a part of the then Government in Office, from joining the Government and being appointed the Cabinet Minister for Labour and Foreign Employment on 20th May 2022. Pursuant to the resignation from office of the then President on 14th July 2022, Parliament, acting in terms of Article 40(1) of the Constitution, had elected the then Prime Minister as President on 20th July 2022. A new Prime Minister had thereafter been appointed on 22nd July 2022, and on the same date, the Petitioner had been appointed as Cabinet Minister of Labour and Foreign Employment, once again of a Government of which the 1st Respondent was not a member. The Petitioner is currently functioning in such post.

<u>P2 and restrictions on members of the 1st Respondent</u>

The Constitution of the 1st Respondent, produced by the Petitioner marked **P2**, contains provisions that deal with the consequences that would flow where a member obtains

membership in other political parties while holding membership in the 1st Respondent, and joining a Government of which the 1st Respondent is not a party. The relevant provisions in P2 are set out below:

> "3.3 සාමාජිකයෙකුට වෙනත් දේශපාලන පක්ෂයක සාමාජිකත්වය දැරිය නොහැකි වන අතර, එසේ වෙනත් දේශපාලන පක්ෂයක සාමාජිකත්වය ලබාගතහොත් සහ/හෝ දරන්නේනම්, එනයින්ම එම සාමාජිකයාගේ සමගි ජන බලවේගය පක්ෂයේ පක්ෂ සාමාජිකත්වය අහෝසි වේ.
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> 3.5 **කිසිදු සාමාජිකයෙකු කෘත්‍යාධිකාරී මණ්ඩලයේ පූර්ව අනුමැතියකින් තොරව වෙනත් දේශපාලන පක්ෂයක් හෝ දේශපාලන සංවිධානයක් විසින් ඇති කරනු ලබන පරිපාලනයක් තුළ තනතුරු භාර ගැනීමක් නොකළ යුතුය.**
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> 3.7 කිසිදු සාමාජිකයෙකු කෘත්‍යාධිකාරී මණ්ඩලයේ පූර්ව අනුමැතියකින් තොරව වෙනත් දේශපාලන පක්ෂයක හෝ වෙනත් දේශපාලන පක්ෂයක් විසින් පාලනය කරනු ලබන ආණ්ඩුවකට හෝ පළාත් සභාවකට හෝ පළාත් පාලන ආයතනයකට හෝ සහයෝගය දැක්වීම හෝ සහයෝගය දැක්වෙන ප්‍රකාශ කිරීම හෝ සහයෝගය දැක්වෙන බවට ඇගවෙන ප්‍රකාශ කිරීම හෝ නොකළ යුතුය.
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> 3.8 කිසිදු සාමාජිකයෙකු කෘත්‍යාධිකාරී මණ්ඩලයේ පූර්ව අනුමැතියකින් තොරව වෙනත් දේශපාලන පක්ෂයක හෝ වෙනත් දේශපාලන පක්ෂයක් විසින් පිහිටුවනු ලබන පාර්ලිමේන්තුවේ හෝ පළාත් සභාවක හෝ පළාත් පාලන ආයතනයක හෝ විපක්ෂයකට සහයෝගය දැක්වීම හෝ සහයෝගය දැක්වෙන ප්‍රකාශ කිරීම හෝ සහයෝගය දැක්වෙන බවට ඇගවෙන ප්‍රකාශ කිරීම හෝ නොකල යුතුය."

Thus, it would appear that obtaining membership of another political party while being a member of the 1st Respondent would result in the automatic cancellation of membership in the 1st Respondent. Furthermore, no member of the 1st Respondent shall accept office, join or assist a Government of which the 1st Respondent is not a member without the prior approval of the Working Committee of the 1st Respondent. It is a violation of the latter that (a) led to the suspension of the membership of the Petitioner in the 1st Respondent in the first instance, (b) formed the basis of the charge sheet that was issued to the Petitioner, and (c) culminated in the expulsion of the Petitioner from the 1st Respondent.

<u>Suspension of the membership of the Petitioner and calling for explanation</u>

Paragraph 3.13 of P2 provides as follows:

"3.13 පක්ෂයේ යම් සාමාජිකයෙකු විනය කඩකිරීමක් සිදුකර ඇති බවට පෙනී යන අවස්ථාවකදිද, පක්ෂයේ උපරිම යහපත සහ ආරක්ෂාව සඳහා වහාම එම සාමාජිකයාට එරෙහිව පියවර ගත යුතු බවට පක්ෂ නායකයාට පෙනී යන අවස්ථාවකදි ද, එම සාමාජිකයාගේ පක්ෂ සාමාජිකත්වය වහාම අත්හිටුවා ඒ සම්බන්ධයෙන් පක්ෂ සාමාජිකයාගෙන් නිදහසට කරුණු විමසීමට පක්ෂ නායකයාට බලය ඇති අතර, එම තීරණය ද, එම සාමාජිකයා විසින් නිදහසට කරුණු දක්වා ඇත්නම්, එකි කරුණු දැක්වීම ද, කෘත්‍යාධිකාරී මණ්ඩල රැස්වීමට ඉදිරිපත් කළ යුතු අතර කෘත්‍යාධිකාරී මණ්ඩලය විසින් එම පක්ෂ සාමාජිකයා සම්බන්ධයෙන් ගත යුතු ඉදිරි පියවර ගත යුතුය."

The above provision consists of two tiers of disciplinary control. The first is that the leader of the 1st Respondent has been empowered to suspend on his own initiative the membership of any member who has breached party discipline and to call for an explanation from such member or request such member to show cause. The leader of the 1st Respondent is thereafter required to place such material before the Working Committee of the 1st Respondent, thus bringing the first tier to an end. The second tier commences upon such material being placed before the Working Committee and obliges the Working Committee to decide on the future course of action with regard to such member.

With it being clear that the Petitioner had acted contrary to Paragraphs 3.5, 3.7 and 3.8 of P2, the 3rd Respondent, acting in terms of the powers vested in him in terms of the aforementioned Paragraph 3.13 of P2, suspended with immediate effect the membership of the Petitioner in the 1st Respondent by his letter dated 20th May 2024 [**P4(a)**]. The Petitioner has not challenged, either in this application or before any other forum, the above suspension of his membership.

P4(a) reads as follows:

"<u>සමගි ජන බලවේගය පක්ෂ සාමාජිකත්වය අත්හිටු වීම</u>

සමගි ජන බලවේගය පක්ෂය විසින් පිහිටුවනු නොලබන ආණ්ඩුවක තනතුරු භාර නොගත යුතු බවට පක්ෂය විසින් තීරණය කර තිබියදි. රනිල් වික්‍රමසිංහ අග්‍රාමාත්‍යවරයා වශයෙන් පිහිටුවන ලද ආණ්ඩුවේ කැබිනට් අමාත්‍ය ධුරයක් ඔබ විසින් පක්ෂයේ කෘත්‍යාධිකාරී මණ්ඩලයේ පූර්ව අනුමැතියකින් තොරව භාරගෙන ඇත.

ඒ අනුව ඔබ විසින් පක්ෂයේ විනය කඩ කිරීමක් සිදුකර ඇති බව පෙනී යන හෙයින් ද, පක්ෂයේ උපරිම යහපත සහ ආරක්ෂාව සඳහා ඔබට එරෙහිව වහාම පියවර ගත යුතු බව මා හට පෙනී යන

හෙයින් ද, පක්ෂ ව්‍යවස්ථාව 3.13 වගන්තිය මගින් මා වෙත පැවරී ඇති බලතල ප්‍රකාරව ඔබගේ පක්ෂ සාමාජිකත්වය වහාම අත්හිටුවීම."

By the same letter P4(a), the 3rd Respondent had requested the Petitioner to show cause, thus affording the Petitioner an opportunity of placing his side of the story and setting in motion the process of affording the Petitioner a fair hearing prior to any decision relating to his membership in the 1st Respondent being taken by the Working Committee. The relevant paragraph in P4(a) reads as follows:

"සමගි ජන බලවේගය විසින් පිහිටුවනු නොලබන ආණ්ඩුවක තනතුරු භාර නොගත යුතු බවට පක්ෂය විසින් තිරණය ගෙන තිබියදි එම තිරණයට එරෙහිව යමින් ඔබ විසින් රනිල් වික්‍රමසිංහ මහතා අග්‍රාමාත්‍යවරයා ලෙස පිහිටුවනු ලැබූ ආණ්ඩුවේ කැබිනට් අමාත්‍ය තනතුරක් බාර ගැනීමෙන් පක්ෂ ව්‍යවස්ථාවේ 3.5 සහ/හෝ 3.7 සහ/හෝ 3.11 වගන්ති උල්ලංඝනය කිරීමෙන් පක්ෂයේ විනය කඩකිරීම සම්බන්ධයෙන් **ඔබට නිදහසට කරුණු දැක්වීමට ඇත්නම්, එම කරුණු මෙම ලිපිය ලද දින සිට දින හතක කාලයක් තුළදි මා වෙත ලිඛිතව ලැබීමට සලස්වන මෙන්** පක්ෂ ව්‍යවස්ථාවේ 3.13 වගන්තිය යටතේ මා වෙත පැවරී ඇති බලතල ප්‍රකාරව මෙයින් ඔබට දැනුම් දෙමි."

While stating that he does not agree with the contents of P4(a), the Petitioner, by his letter dated 26th May 2022 [**1R8**] sought an extension of 30 days to respond to P4(a). The Petitioner claims that he submitted his explanation by letter dated 24th June 2022 [**P5(b)**] wherein he explained the circumstances that led him to join the Government on 20th May 2022. While the receipt of P5(b) has been denied by the 1st Respondent, I must observe that P5(b) does not bear the signature of the Petitioner nor has the Petitioner submitted any proof to establish that P5(b) was in fact sent to either of the three Respondents.

Appointment of a Disciplinary Committee

Paragraph 3.13 of P2 requires the 3rd Respondent to place his decision to suspend, as well as the response of the Petitioner, if any, before the Working Committee of the 1st Respondent to enable the Working Committee to decide on the future course of action. By letter dated 15th November 2022 [**P4(b)**], the 2nd Respondent informed the Petitioner as follows:

"ඔබ විසින් සමගි ජන බලවේගය පක්ෂයේ විනය බරපතල ලෙස කඩකිරීමක් සිදුකර ඇති බවටද සහ/හෝ ප්‍රතිපත්ති උල්ලංඝණය කර ඇති බවටද සහ/හෝ බරපතල විනය විරෝධී ක්‍රියාවක් සිදුකොට

ඇති බවටද සහ/හෝ කෘත්‍යාධිකාරී මණ්ඩලය සෑහීමට පත්ව ඇති බැවින් ඔබට විරුද්ධව විනය පරක්ෂණයක් ආරම්භ කිරීමට කෘත්‍යාධිකාරී මණ්ඩලය තීරණය කොට ඇත.

ඒ අනුව ඔබට විරුද්ධව විනය පරීක්ෂණයක් සිදුකර විනය පරීක්ෂණ වාර්තාවක් ඉදිරිපත් කරන ලෙසට පක්ෂ ව්‍යවස්ථාවේ ප්‍රතිපාදන ප්‍රකාරව ජනාධිපති නීතිඥ නලින් දිසානායක මහතා සභාපති වශයෙන්ද, ජනාධිපති නීතිඥ දිනාල් පිලිප්ස් සහ නීතිඥ සඳමල් රාජපක්ෂ යන මහත්වරුන් සාමාජිකයින් ද වන පරීදි විනය මණ්ඩලයක් කෘත්‍යාධිකාරී මණ්ඩලය විසින් පත් කර ඇත.

ඒ අනුව ඔබට විරුද්ධව පැවැත්වෙන එකී විනය පරීක්ෂණය මෙම විනය මණ්ඩලය විසින් පවත්වනු ඇත."

The Petitioner did not reply to P4(b).

Disciplinary proceedings

The Chairman of the Disciplinary Committee had accordingly informed the Petitioner by letter dated 12th January 2023 [**1R10a**] that the disciplinary inquiry has been scheduled for 24th January 2023 at the head office of the 1st Respondent, that the Petitioner is entitled to be represented by an Attorney-at-Law and that his presence is mandatory. A copy of the charge sheet signed by the Chairman of the Disciplinary Committee had been annexed to 1R10a.

Even though 1R10a is said to have been served on the Petitioner in Parliament, the Petitioner did not respond to 1R10a nor did he present himself before the Disciplinary Committee on 24th January 2023. The Disciplinary Committee did not proceed with the inquiry, although it was within their power to do so since 1R10a had been personally delivered to the Petitioner. By letter dated 5th February 2023 [**P4(c)**], the Chairman of the Disciplinary Committee had once again requested the presence of the Petitioner at a hearing scheduled for 24th February 2023. It was also conveyed by P4(c) that the presence of the Petitioner is mandatory and that any failure will result in the inquiry proceeding *ex-parte.*

The Petitioner responded to P4(c) by letter dated 23rd February 2023 [**P5(a)**] in which he stated that he is not in receipt of 1R10a and the charge sheet annexed thereto, and that in any event, the inquiry be postponed as he has a previously scheduled meeting on that date. The Disciplinary Committee had acceded to the said request of the Petitioner and

by letter dated 15th March 2023 [**P4(d)**] re-submitted the charge sheet [**P4(e)**] and informed the Petitioner that, (a) the Committee has agreed to re-schedule the disciplinary inquiry for either 4th April 2023 or 26th April 2023, and (b) the Petitioner may choose one of the said two dates convenient to him and inform his decision to the Disciplinary Committee by 27th March 2023. The Petitioner was informed further that if he fails to respond, the inquiry would commence on 4th April 2023 and in the event he is not present on that date, the inquiry would proceed in his absence.

The Petitioner claims that he responded to P4(d) by letter dated 27th March 2023 [**P5(c)**] sent through an Attorney-at-Law. P5(c) is not on a letter head of an Attorney-at-Law nor does it contain the name or the signature of the sender. P5(c) sought the withdrawal of P4(d) on the basis that the Disciplinary Committee has no legal authority to conduct an inquiry, even though P5(c) did not elaborate any further. Thus, even if one accepts that P5(c) was sent by or on behalf of the Petitioner, it is clear that having submitted himself to the jurisdiction of the Disciplinary Committee by P5(a), the Petitioner had a change of mind and was not going to participate at the proceedings before the Disciplinary Committee.

<u>The events of 4th April 2023</u>

Two important events took place on 4th April 2023.

The first important event that took place on 4th April 2023 is the filing of action by the Petitioner in the District Court of Nugegoda [Case No. SPL/624/2023] against the General Secretary of the 1st Respondent, the Chairman of the Disciplinary Committee and the leader of the 1st Respondent, naming them as the 1st, 2nd and 3rd defendants, respectively. Of the said defendants, the 1st and 3rd defendants are before this Court as the 2nd and 3rd Respondents. A copy of the plaint has been tendered marked '**P8**'.

The Petitioner had sought a declaration that the charge sheet P4(e) is null and void and *inter alia* a permanent injunction, interim injunction and an enjoining order preventing the three defendants from taking any disciplinary action against the Petitioner based on the charge sheet and P4(d). Although the Petitioner claims that he obtained an enjoining

order on the same date, the Petitioner has not tendered a copy of the order delivered by the District Court. However, it is admitted that the Instructing Attorney-at-Law of the Petitioner had not taken steps to have the said enjoining order served on the Disciplinary Committee or to apprise the Disciplinary Committee of such order. Thus, when the Disciplinary Committee commenced its sittings at 4pm on 4th April 2023, there was no impediment to it proceeding with the inquiry against the Petitioner.

This brings me to the second important event that took place on 4th April 2023, that being, notwithstanding P5(c), the proceedings of the Disciplinary Committee commenced as scheduled at 4pm on 4th April 2023. The proceedings of that date have been marked as '**1R20**'. Having recorded the fact that the Petitioner has not indicated which of the two days proposed in P4(d) are convenient to him and that the Petitioner is absent, the Disciplinary Committee had decided to proceed with the inquiry in the absence of the Petitioner. The Prosecuting Officer had led the evidence of the 2nd Respondent and produced some of the above documents to establish that the Petitioner had violated the provisions of P2 by accepting a ministerial portfolio in a Government of which the 1st Respondent was not a member.

The decision of the Disciplinary Committee has been tendered with the Statement of Objections marked '**1R21**'. I have examined 1R21 and it is clear that the Disciplinary Committee has considered the evidence, both oral and documentary, and thereafter found the Petitioner guilty of all charges for the reasons recorded therein. I must state that the Petitioner does not impugn the findings of the Disciplinary Committee, and for good reason.

<u>Decision of the Working Committee and the expulsion of the Petitioner</u>

The 3rd Respondent states that acting in terms of the powers vested in him by paragraph 13.3(xx) of P2, he summoned a meeting of the Working Committee for 18th July 2023. An extract of the minutes of the said meeting was tendered with the Statement of Objections of the 1st – 3rd Respondents [**1R26**], and the minutes themselves [**X1**] together with the signature sheet of the attendees [**X2**] were tendered thereafter supported by an affidavit of the 3rd Respondent. It is clear from the said minutes that the Chairman of the

Disciplinary Committee had presented 1R21 to the 3rd Respondent and that in the absence of the 2nd Respondent, a summary of the report had been presented to the Working Committee by the Deputy General Secretary of the 1st Respondent. Having considered the said findings, the members of the Working Committee had unanimously decided to expel the Petitioner from the 1st Respondent.

This decision of the Working Committee has been communicated to the Petitioner by letter dated 18th July 2023 signed by the 3rd Respondent [**P9**].

Article 99(13)(a) of the Constitution and its proviso

The consequences that follow an expulsion of a Member of Parliament from the membership of the political party or independent group from which he was elected have been set out in Article 99(13)(a) of the Constitution.

Article 99(13)(a) reads as follows:

> "*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 Petitioner, aggrieved by P9, invoked the above jurisdiction of this Court by his petition filed on 15th August 2023. While the principal relief sought is a declaration that the decision to expel the Petitioner as communicated by P9 is invalid, the Petitioner has also sought a declaration that the constitution and/or appointment of the Disciplinary Committee, and the charge sheet issued by such Committee is in violation of the Constitution of the 1st Respondent and is thereby of no force or avail in law.

The nature of the jurisdiction of this Court

Prior to considering the several arguments presented by the learned President's Counsel for the Petitioner, there are two matters that I must briefly discuss in order to place in context the manner in which I must consider the several issues that have been raised in this application.

The first is the nature of the jurisdiction of this Court when an application is made under Article 99(13)(a) of the Constitution. In **Gamini Dissanayake v M. C. M. Kaleel and Others** [(1993) 2 Sri LR 135; at page 198], Mark Fernando, J in the minority judgment stated as follows:

> "*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, 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****…." [emphasis added]

In the majority judgment delivered by this Court in **Tilak Karunaratne v Mrs. Sirimavo Bandaranaike and Others** [(1993) 2 Sri LR 90; at pages 101-102], Dheeraratne, J stated that:

> "*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 courts jurisdiction includes, an investigation into the requisite competence of the expelling authority; an investigation as to whether the expelling authority followed the procedure, if any, which was mandatory in nature; an investigation as to whether there was breach of principles of natural justice in the decision making process; and an investigation as to whether in the event of grounds of expulsion being specified by way of charges at a domestic inquiry, the member was expelled on some other grounds which were not so specified*…." [emphasis added]

Having thereafter considered the submission of Mr. H.L. De Silva, PC appearing for the respondents in that application that although Court could interfere if the decision of the expelling authority was unreasonable in the *'Wednesbury sense*', but since the decision to expel the petitioner was a political decision judges should not enter the political thicket, Dheeraratne, J stated that "*Our jurisdiction appears to be wider;* ***it is an original jurisdiction on which no limitations have been placed by Article 99(13)(a)***" and referred to the above passage of Mark Fernando, J in **Dissanayake** in support of his position. I must state that the views expressed by Mark Fernando, J have been referred to in almost every judgment delivered by this Court where the applicability of the proviso to Article 99(13)(a) has been considered.

In **Zainul Abdeen Nazeer Ahamed v The Sri Lanka Muslim Congress and Others** [SC Expulsion No. 01/2022; SC minutes of 6th October 2023] Padman Surasena, J considered *inter alia* the above decisions and the decisions in **Ameer Ali and Others v Sri Lanka Muslim Congress and Others** [(2006) 1 Sri LR 189], **Sarath Amunugama and Others v Karu Jayasuriya, Chairman UNP and Others** [(2000) 1 Sri LR 172] and **Perumpulli Hewage Piyasena v Illankai Thamil Arsukachchi and Others** [(2012) 1 Sri LR 215] and stated as follows:

"*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*." [emphasis added]

Standard of review

The second matter that I wish to address at the outset is the standard of review. In **Rambukwella v United National Party and Others** [(2007) 2 Sri LR 329; at page 341], this Court was confronted with the submission of the respondent that a political party is a private organisation consisting of its members who come together on the basis of a constitution of such Party and hence the expulsion of a member should be viewed from the same perspective as that of a member from a private club without introducing the high standard of review that apply in Public Law, and the opposing submission that in view of the serious impact that an expulsion has on the rights of the member the standard of review must be the same as under Public Law.

Chief Justice Sarath Silva, having considered the above submissions in the light of Section 7 of the Parliamentary Elections Act No.1 of 1981, the law relating to expulsion of a Member of Parliament from his or her membership of the political party on whose ticket such member was elected as it stood prior to the present Constitution of 1978 and the evolution of Article 99, held as follows:

"*In view of the change of the Electrical System effected by the Fourteenth Amendment the review of the validity of a decision of expulsion has to be, in my view, now considered not only from the perspective of a vacation of the seat of the*

Member in Parliament but also from the perspective of the impact on the Electorate from which he was declared on the basis of preferential votes cast in his favour. ***As a result of the expulsion by the Party the voters preferred candidate is removed from his seat in Parliament and replaced by a candidate who at the original election failed to obtain adequate preferential votes to gain election to Parliament.*** *In short the winning candidate is replaced by a candidate who has lost, as a result of the expulsion.* ***Thus in consequence of the expulsion not only the member loses his seat in Parliament but also there is a subversion of the preference indicated by the electors in exercising their franchise.*** *In view of these far reaching consequences I am inclined to agree with the submission of Mr. Wijesinghe, that* ***the standard of review of a decision of expulsion should be akin to that applicable to the review of the action of an authority empowered to decide on the rights of persons in Public Law****. Generally such review comes with the rubric of Administrative Law.*" [emphasis added]

I must state that the cumulative effect of the aforementioned views expressed by this Court over the last thirty plus years, with which I am in agreement, is that the jurisdiction conferred on this Court by the proviso to Article 99(13)(a) is indeed extremely wide and that the level of scrutiny is equally high. Having said so, I must lay down three matters that I wish to be guided by, in considering the several matters raised by the parties in this application.

Jurisdiction is not discretionary

The first is that the power conferred by the proviso to Article 99(13)(a) is not discretionary in nature and hence, I shall refrain from venturing into a consideration of any arguments that may be taken when this Court is exercising a discretionary jurisdiction. As in this application, an allegation was raised in **Perumpulli Hewage Piyasena v Ilankai Tamil Arasu Kadchi** [supra] that the Petitioner has suppressed or misrepresented material facts. Saleem Marsoof, PC, J having considered that issue, held as follows:

"*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 there under merely on the ground of suppression or misrepresentation of material facts, as in cases involving injunctive relief or applications for prerogative writs." [page 222]

"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." [pages 223-224]

Similarly, I am not inclined to uphold the submission of the learned President's Counsel for the 1st and 2nd Respondents and the learned Counsel for the 3rd Respondent that the members of the Working Committee should have been named as respondents to this

application. While serving as a Judge of the Court of Appeal, I have considered this identical submission in **Porakara Mudiyanselage Aruna Samantha Kumara v T.A.C.N. Thalangama and Others** [CA (Writ) Application No. 238/2020; CA minutes of 21st May 2021] where an expulsion of a member of a local authority by the political party to which such member belonged was challenged in a writ application filed in terms of Article 140 of the Constitution. With the jurisdiction vested in the Court of Appeal being discretionary and with the petitioners in that case having named as respondents some of the members of the working committee of the respondent political party and having sought permission to add the other members though a ruling had not been made, I exercised my discretion in favour of the petitioners and over ruled such objection *inter alia* for the following reasons:

(a) The failure to name all members of the Working Committee as Respondents has not prejudiced those who have been named/not named as Respondents; and

(b) The reasons for the expulsion can still be placed before this Court by the members who have been added as Respondents.

I would go a step further in this application by stating that I am exercising a Constitutionally vested jurisdiction which involves no discretion and that given what is being challenged is the decision of a political party to expel from its membership a Member of Parliament, the presence before this Court of the political party itself together with its General Secretary and its Leader would suffice in the Respondents seeking to justify the grounds for the expulsion.

Merits of the decision

The second matter that I shall be guided by is that although the merits of the decision to expel a member can be examined and has in fact been examined in several previous applications and can be examined in future applications as well, given the width and breadth of the jurisdiction of this Court, I must exercise caution in venturing into the arena of considering the merits of the decision that led to an expulsion of a Member of Parliament, especially in an application such as this where the violation is apparent and arises as a matter of policy on the part of the 1st Respondent.

Mr. M. A. Sumanthiran, the learned President's Counsel for the 1st Respondent submitted that what has now happened is a tragi-comedy in that the Petitioner, having been elected to Parliament on the nomination list of the 1st Respondent, violates the Constitution of the 1st Respondent, crosses the aisle of Parliament, sits on the Government benches having accepted ministerial office, votes with the Government and is now challenging his expulsion from the Opposition ranks. He submitted further that the People *do not elect a Member of Parliament intending them to cross the aisle from side to side to satisfy their personal whims and fancies and destroying the very fabric of an electoral system*, and for that reason, party discipline is extremely important for the effective functioning of a political party and that primacy must be given to the political party over an elected member.

Kulatunga, J in **Jayatillake and Another v Kaleel and Others** [(1994) 1 Sri LR 319; at page 400] held that, "*In handling a crisis of the magnitude faced by the respondents and in dealing with men of the petitioners' caliber,* ***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*." [emphasis added]

In **Tilak Karunaratne v Mrs. Sirimavo Bandaranaike and Others** [supra; at page 111] Dheeraratne, J stated further that:

> "*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." [emphasis added]

A similar view has been expressed in **Dissanayake** [supra; at page 138], where Kulatunga, J stated that, "*Our Constitution confers primacy to the political party as against the individual M.P. The party carries the mandate of the electors and in turn gives a mandate to the M.P. The exercise of the rights of the petitioners qua MP's is subordinate to the requirements of party discipline and their freedom to agitate matters in public is constrained by reason of their obligations to the party which they have freely undertaken to honour*." Ms. Sureka Ahmed Jayasinghe, the learned Senior State Counsel appearing for the 4th – 9th Respondents submitted that this amorphous '*mandate of the people*' argument should not be used to undermine party discipline which, as made evident by such offices as party whips, is integral to our democratic form of government.

In this background, I am of the view that much deference as possible must be shown to the decision of the political party when it says that one of its members have violated its constitution and that it can no longer have that person as a member of that party. As submitted by Mr. Hejaaz Hizbullah, the learned Counsel for the 3rd Respondent, *to demand that SJB continue to keep the Petitioner as a member of the party is like forcing a cricket team to share the dressing room with a player from the other side.* Unless in exceptional circumstances such as where malice or bias on the part of the decision maker is alleged and such allegations are supported by cogent evidence or where the expulsion is unlawful or capricious or the reasons given for the expulsion are flimsy, farfetched or imaginary, I am of the view that the merits of the decision that culminated in an expulsion is a matter that is best left within the domain of the relevant political party. As Kulatunga, J stated in **Jayatilake and Another v Kaleel and Others** [supra; at page 234], "*a political party must be allowed a discretion to decide what sanctions are appropriate for violations of Party discipline.*"

I must perhaps state that in this application, the necessity for this Court to examine the merits does not arise for two reasons. The first is that the reason for the expulsion is very clear and needs no further consideration. Party discipline is paramount and as submitted by the learned Senior State Counsel, there has been an unambiguous violation of an

unambiguous rule by the Petitioner. The Petitioner was a founder member of the 1st Respondent and ought to have been fully conversant with the provisions of its constitution. Having been present at the Working Committee meeting on 10th May 2022, the Petitioner was privy to the decision taken at such meeting that no member shall accept any post in a Government of which the 1st Respondent is not a party. Notwithstanding, he joins such a Government 12 days later. The second reason is that the Petitioner himself has not sought to impugn the decision on its merits at any stage of the process that commenced on 20th May 2022, except perhaps the explanation said to have been offered by P5(b).

Compliance with procedure

The third matter that I shall be guided by is that I must be satisfied that there has been substantial compliance with the procedure laid down in the constitution of the 1st Respondent, for the following reasons:

(a) The relationship between the Petitioner and the 1st Respondent is contractual and the Petitioner is entitled to demand that the contractual provisions be followed and adhered to;

(b) The standard of review is akin to that of an application where the principles of Public Law would apply;

(c) The consequence that follow an expulsion have an impact not only on the Petitioner but also on those who voted for him.

In **Dissanayake** [supra; page 234], Kulatunga, J observed that, "*The right of a Member of Parliament to relief under Article 99(13)(a) is a legal right and forms part of his constitutional rights as a Member of Parliament.*" A similar view was expressed in **Safiul Muthunabeen Mohamed Muszhaaraff v S. Suairdeen and Others** [SC Expulsion No. 02/2022; SC minutes of 29th February, 2024] where Priyantha Jayawardena, PC, J held that:

"*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*."

Arguments of the Petitioner

Mr. Faiszer Musthapha, the learned President's Counsel for the Petitioner presented the following four principal arguments before us:

(1) The Petitioner has not been expelled by and/or from the 1st Respondent in that the terminology that has been used in P9 is wrong;

(2) The impugned decision of the Working Committee of the 1st Respondent is violative of the enjoining order issued by the District Court of Nugegoda in Case No. SPL/624/2023;

(3) The procedure laid down in P2 has not been followed, in that the Disciplinary Committee has not been appointed by the Working Committee;

(4) The Petitioner has not been afforded a hearing by the 1st Respondent and/or its Working Committee and/or the Disciplinary Committee.

The Petitioner has not been expelled from the 1st Respondent

In terms of Article 99(13)(a), where a Member of Parliament **ceases to be a member** of a recognised political party or independent group on whose nomination paper his name appeared at the time of his becoming such Member of Parliament, **by resignation**, **expulsion** or **otherwise**, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member. Thus, the Constitutional requirement is that the cessation of membership must occur either by resignation, expulsion or otherwise, which means in any other manner. The Sinhala wording used is

"ඉල්ලා අස්වීමෙන් හෝ පහ කිරීමෙන් හෝ අන් හේතුවක් නිසා හෝ **නතර වූ අවස්ථාවක**". Having said that, the jurisdiction of this Court which has been conferred by the proviso to such Article is limited, for obvious reasons, to expulsion. Thus, any argument that a Member of Parliament has ceased to be a member of a political party other than by expulsion would mean that the proviso would not apply and such cessation cannot be challenged before this Court.

Be that as it may, the first submission of the learned President's Counsel for the Petitioner was that:

(a) the impugned letter P9 is not a letter of expulsion in that the terminology used in P9 does not reflect the terminology used in P2, and for that reason, P9 is not in accordance with the provisions of P2; and

(b) as the Petitioner has not been expelled, the disqualification in Article 99(13)(a) does not apply to the Petitioner.

The learned President's Counsel for the Petitioner thereafter drew our attention to Paragraph 3.12 of P2 which reads as follows:

> "කෘත්‍යාධිකාරී මණ්ඩලය විසින් විනය කමිටු පත්කළ යුතු අතර එම විනය කමිටු විසින් ලබාදෙන නිර්දේශ සැලකිල්ලට ගෙන යම් සාමාජිකයෙකුගේ **පක්ෂ සාමාජිකත්වය අත්හිටුවීමට** හෝ යම් සාමාජිකයෙකු **පක්ෂ සාමාජිකත්වයෙන් නෙරපීමට** හෝ **සුදුසු වෙනත් විනය ක්‍රියාමාර්ග ගැනීමට** කෘත්‍යාධිකාරී මණ්ඩලය බලය ඇත්තේය."

It was the position of the learned President's Counsel for the Petitioner that in terms of P2, the Working Committee, having considered the report of the Disciplinary Committee, can arrive at three possible decisions, namely to suspend the member, expel the member or take any other appropriate disciplinary action against such member.

According to the 1st – 3rd Respondents, the Working Committee, having considered the report of the Disciplinary Committee had arrived at the following decision – *vide* **1R26**:

> "ඒ අනුව පසුගිය විනය පරීක්ෂණ කමිටුවේ වාර්තාව සත්‍ය වාර්තාවක් ලෙස සම්මත කිරීමටත් එකි කමිටුවේ විනය පරීක්ෂණ මණ්ඩලයේ තීරණය සහ නිර්දේශ සළකා බලා සමගි ජන බලවේගය

> ව්‍යවස්ථාවලියේ 3(12) ව්‍යවස්ථාවේ ප්‍රතිපාදන ප්‍රකාරව කටයුතු කරමින් ගරු නාලක පුඩි හරින් ප්‍රනාන්දු, මහතාට සහ **ගරු මලිගස්පේ කෝරළගේ නලින් මනුෂ නානයක්කාර මහතා පක්ෂ සාමාජිකත්වයෙන් නෙරපා හැරීමට** ගරු හර්ෂණ රාජකරුණා මැතිතුමන් විසින් යෝජනා කරන ලද අතර එකි යෝජනාව මුපිබර් රහුමාන් මැතිතුමන් විසින් ස්ථිර කරන ලදි.
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> එකි යෝජනාය අනුව සමගි ජන බලවේගයේ කෘත්‍යාධිකාරී මණ්ඩලය 2023-07-18 වන දින සමගි ජන බලවේගය ව්‍යවස්ථාවලියේ 3(12) ව්‍යවස්ථාවේ ප්‍රතිපාදන ප්‍රකාරව කටයුතු කරමින් ගරු නාලක පුඩි හරින් ප්‍රනාන්දු, මහතා සහ **ගරු මලිගස්පේ කෝරළගේ නලින් මනුෂ නානායක්කාර මහතා සමගි ජන බලවේගයේ පක්ෂ සාමාජිකත්වයෙන් නෙරපා හැරීමට සමගි ජන බලවේගයේ කෘත්‍යාධිකාරී මණ්ඩලයට ඒකමතිකව තීරණය කරන ලදි.**"

Thus, the unanimous decision of the Working Committee of the 1st Respondent was that the Petitioner shall be expelled from the 1st Respondent. To that extent, the decision of the Working Committee is clear and is in accordance with P2.

The last three paragraphs of the impugned letter P9 by which the above decision was conveyed by the 3rd Respondent to the Petitioner reads as follows:

> "විනය පරීක්ෂණ මණ්ඩලය එම දිනයේදී ඒකපාර්ශ්විකව විනය පරීක්ෂණය පවත්වා විනය පරීක්ෂණ වාර්ථාව මා වෙත ඉදිරිපත් කර ඇත. එකී විනය මණ්ඩලය පරීක්ෂණ වාර්ථාව අනුව චෝදනා පත්‍රයේ සඳහන් චෝදනා 08 ඔබ වැරදිකරු බවට විනය පරීක්ෂණ මණ්ඩලය තීරණය කොට ඇත.
>
> සමගි ජනබලවේග පක්ෂයේ නායක ලෙස පක්ෂ ව්‍යවස්ථාව ප්‍රකාරව මා හට පැවරී ඇති බලතල අනුව මා විසින් එය වර්ෂ 2023.07.18 වන දින පක්ෂයේ කෘත්‍යාධිකාර මණ්ඩලය වෙත ඉදිරිපත් කරන ලදි.
>
> ඒ අනුව කෘත්‍යාධිකාර මණ්ඩලය විසින් සමගි ජනබලවේග පක්ෂ ව්‍යවස්ථාවේ 3:10 3:11 3:12 සහ 3:13 වගන්ති ප්‍රකාරව ගන්නා ලද ඒකමතික තීරණය මත ඔබ චෝදනා පත්‍රයේ සඳහන් චෝදනා සියල්ලටම වැරදිකරු බවට සනාථ වී ඇති බැවින් ඔබගේ පක්ෂ සමාජිකත්වය අද දින සිට ක්‍රියාත්මක වන පරිදි **තහනම්** කරන බවට ඔබට මෙයින් දැනුම් දෙමි."

Furthermore, the above decision of the Working Committee has been conveyed by the 3rd Respondent to the Chairman, Election Commission [**1R28a**] and the Secretary General of Parliament [**1R28b**]. In both letters:

(a) The caption reads as follows: "මනුෂ නානායක්කාර යන පාර්ලිමේන්තු මන්ත්‍රීවරයාගේ පක්ෂ සාමාජිකත්වය **අහෝසි කිරීම** සම්බන්ධයෙනි";

(b) The final paragraph reads as follows: "ඒ අනුව එකී මනුෂ නානායක්කාර යන පාර්ලිමේන්තු මන්තිවරයා මන්ති ධුරයෙන් **ඉවත් කිරීම** සම්බන්ධයෙන් අවශ්‍ය ඉදිරි ක්‍රියා මාර්ග ගන්නා ලෙස ඔබතුමාගෙන් ඉතා කාරුණිකව ඉල්ලා සිටිමි"

The learned President's Counsel for the Petitioner submitted that the terminology used in P9 [**තහනම් කිරීම**] as well as in 1R28a and 1R28b [**අහෝසි කිරීම / ඉවත් කිරීම**] are different to that in P2 and for that reason, P9 is not a valid letter of expulsion. However, the word, "**නෙරපනවා**" has been defined in the "ගුනසේන මහා සිංහල ශබ්ද කෝෂය" to include the word, "**ඉවත් කරනවා**". I must state that even if there is any discrepancy in the terminology, what is critical in terms of P2 is the decision of the Working Committee and not the use of the specific terminology when the said decision is conveyed. The unanimous decision of the Working Committee, as borne out by 1R26 was to expel the Petitioner. There is no doubt about that.

Having said so, on the face of it, the terminology used in P9 is not the same terminology used in P2. However, the word, '**නෙරපීම**' in Paragraph 3.12 means to expel a person and the word, '**තහනම්**' in P9 means to ban someone, with the result that such person loses his membership in the political party. Both words convey the same intention and effect, that the Petitioner has ceased to be a member of the 1st Respondent. The decision of the Working Committee and its conveyance by P9 are amply sufficient to trigger the provisions of Article 99(13)(a) and its proviso. In these circumstances, I am satisfied that the Petitioner has ceased to be a member of the 1st Respondent as a result of his expulsion by its Working Committee. I therefore see no merit in the first argument of the learned President's Counsel for the Petitioner.

<u>Violation of the enjoining order</u>

The second argument of the learned President's Counsel for the Petitioner was that the impugned decision of the Working Committee of the 1st Respondent taken at its meeting held on 18th July, 2023 contravenes the enjoining order issued by the District Court of Nugegoda in Case No. SPL/624/2023.

I have already referred to the fact that having afforded the Petitioner two opportunities of presenting his defence, the Disciplinary Committee issued an ultimatum to the

Petitioner by its letter dated 15th March 2023 marked P4(d) to present himself before the said Committee and that the Petitioner was even afforded the courtesy of choosing the date of the inquiry.

In his plaint filed on 4th April 2023, the Petitioner, in referring to the three Defendants, had stated in paragraph 3 of the plaint [**P8**] that:

> "ඉහත නම් සඳහන් කළ 1 වන විත්තිකරු සමගි ජන බලවේගයේ සාමාජිකයෙකු වන අතර සමගි ජන බලවේගයේ ලේකම්වරයා ද වේ. දෙවන විත්තිකරු සමගි ජන බලවේගයේ උද්දේශිත විනය කමිටුවේ සාමාජිකයෙකු වේ. **සමගි ජන බලවේගයේ සමස්ථ සාමාජිකත්වය වෙනුවෙන් තුන්වන විත්තිකරුට එරෙහිව මෙම නඩුව පවරනු ලබයි.**"

Having indicated that the purpose of naming the 3rd defendant as a party to the action was for him to represent the entire membership of the 1st Respondent political party, and although by paragraph (a) of the prayer to the plaint, the Petitioner had prayed for permission to name the 3rd defendant as representing the entire membership of the 1st Respondent, the Petitioner has not produced any evidence to establish that he obtained permission in this regard from the District Court.

The Petitioner had also sought *inter alia* a declaration that the charge sheet served on him by the Disciplinary Committee is null and void, and a permanent injunction, interim injunction and an enjoining order preventing the three defendants from taking any disciplinary action against the Petitioner based on the charge sheet, and P4(d).

Paragraphs (I) and (J) by which the said enjoining orders had been sought are re-produced below:

> "(i) ඉහත කි P4 e ලෙස සලකුණු කර ඇති චෝදනා පත්‍රය මත කිසිදු පියවරක් ගැනීමෙන් 1, 2, 3 විත්තිකරුවන් සහ ඔවුන්ගේ සේවකයන් නියොපිතයන් සහ ඔවුන් යටතේ කටයුතු කරන්නන් වළක්වාලන අතුරු තහනම් නියෝගය සම්බන්දයෙන් වන විමසීම අවසන් වෙන තෙක් බලපවත් වන වාරණ නියෝගයක් නිකුත් කරණ ලෙසටද
>
> (j) ඉහත කි ලෙස P4 d ලෙස සලකුණු කර ඇති 2023 – 03 – 15 දිනැති ලිපිය මත කිසිදු පියවරක් ගැනීමෙන් 1, 2, 3 විත්තිකරුවන් සහ ඔවුන්ගේ සේවකයන් නියොපිතයන් සහ ඔවුන් යටතේ කටයුතු කරන්නන් වළක්වාලන අතුරු තහනම් නියෝගය සම්බන්දයෙන් වන විමසීම අවසන් වෙන තෙක් බලපවත් වන වාරණ නියෝගයක් නිකුත් කරණ ලෙසටද"

Thus, the gravamen of the Petitioners complaint was with the letter dated 15th March 2023 [P4(d)].

Although it is admitted that the District Court had issued the above enjoining order/s on 4th April 2023, the Petitioner has not tendered a copy of the proceedings of that date nor the order delivered by the District Court by which the said enjoining order/s had been granted. I have already stated that the said enjoining order was not served on the Disciplinary Committee, and with there being no impediment, the Disciplinary Committee proceeded with the inquiry that was scheduled for 4th April 2023 and concluded its hearing the same day.

On 2nd May 2023, the defendants had filed a petition and affidavit in terms of Sections 664(3) and 666 of the Civil Procedure Code [**1R24**] seeking to vacate the said enjoining order. Among the matters that the said defendants had brought to the notice of the District Court as part of their obligation to make full disclosure of material facts was that the Disciplinary Committee had proceeded with the inquiry on 4th April 2023, that the Petitioner has been found guilty of all charges, that the recommendations of the Disciplinary Committee have been submitted to the Working Committee in terms of Paragraph 3.12 of P2 and the following matter:

> "එබැවින් දැනට මෙම වාරණ නියෝගයට අදාළ වූ වර්ෂ 2023-03-15 දිනැති ලිපිය සහ වර්ෂ 2023-01-12 දිනැති වෝදනා පත්‍රය සම්පූර්ණයෙන්ම වලංගු නිත්‍යානුකූල සහ ව්‍යවස්ථානුකූල ලේඛන වන බවත් **එකී ලේඛන සම්බන්ධ ඉදිරි කටයුතු කෘත්‍යාධිකාරී මණ්ඩලය හමුවේ පවතින බවත්** එම කෘත්‍යාධිකාරී මණ්ඩලය හෝ එහි සාමාජිකයින් මෙම නඩුවේ පාර්ශ්වකයන් නොවන බවත් එබැවින් ඊට විරුද්ධව තවදුරටත් මෙම වාරණ නියෝගය ක්‍රියාත්මක කල නොහැකි බවත්."

The defendants had very clearly put the Petitioner on notice that much water has flowed under the bridge since the letter dated 15th March 2023 and that the matter is now before the Working Committee, thus changing the entire scope and ambit of the plaint filed in the District Court.

Having heard the learned Counsel, the District Court by its Order delivered on 14th June 2023 [**1R25**] vacated the enjoining order previously issued against the 2nd and 3rd

defendants. The District Court however did not vacate the enjoining order issued against the 1st defendant, that being the General Secretary of the 1st Respondent. Thus, while the 2nd Respondent in his capacity as General Secretary of the 1st Respondent could not have played any role in the disciplinary proceedings relating to the Petitioner, there was no impediment after the above variation on 14th June 2023 to either the 1st Respondent, the 3rd Respondent or the Working Committee of the 1st Respondent from proceeding with disciplinary action against the Petitioner.

The learned President's Counsel for the Petitioner submitted that even though the 3rd Respondent was no longer enjoined from taking any further action against the Petitioner, the 2nd Respondent and those acting under his authority were enjoined from convening a Working Committee meeting for any discussion and/or ratification of the disciplinary matters against the Petitioner and taking any further action against the Petitioner. It was the position of the learned President's Counsel for the Petitioner that even though the 2nd Respondent was not present at the meeting of the Working Committee held on 18th July 2023, the meeting of the Working Committee had been convened by the 2nd Respondent in violation of the enjoining order and for that reason, the decision arrived at by the Working Committee on 18th July 2023 to expel the Petitioner is invalid.

Paragraph 3.13(xx) of P2 provides that, "පක්ෂ නායකයාගේ උපදෙස් මත මහ ලේකම්වරයා විසින් කෘත්‍යාධිකාරී මණ්ඩලය අවම වශයෙන් මාසයකට වරක් කැඳවිය යුතුය. පක්ෂයේ නායකයාට අවශ්‍ය අවස්ථාවකදි කෘත්‍යාධිකාරී මණ්ඩලය කැඳවීමට බලය ඇත්තේය."

Thus, while the entity tasked with taking decisions for the 1st Respondent is its Working Committee, the power to call for a meeting of the Working Committee can be exercised by its General Secretary at the request of the 3rd Respondent or directly by the 3rd Respondent. In his affidavit to this Court, the 2nd Respondent has stated that, "*I did not participate in any manner whatsoever in the decision making process pertaining to the same in view of the Order of the District Court*", a fact which is borne out by the minutes of the meeting 1R26 and has been confirmed by the 3rd Respondent in his affidavit.

The fact that the meeting was called by the 3rd Respondent is borne out by 1R28a and 1R28b. This is further established by the following paragraph in P9 where the 3rd Respondent has taken the responsibility of placing 1R21 before the Working Committee:

> "විනය පරීක්ෂණ මණ්ඩලය එම දිනයේදී ඒකපාර්ශ්විකව විනය පරීක්ෂණය පවත්වා විනය පරීක්ෂණ වාර්ථාව මා වෙත ඉදිරිපත් කරන ඇත. එකී විනය මණ්ඩලය පරීක්ෂණ වාර්ථාව අනුව චෝදනාපත්‍රයේ සඳහන් චෝදනා 08 ඔබ වැරදිකරු බවට විනය පරීක්ෂණ මණ්ඩලය තීරණය කොට ඇත.
>
> **සමගි ජනබලවේග පක්ෂයේ නායක ලෙස පක්ෂ ව්‍යවස්ථාව ප්‍රකාරව මා හට පැවරී ඇති බලතල අනුව මා විසින් එය වර්ෂ 2023.07.18 වන දින පක්ෂයේ කෘත්‍යාධිකාර මණ්ඩලය වෙත ඉදිරිපත් කරන ලදි.**"

In the absence of any material to contradict this position, I am satisfied that the 2nd Respondent did not convene the meeting of the Working Committee held on 18th July 2023 nor has he taken any steps in contravention of the enjoining order issued against him. In any event, the enjoining order against the 2nd Respondent was to prevent any further steps being taken on P4(d) and P4(e) but as intimated by the defendants in that case to the District Court, the Disciplinary Committee had already proceeded to hear the matter and submitted its findings to the Working Committee. Thus, even though there existed an enjoining order, it was limited in its practical application and events subsequent to 4th April 2023 had made such order futile. In these circumstances, I see no merit in the second argument of the learned President's Counsel for the Petitioner.

Appointment of the Disciplinary Committee

This brings me to the third argument of the learned President's Counsel for the Petitioner, that being:

(a) P4(a) was not placed before a properly constituted meeting of the Working Committee; and/or

(b) the Working Committee did not take a decision to appoint a Disciplinary Committee to look into the breach of the provisions of P2 by the Petitioner as required by Paragraph 3.12 of P2,

and for that reason, the recommendations of the Disciplinary Committee are illegal as it has not been validly constituted.

As Dheeraratne, J stated in **Tilak Karunaratne v Mrs. Sirimavo Bandaranaike and Others** [supra; at page 101], "*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.*"

I must at this point advert to certain provisions of the constitution of the 1st Respondent P2, as the said provisions clearly demonstrate that (a) within the 1st Respondent there is no concentration of power in one person, (b) almost all decisions are taken by the Working Committee after deliberation, and (c) such decisions are thereafter placed at the annual Party Conference for review by the entire membership.

While Paragraph 13.3 (i) – (xxix) of P2 sets out the extensive powers and functions of the Working Committee, Paragraph 13.3(i) provides as follows:

> "**පක්ෂයේ පරිපාලන කටයුතු සිදු කිරීමේ බලාධිකාරය කෘත්‍යාධිකාරී මණ්ඩලය වන අතර පක්ෂය වෙනුවෙන් තීරණ ගැනීමේ බලය කෘත්‍යාධිකාරී මණ්ඩලය සතුවේ.** එකි තීරණ පක්ෂ සම්මේලනයේ සමාලෝචනයට යටත්ව අවසානාත්මක වේ. කෘත්‍යාධිකාරී මණ්ඩලය විසින් පක්ෂයේ ජාතික විධායක කම්ටුව විසින් තීරණය කරනු ලබන වැඩසටහන් ක්‍රියාත්මක කළ යුතු අතර පක්ෂ ව්‍යවස්ථාව, ස්ථාවර නියෝග, රීතීන්, පක්ෂයේ ආචාරධර්ම හා ප්‍රතිපත්ති ක්‍රියාත්මක වන බවට වග බලා ගත යුතුය."

Other than the limited power vested in the 3rd Respondent to suspend the membership of a member of the 1st Respondent in terms of Paragraph 3.13 to which I have already referred, disciplinary control of the members of the 1st Respondent is vested by P2 exclusively in its Working Committee. This is amply demonstrated by the following provisions of P2:

(1) Paragraph 13.3(iii) – " **යම් සංවිධානයක් අත්හිටුවීමෙන් හෝ අනුබද්ධතාවයෙන් බැහැර කිරීමෙන් හෝ පක්ෂයේ යම් සාමාජිකයෙකු හෝ යම් සංවිධානයක නිළධාරියෙකු හෝ සාමාජිකත්වයෙන් හෝ ධුරයෙන් ඉවත් කිරීමෙන් හෝ ඔහුගේ ධුරය අත්හිටුවීමෙන් හෝ සාමාජිකත්වය අත්හිටුවීමෙන් හෝ වෙනත් ආකාරයකින් හෝ යම් සාමාජිකයෙකුට හෝ පක්ෂයේ සංවිධානයකට හෝ නිලධාරියෙකුට**

විරුද්ධව විනයානුකූල පියවර ගැනීමේ බලය කෘත්‍යාධිකාරී මණ්ඩලය සතුවේ. එවැනි ක්‍රියාමාර්ගයක් ගනු ලැබූ විට එය පක්ෂයේ ඊලඟ වාර්ෂික සම්මේලනයට වාර්තා කළ යුතුයි."

(2) Paragraph 3.13 requires the 3rd Respondent to place before the Working Committee his decision to suspend the membership of a member and the response thereto, if any, and which thereafter obligates the Working Committee to decide on the future course of action that should be taken with regard to such member – "කෘත්‍යාධිකාරී මණ්ඩල රැස්වීමට ඉදිරිපත් කළ යුතු අතර කෘත්‍යාධිකාරී මණ්ඩලය විසින් එම පක්ෂ සාමාජිකයා සම්බන්ධයෙන් ගත යුතු ඉදිරි පියවර ගත යුතුය."

(3) Paragraph 3.12 – "**කෘත්‍යාධිකාරී මණ්ඩලය විසින් විනය කමිටු පත්කළ යුතු අතර** එම විනය කමිටු විසින් ලබාදෙන නිර්දේශ සැලකිල්ලට ගෙන යම් සාමාජිකයෙකුගේ පක්ෂ සාමාජිකත්වය අත්හිටුවීමට හෝ යම් සාමාජිකයෙකු පක්ෂ සාමාජිකත්වයෙන් නෙරපීමට හෝ සුදුසු වෙනත් විනය ක්‍රියාමාර්ග ගැනීමට කෘත්‍යාධිකාරී මණ්ඩලයට බලය ඇත්තේය."

Concomitant with its power to take decisions on behalf of the 1st Respondent [Paragraph 13.3(i)] is the power conferred on the Working Committee to take disciplinary action against members of the 1st Respondent [Paragraph 13.3(iii)], decide on the course of action that must be taken once a member has been suspended by the 3rd Respondent [Paragraph 3.13], and appoint a Disciplinary Committee [Paragraph 3.12] to consider such matters.

The above provisions act as procedural safeguards to protect the rights of the members of the 1st Respondent and ensure that no single person can take any arbitrary or capricious decision that affects their rights as members. Thus, except the limited power conferred on the 3rd Respondent to suspend the membership of a member, full disciplinary control over a member is vested in and must be exercised by the Working Committee of the 1st Respondent.

In paragraphs 42 – 49 of his petition, the Petitioner has stated that although a member of the Working Committee, he was not given notice of the Working Committee meeting pertaining to the appointment of a Disciplinary Committee and for that reason there was no proper Working Committee meeting constituted, and hence decisions taken at such meeting including the appointment of the Disciplinary Committee are invalid. This formed

the basis for the declaration sought by the Petitioner that the appointment of the Disciplinary Committee has been made in violation of P2. The averments in the above paragraphs of the petition have been denied in paragraph 15 of the Statement of Objections of the 1st – 3rd Respondents. I must state that the argument that, since the Petitioner did not receive notice of the establishment of the Disciplinary Committee the appointment of the Disciplinary Committee is suspect, is not tenable, because the Petitioner's membership in the 1st Respondent and from its Working Committee stood suspended with effect from 20th May 2022 and for that reason, the Petitioner was not entitled to be noticed of any meeting of the 1st Respondent after that date.

In paragraph 12(e) of their Statement of Objections, the 1st – 3rd Respondents have stated further that, "*the Working Committee of the SJB decided to appoint a Disciplinary Inquiry Committee to inquire into the allegations against the petitioner in terms of Article 3(12) of the Constitution and the said decision was communicated to the Petitioner by letter dated 15th November 2023 (sic) by the 2nd Respondent.*" The date of such meeting has however not been disclosed either in the Statement of Objections or in the said letter of 15th November 2022 [P4(b)]. Furthermore, the 1st – 3rd Respondents have not produced the minutes of the said meeting and the signature sheet.

Responding to this position, the learned President's Counsel for the Petitioner in the course of his submissions stated that if such a decision had been taken, the 1st – 3rd Respondents must corroborate same by producing the minutes of such meeting and that the only inference that can be drawn by the failure to do so is that the Working Committee did not appoint the Disciplinary Committee to look into the breach of the provisions of P2 by the Petitioner as required by Paragraph 3.12 of P2. Thus, it is a matter of evidence if such a meeting was in fact held, as claimed by the 1st – 3rd Respondents.

It is in this background, and being mindful of Paragraph 13.3(xx) of P2 in terms of which the power to summon a meeting of the Working Committee is vested with the 2nd and 3rd Respondents, and that the burden of establishing that due process has been followed and that the expulsion is valid is on the 1st Respondent, that I shall consider the correspondence exchanged between the parties, most of which I have already referred to.

The first document is P4(b) by which the 2nd Respondent informed the Petitioner that the Working Committee has appointed a Disciplinary Committee to inquire into the matters set out in P4(a). The Petitioner did not reply to P4(b). The second document is 1R10a, by which the Chairman of the Disciplinary Committee informed the Petitioner that a Disciplinary Committee has been appointed by the Working Committee. The Petitioner did not reply 1R10a.

The third document is P4(c) by which the Chairman of the Disciplinary Committee requested the Petitioner to present himself before the Disciplinary Committee. The Petitioner for the first time responded to the Disciplinary Committee by his letter P5(a) and took up the position that "*I did not receive a charge sheet as stated by you or any charge sheet. Therefore, I state that the purported disciplinary inquiry fixed for 24th February 2023 is void ab initio and null and void as it violates the principles of natural justice as I have not been informed of the charges against me.*" The Petitioner did not allege that the Disciplinary Committee has not been validly appointed by the Working Committee but moved for another date as he had to attend a previously scheduled meeting. Thus, the Petitioner submitted himself to the jurisdiction of the Disciplinary Committee, and requested that due process be adhered to and that he be given a fair hearing. The fifth document is P5(c), with no name or signature of the sender, wherein it is stated that the *Disciplinary Committee has no authority or legal basis to send* P4(d) without any further elaboration.

In its decision 1R21, the Disciplinary Committee has referred to it having been appointed by the Working Committee. The Petitioner has not specifically raised this issue in his plaint before the District Court. In paragraph 11(iv) of its petition filed before the District Court of Nugegoda [1R24], the defendants have disclosed that P4(a) was informed to the Working Committee and that the Disciplinary Committee was appointed by the Working Committee. The proceedings of the District Court of 14th June 2023 do not disclose any submissions on this matter. Most importantly, the minutes of the meeting of the Working Committee held on 18th July 2023 [1R26], where the decision to expel the Petitioner from the 1st Respondent was arrived at, disclose the fact that the Disciplinary Committee has been appointed by the Working Committee, thus laying to rest any doubts on this matter.

The final document is P9 which discloses that the Disciplinary Committee has been appointed by the Working Committee.

In the above circumstances, I am satisfied that the provisions of P2 have been complied with and that the Working Committee has acted in terms of P2. In any event, I am of the view that having kept silent from P4(b) onwards and having submitted to the jurisdiction of the Disciplinary Committee by P5(a), the Petitioner is *estopped* from challenging the legality of the appointment of the Disciplinary Committee in these proceedings.

Although not referred to by the Petitioner, I must, for the sake of completeness, state that it is necessary to place before Court the minutes of the meeting where the decision to expel has been taken once such decision is challenged. This was considered in **Ameer Ali and Others v Sri Lanka Muslim Congress and Others** [supra; page 198] where it was held that:

> *"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."* [emphasis added]

A similar view was expressed in **Safiul Muthunabeen Mohamed Muszhaaraff v S. Suairdeen and Others** [supra], where this Court held that, *"… 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.*"

However, in the above two cases, the Court was referring to the minutes of the meeting that took the decision to expel the member concerned whereas in this case, not only have the minutes of the meeting that took the decision to expel the Petitioner been tendered but those minutes refer to the fact that it is the Working Committee that appointed the Disciplinary Committee, thus confirming that the requirement in Paragraph 3.12 of P2 has been satisfied.

In the above circumstances, I am not in agreement with the third argument of the learned President's Counsel for the Petitioner.

A fair hearing and natural justice

I shall now consider the final argument of the learned President's Counsel for the Petitioner, that being the Petitioner has not been afforded a fair hearing by the 1st Respondent and/or its Working Committee and/or the Disciplinary Committee

Although it was submitted by Mr. Sumanthiran, PC that crossing the aisle would by itself justify expulsion, it has been accepted by our Courts time and again that a fair hearing must be afforded to a member prior to a decision being taken to expel such person from a political party or independent group. As Mark Fernando, J observed in **Dissanayake** [supra; at page 182], "*a decision made by an unbiased tribunal, after duly considering the views of those likely to be affected by it, is not only* ***more likely to be correct, but will be more acceptable and of better quality. Fairness to the individual facilitates a better decision by the tribunal****. The duty to give a fair hearing is as much a canon of good administration as of good legal or judicial procedure* ..." [emphasis added]

It is important that individuals are provided with the opportunity to participate in the decision making process prior to decisions affecting their rights are taken by public authorities and/or authorities vested with statutory power. This would promote the quality, accuracy and rationality of such process, and enhance the legitimacy thereof while at the same time improving the quality of decisions made by public authorities. As stated in **De Smith's Judicial Review** [Eighth edition; page 342] "*Procedural justice aims to provide individuals with a fair opportunity to influence the outcome of a decision and so ensure the decision's integrity*" and *"assist in achieving a sense that justice has both been done and seen to be done".*

That procedural fairness is not frozen at any moment of time and is a '*constantly evolving concept*' [per Lond Bingham in R v H [(2004) 2 A.C. 134] has been emphasised in **De Smith** [supra; page 407] where the authors have stated as follows:

"*The content of procedural fairness is infinitely flexible. It is not possible to lay down rigid rules and everything depends on the subject matter. The requirement necessary to achieve fairness range from mere consultation at the lower end, upwards through an entitlement to make written representations, to make oral representations, to a fully-fledged hearing with most of the characteristics of a judicial trial at the other extreme. What is required in a particular case is incapable of definition in abstract terms. As Lord Bridge has put it [vide Lloyd v McMahon [(1987) 1 A. C. 625 at 702]:*

"*the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates*."

In **Jayatillake and Another v Kaleel and Others** [supra; at page 394], this Court stated that, " … *there are certain procedural safeguards which are recognised for ensuring fair hearings e.g. the accused should be supplied with a fair statement of the charges (Stevenson v United Road Transport Union), he should be informed of the exact nature of the charge (Labouchere v Earl of Wharncliffe), he should be given an opportunity of defending or palliating his conduct (Fisher v Keane). The opportunity should be fair, adequate and sufficient. Thus the right to be heard will be illusory unless there is time and opportunity for the case to be met - Paul Jackson 'Natural Justice' p. 63. An Oral hearing is another valuable safeguard which ought to be provided unless it may be dispensed with having regard to the subject-matter, the rights involved and the nature of the inquiry."*

It was held in **Tissa Attanayake v United National Party and Others** [(2015)] 1 Sri LR 319] that:

"*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." [page 331]

"… 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." [page 334]

Having considered the above cases and the requirement to follow principles of natural justice, Surasena, J in **Zainul Abdeen Nazeer Ahamed v The Sri Lanka Muslim Congress and Others** [supra] stated as follows:

"*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. 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 21st November 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*."

While agreeing with the above view, Samayawardhena, J went on to state that, "*In my view, if he (the petitioner) 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*."

Has the Petitioner been afforded a fair hearing?

That being the legal position, I shall first deal with the complaint that the Petitioner was not afforded a fair hearing by the Working Committee and/or the Disciplinary Committee prior to being expelled. This allegation is furthest from the truth. The mechanism provided in P2 does not require a hearing to be afforded by the Working Committee itself but instead provides for a hearing to be afforded by a Disciplinary Committee that is appointed by the Working Committee. To that extent, the grievance of the Petitioner is unfounded.

I have already referred to the correspondence between the 1st – 3rd Respondents on the one hand and the Petitioner on the other, commencing with P4(a) and culminating in P9. The Petitioner was invited by P4(a) at the first available opportunity to provide an explanation and/or show cause relating to his suspension. Whether the Petitioner submitted an explanation is in doubt. Having stayed its hand for a period of about five months, the Petitioner was put on notice by P4(b) that a Disciplinary Committee has been appointed to conduct a formal disciplinary inquiry. The Disciplinary Committee thereafter invited the Petitioner by 1R10a to present himself for an inquiry on 24th January 2023 and informed him that he is entitled to legal representation. A copy of the charge sheet together with the list of witnesses and documents were served on the Petitioner together with 1R10. Thus, the Petitioner was fully aware of the scope and ambit of the Disciplinary Inquiry and of the material that was to be presented at the inquiry. Even though the Petitioner did not respond to 1R10, the Disciplinary Committee on its own volition postponed the inquiry to 24th February 2023 and informed him of such fact by P4(b). The Petitioner responded to the Disciplinary Committee for the first time with P5(a) and sought an adjournment, purportedly on the basis that he has to attend a previously scheduled meeting at the Presidential Secretariat.

Be that as it may, the Disciplinary Committee accepted the excuse offered by the Petitioner and afforded the Petitioner a further opportunity to participate at the formal inquiry and even went to the extent of giving the Petitioner a choice of two dates to choose from. It is then that the Petitioner challenged the authority of the Disciplinary Committee by P5(c), for reasons which had not been disclosed. The Petitioner thereafter

clearly displayed his intention not to participate before the Disciplinary Committee by filing action in the District Court of Nugegoda.

In these circumstances, it is clear to me that the Disciplinary Committee has acted with patience and has afforded the Petitioner every possible opportunity of providing his side of the story and of being heard by an independent disciplinary body. The Petitioner could not have asked for more opportunities to present his case, and cannot blame others for his failure to attend the inquiry. The findings of the Disciplinary Committee have thereafter been placed before the Working Committee which had arrived at its decision only after considering the said findings. I therefore see no merit in the argument of the learned President's Counsel for the Petitioner that the Petitioner was not afforded a fair hearing prior to the Working Committee taking a decision on 18th July 2023.

Two other matters

There are two other matters that were raised by the learned President's Counsel for the Petitioner that I must advert to.

The first is that the Working Committee did not meet as stated on 18th July 2023 and that the minutes of the meeting marked 1R26 are fabricated. What gave rise to this allegation was that 1R26 was only an extract of the minutes and the signature sheet of those who were present at that meeting had not been annexed. Although prior permission was not sought to tender further material, the learned President's Counsel for the 1st Respondent submitted together with an affidavit of the 3rd Respondent, a complete copy of the minutes of the said meeting [X1] together with the signature sheet of the attendees [X2] in order to demonstrate the legality of the decision arrived at the meeting of the Working Committee on 18th July 2023. Although the learned President's Counsel for the Petitioner sought to argue that there were discrepancies between 1R26 and X1, having examined both documents, I see no reason to doubt the authenticity of the minutes, and I therefore accept the statement by the 3rd Respondent that X1 is a true copy of the minutes of the meeting.

In the above circumstances, I am satisfied that the Working Committee (a) met on 18th July 2023, (b) was apprised of the findings of the Disciplinary Committee, and (c) arrived at the decision to expel the Petitioner only after having considered the said findings.

The second matter that I wish to advert to is the submission of the learned President's Counsel for the Petitioner that in terms of Paragraph 13.3(i) of P2, the decision of the Working Committee is subject to the approval at the Party Conference. That is correct and is the general rule. However, an exception is found at Paragraph 13.3(iii) which provides that decisions of the Working Committee on disciplinary matters must only be reported to the Party Conference. To insist that such decisions be approved at the Party Conference or that such decisions be reviewed prior to such decisions taking effect would make it impossible to implement decisions taken by the Working Committee relating to disciplinary issues.

Conclusion

In the above circumstances, I am of the view that the expulsion of the Petitioner from the 1st Respondent is valid. This application is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J

I agree.

JUDGE OF THE SUPREME COURT