RAMAMOORTHY
v.
DOUGLAS DEVANANDA AND OTHERS

SUPREME COURT
FERNANDO, J.,
WADUGODAPITIYA, J. AND
GUNASEKERA, J.
S.C. SPECIAL (E)
APPLICATION NO. 2/99 WITH
S.C. SPECIAL (E)
APPLICATION NO. 3/99
MARCH 24, 1999.

Expulsion of a Member of an Independent Group – Article 99 (13) (a) of the Constitution – Validity of the expulsion – Non-co-operation with the Group – Failure to explain alleged misconduct – Wilful failure to attend disciplinary inquiry – Ex parte decision to expel the Member – Natural justice.

The petitioners were Members of Parliament representing Independent Group No. 2 which contested the 1994 election for the Jaffna District. In all there were 09 Members of the Group who had been selected by the Eelam People's Democratic Party (the 10th respondent). In June, 1997, the petitioner in this application and the petitioner in the connected SC special (E) application No. 3/99 were expelled from the group which expulsion was declared invalid on an application made to Court in terms of Article 99 (13) (*a*) of the Constitution. Thereafter, the 1st respondent (the Leader of the Group) summoned a meeting of Members of Parliament of the Group for 9.9.97, *inter alia* to call for the explanation of the petitioners in respect of vilifications made against the Group and its leader. But, the petitioner replied that he would not attend it. Following this event the petitioner adopted a persistent and wilful policy of non-co-operation with the Group and its activities and failed to attend Group meetings. He also failed without excuse to speak in debates in Parliament as required by the Group. The 1st respondent called for the petitioner's explanation pursuant to a decision of the Group. By letter dated 23.3.98, the 1st respondent called for the petitioner's explanation for the allegation of misconduct set out therein. The petitioner failed to give an explanation.

He was given extensions of time and every possible opportunity to explain. But, he did not respond. Hence, on a decision of the Group a Committee of three was appointed to hold a disciplinary inquiry into the conduct of the petitioner.

The petitioner informed the Committee that the meetings of the group were *mala fide* and that he will not attend meetings of the Committee of Inquiry. The Committee gave the petitioner a further date but the petitioner did not attend. Instead, he replied threatening to take disciplinary action against the Group. As such the Committee held an *ex parte* inquiry and recommended to the Group immediate disciplinary action. The Members decided to expel the petitioner which decision was communicated to him by letter dated 31.1.99 setting out the grounds for the expulsion. By a letter of the same date the petitioner in the connected SC Special (E) application No. 3/99 was also expelled.

Held:

1. The ruling of the Court in 1997 in favour of the petitioner in respect of the June, 1997, expulsion was not a bar to the impunged disciplinary proceeding. The previous ruling was on the ground that there was a breach of the *audi alteram partem* rule (a procedural flaw). It did not hold that the charges were unfounded. In any event the earlier expulsion was on the basis of alleged misconduct before June, 1997. The second expulsion was based on subsequent misconduct alleged to have taken place in September and December, 1997.

2. The fact that two of the members of the Committee of Inquiry were also members of the first Committee of Inquiry did not justify the allegation of bias for the reason that at the later inquiry the charges were different. In any event, by his failure to take the objection before the Committee the petitioner had waived the plea of bias.

3. Even though there was no formal charge-sheet framed by the Committee, the letter dated 23.3.98 addressed to the petitioner gave him adequate notice of the substances of the allegations of which he was found guilty.

Per Fernando, J.

> "Natural justice in this respect is concerned with the substance, and not with mere form: . . . what is required is that the substance of the allegation be communicated with sufficient precision and clarity to enable the person charged to know what he has to meet."

4. The petitioner had no right to have been served with a copy of the report of the Committee before it was considered by the Group. In the context of his conduct and persistent refusal to attend the inquiry or even to attend the Group meetings at which the said report was tabled and discussed, it is frivolous and vexatious to claim in proceedings before the Court that he was denied access to the report before it was considered by the Group.

Per Fernando, J.

> "It is not unreasonable to conclude that the petitioner had totally repudiated his obligations to the Group, thereby manifesting an intention no longer to function as a part of the Group. Although the petitioner did not expressly resign from the Group, resignation might well have been implied from his conduct."

Case referred to:

1. *Jayatilleke v. Kaleel* (1994) 1 Sri LR 319, 345.

APPLICATION under and in terms of Article 99 (13) (*a*) of the Constitution challenging expulsion from membership of a recognized Independent Group.

D. W. Abeyakoon, PC with *E. Thambiah* for the petitioner.

E. D. Wickremanayake with *U. Abdul Najeem* for the 1st-08th and 10th respondents.

9th, 11th and 12th respondents absent and unrepresented.

Cur. adv. vult.

March 30, 1999.

FERNANDO, J.

Thirteen candidates were nominated by the "Independent Group No. 2" (the Group), which contested the 1994 General Election for the Jaffna District. Ten of these candidates had been selected by the Eelam People's Democratic Party (the 10th respondent), and three by the United National Party. On the votes polled, the Group became entitled to nine seats; and based on the preferences obtained, nine nominees of the 10th respondent – the petitioner, the 1st respondent, the 3rd to 8th respondents, and another person – were declared elected as Members of Parliament for the Jaffna District. That ninth person resigned shortly thereafter, and – on the basis of the preferences obtained – was succeeded by the petitioner's brother, the 9th respondent (who is the petitioner in SC Special (E) 3/99). We were informed that the three nominees of the United National Party

were not made respondents because they had resigned from the Group.

Both petitioners were expelled from the Group by letters dated 31.1.99. They filed applications on 26.2.99 challenging their expulsion. The Chief Justice nominated this bench to hear those applications. When we took up this application for hearing, counsel agreed that the decision in respect of this application would apply to SC Special (E) No. 3/99 as well.

These applications are a sequel to two similar applications filed by the same petitioners in respect of their previous expulsion in June, 1997 (SC Special (E) Nos. 1 & 2/97, SCM 21.8.97). There it was held that no charge-sheet had been served on the petitioners, and no explanation called for in regard to the acts of misconduct alleged against them; and that although a request had been made to them on the telephone – to come for a "formal inquiry" – that was totally inadequate.

Immediately thereafter, the 1st respondent as Leader of the Group, summoned a meeting of the Members of Parliament of the Group for 9.9.97, to be held in the Parliamentary Complex. One of the items on the agenda was to call for an explanation from the petitioners "in respect of vilifications made, and being made, against [the Group] and its Leader" by the petitioners. The petitioner replied on 9.9.97 that the meeting had been summoned with the intention of expelling him *and stated that he would not attend.* According to the 1st respondent, the Parliamentary Group met regularly thereafter in the room allocated for the use of the Group in the Parliament; notices of meeting were sent to all Members, together with a copy of the minutes of the previous meeting; copies of all the notices and minutes (from September, 1997, to February, 1999) were annexed. Eight such meetings were held in 1997, but the petitioner did not attend any, although on many of those dates he did attend sittings of Parliament, and gave no excuse for not attending.

Mr. D. W. Abeyakoon, PC, relied on the petitioner's statement in his counter-affidavit, that he "only received some of the notices and minutes of the meetings", but not all. What the petitioner had received was entirely within his knowledge, and the onus was on him to identify those without ambiguity – and that he could easily have done simply by reference to the dates of the documents produced by the 1st respondent, without even troubling to annex copies of what he had received. That omission becomes all the more significant because twice – in letters dated 23.3.98 and 28.12.98 – the 1st respondent had asserted that notices and minutes of all meetings had been sent to the petitioner; but the petitioner failed to deny that in his replies dated 4.4.98 and 4.1.97.

There can be no doubt, therefore, that the petitioner did receive notices and minutes of all the meetings of the Group.

The notices and the minutes of those meetings show that many matters relevant to the Group were being discussed. Turning to the second issue relevant to this case, on 10.11.97 the Group decided that Members should speak during the Committee Stage of the Budget debate, and to the minutes of that meeting was annexed a list of Members, the subjects, the dates, and the periods of time allocated for them to speak. The petitioner was scheduled to speak on 25.11.97 on the votes of the Ministry of Forestry and Environment and on 2.12.97 on the votes of the Ministry of Science and Technology, for just five minutes on each occasion. A copy of the minutes of the meeting of 10.11.97 was forwarded to the petitioner with a notice dated 18.11.97. It is common ground that the petitioner did not speak on those two occasions, but gave neither an excuse nor an explanation. However, in his counter-affidavit the petitioner alleged that he had been allocated subjects which were not familiar to him in order to embarrass him, but did not claim that he was unaware that he had been allocated time to speak. Accordingly, it must be assumed that the decision had been communicated to him in time.

The question of disciplinary action against the petitioner was discussed at several meetings; although the Group decided over and over again that disciplinary action should be taken and/or that his written explanation should be called for, no steps were taken until March, 1998. By letter dated 23.3.98 the 1st respondent called for his written explanation:

"From 9th September, 1997, I had been summoning our Parliamentary Group meetings before the Parliament meets every month. For these meetings, the notices were sent along with the agenda to all of our Group Members, including you.

It is observed that you had not only failed to attend any of these Parliamentary Group meetings up to now, but also failed to give any valid reasons for your absence from these meetings. Further, you had also failed to carry out the decisions of the Parliamentary Group, specifically with regard to the time allocation for the speeches to be made on behalf of the Independent Group No. 2 during the last Budget Debate in the Parliament.

Under these circumstances, the Parliamentary Group of the Independent Group No. 2 has come to the conclusion that you appear to be wilfully refusing to co-operate with our Group in its activities and failing to comply and respect the decisions of our Group.

Therefore, the Parliamentary Group has unanimously decided and authorised me to call for your explanations as to why disciplinary action should not be taken against you.

Please note that your explanations in writing should reach me on or before 6th April, 1998, to enable me to forward the same to our next Parliamentary Group meeting for its consideration and appropriate action. If you fail to respond to this letter, I shall assume that you have no explanations to offer and shall refer the matter to our Parliamentary Group for appropriate action."

The minutes show that the matter was considered thereafter at several meetings. Thus, on 5.5.98 the Group noted that although no explanation had been received, "as the postal service in the country was disrupted, it was reasonable to give more time to both to send their replies". The minutes of the meeting of 23.6.98 recorded that the petitioner's reply dated 4.4.98 had been received only on 28.5.98, and noted that he had only said that "*a reply will be sent soon*". That reply made no complaint about the contents of the letter of 23.3.98 or the procedure. The matter came up again at several subsequent meetings, and on 6.11.98 it was decided to obtain legal advice. A copy of the minutes of that meeting was sent to the petitioner with a notice dated 9.11.98.

At the meeting held on 9.12.98 the Group decided to appoint a Committee of Inquiry (the Committee) consisting of the 4th, 5th and 8th respondents; to call for an oral explanation from the petitioner before the Committee; and that the Committee should meet and hold the inquiry on 28.12.98 at 10.00 am in Parliament. The 1st respondent was authorised to communicate this decision to the petitioner, and to request him to appear before the Committee to give his oral explanation. A copy of the minutes of that meeting was sent to the petitioner with a notice dated 14.12.98; and by letter dated 17.12.98 the 1st respondent told the petitioner:

> "By your letter dated 4.4.1998 you had written . . . that a reply will be sent very soon. But, so far you have not sent a reply to my letter.
>
> The above matter was considered at the Meeting of the Independent Group 2 on 9.12.1998. To bring this matter to an end very quickly, it was decided at that Meeting to appoint a Committee of Inquiry in order to obtain verbal explanation from you. In accordance with that decision a Committee of Inquiry was appointed with [the 4th respondent as President and the 5th and 6th respondents] as Members. Further, it was decided that the Inquiry should be conducted at the Office of the Independent Group 2 situated in the Parliament." [translation supplied by the petitioner]

The petitioner's reply dated 22.12.98 was that:

" . . . Since I have not replied to your letters calling for explanation as such no letter was sent for the Meeting that decided to appoint an Inquiry Committee for which I was to attend . . .

. . . I am aware that Meetings were conducted to take actions against me and not for any other good intentions. I consider that all actions that are being taken against me, after the Supreme Court decision are with a narrow view. Hence, *I would like to inform you again that nothing good will come out of my attending these Meetings."* [translation supplied by the petitioner]

The petitioner did not appear before the Committee on 28.12.98, and the 1st respondent again wrote to him the same day:

" . . . Not only invitations were sent to you for the Meetings that took place this year, even the Minutes were sent. If necessary copies of these could be sent to you.

. . . *Therefore, to give you another ultimatum, it has been* decided to conduct and complete the Inquiry on the forthcoming 5.1.1999. By this, I kindly request you to be present at the Office of the Independent Group 2 situated in the Parliament at 10.30 am. The Inquiry Committee with [the 4th respondent as president and the 5th and 6th respondents] as Members will conduct the Inquiry." [translation supplied by the petitioner]

The petitioner replied on 4.1.99 that:

" . . . I consider that you are constantly troubling me for you have a grudge against me since you lost in the Supreme Court. *I have stressed over and over again that types of Meetings are only to take action against me and not with any other good intention.*

. . . Knowing that more than 400 are buried in the Chemmani cemetery, has the Jaffna Independent Group taken any action so far in any of the Meetings?

There are 795 Remand Prisoners detained in Kalutara without Inquiries for several years. After knowing this has the Independent Group 2 taken any action? . . .

If there is no suitable reply for questions as above I and many other Jaffna District Members jointly proposed to appoint an Inquiry Committee against you is for you to know, who is to blame and take action against whom." [translation supplied by the petitioner]

He did not appear before the Committee even on 5.1.99.

The Committee was, therefore, compelled to proceed *ex parte*. It found the allegations proved, and recommended immediate disciplinary action. The Group considered the Report of the Committee on 18.1.99. The Members agreed with the findings and unanimously decided that the two petitioners should be expelled. The 1st respondent conveyed that decision to the petitioner by letter dated 31.1.99, together with the reasons therefor:

"(1) You have wilfully absented yourself from the eight consecutive meetings of the Parliamentary Group referred to in this letter.

(2) You have wilfully not complied with the decisions of the Parliamentary Group, specifically by not speaking during the 1997 Budget Debate in Parliament.

(3) You have wilfully desisted from giving written explanations to the points raised in my letter of 23.3.1998.

(4) You have wilfully kept away from the inquiry into your conduct by a three-member Inquiry Committee, which was scheduled for 28.12.1998, and then postponed for 5.1.1999 due to your absence on the first date.

(5) Your above-mentioned actions clearly imply that you have wilfully contravened declarations (1), (3) and (5) of the

> Oath of the Independent Group 2 of the Jaffna Electoral District, which Oath signed on 5.7.1994 had been declared by the Supreme Court of Sri Lanka as the Constitution of the Independent Group 2."

The findings of the Committee were substantially to the same effect.

Mr. Abeyakoon made several submissions in support of his contention that the expulsion was bad in law. First, he contended that immediately after this Court ruled in favour of the petitioner in respect of the June, 1997, expulsion, the 1st respondent took steps directed at his expulsion, commencing with the meeting of 9.9.97. However, that cannot be considered as unlawful or improper because this Court did not hold that the charges in respect of which the petitioner had first been expelled were unfounded: only that there had been a procedural flaw, namely, a breach of the *audi alteram partem* rule. That decision was, therefore, not a bar to disciplinary proceedings in respect of the very same charges. In any event, it is quite clear that those charges necessarily related to misconduct alleged to have occurred *before* June, 1997, and the charges resulting in the second expulsion were plainly based on *subsequent* misconduct alleged to have taken place in September and December, 1997.

Mr. Abeyakoon's second argument was that the findings of the Committee were vitiated by bias, because two members (the 4th and the 8th respondents) had also been members of the first Committee of Inquiry. Had the Committee being inquiring into the very same charges different consideration *might* have arisen. Here, plainly, the charges were different, and that particular objection – of having formed a view and thus prejudged the matters in issue – cannot be taken. Further, the Group consisted of only nine Members. Excluding the two petitioners, and the 1st respondent whom the petitioners had criticised as being "dictatorial", "systematically hostile", etc., there were only six members to choose from. I doubt whether the Group was obliged to choose the three who had not functioned on the first Committee. If that principle has always to be applied, the

consequence would be that there would be no one qualified to inquire if ever a third set of charges arose.

There is another consideration which is a complete answer to Mr. Abeyakoon's objection. As Wade observes:

> "The Court normally insists that the objection shall be taken as soon as the party prejudiced knows the facts which entitle him to object. If, after he or his advisers, know of the disqualification, they let the proceedings continue without protest, they are held to have waived their objection and the determination cannot be challenged." (Administrative Law, 5th ed, page 430).

The petitioner was aware of the composition of the Committee not later than 22.12.98 when he replied to the 1st respondent's letter of 17.12.98; the minutes of the meeting of 9.12.98 would probably have reached him even before. Even in his letter dated 4.1.99 he did not take the objection. Thus, he let the Committee continue its proceedings without protest, and thereby waived this plea of bias.

Third, it was contended that the letter dated 23.3.98 was not a charge-sheet; that no proper charge-sheet was ever served on the petitioner; and that in any event it was the Committee, and not the 1st respondent, which should have served the charge-sheet. Natural justice in this respect is concerned with the subtance, and not with mere form: see *Jayatilleke v. Kaleel*[1]. What is required is that the substance of the allegation be communicated, with sufficient precision and clarity to enable the person charged to know what he has to meet. The requirements of the law relating to criminal procedure as to indictments and charges do not apply.

It is quite clear from the letter dated 23.3.98 that the petitioner was being charged with having failed to attend every single meeting held in 1997, without giving valid reasons, and with having failed to carry out the decision of the Group "specifically" in regard to speaking in Parliament during the 1997 Budget debate. The reference made, in a general way, to failing "to carry out the decisions of the Group", would not have justified (in the absence of particulars) a finding that

there had been non-compliance with any other decision. However, there was no decision on that basis. That letter also made it clear that in those circumstances the petitioner appeared to be wilfully refusing to co-operate with the Group in its activities, and that disciplinary action was contemplated. I hold that the petitioner had adequate notice of the substance of the allegations of which he was later found guilty.

The submission that the Committee itself should have served the charge-sheet is quite unfounded. Almost invariably the practice in disciplinary proceedings is that an inquiring officer or a committee of inquiry is appointed only *after* a charge-sheet has been served, an explanation received, *and* such explanation is found to be unsatisfactory. There is no justification at all for the submission that it is only the Committee of Inquiry which could prepare and serve the charge-sheet. Such a procedure would have been appropriate for an inquisitorial body.

Mr. Abeyakoon then submitted that the Committee should have sent a copy of its report to the petitioner, and called for his observations, before that report was considered by the Group. That is a request which the petitioner did not make even on 4.1.99, when he virtually defied the 1st respondent and the Group-making allegations against the Group and threatening to appoint a Committee of Inquiry to probe them. I hold that the petitioner had no such right. Furthermore, the petitioner had the opportunity of perusing the Committee's report and making representations to the Committee and/or to the whole Group. That report was tabled at the Group meeting on 7.1.99, and discussion was postponed for 18.1.99; notice was given on 14.12.98 of the first of those meetings, and on 11.1.99 of the second; the second notice expressly stated that the question of disciplinary action against the petitioner would be considered on 18.1.99. Nevertheless, the petitioner refused to attend either of those meetings. Having failed for several months to submit an explanation, having refused to participate in meetings, and to appear before the Committee, and having failed to avail himself of the opportunity of commenting on the report at the relevant Group meetings, it is frivolous and vexatious now to claim in these proceedings that he was denied access to the report before it was considered by the Group.

Mr. Abeyakoon's fifth contention was that other Members of the Group who had absented themselves from meetings, or had not spoken in Parliament, were not subjected to disciplinary proceedings, and that there had thus been discrimination against the petitioner. Those matters should have been raised in his explanation, before the Committee, and at meetings of the Group both before and after the Committee submitted its report. They cannot be entertained for the first time in this Court, for that would be to take over functions of the Committee.

Finally, it was claimed that the Committee had found the petitioner guilty of matters with which he had not been charged. Mr. Abeyakoon conceded that the Committee was justified in holding that the petitioner had wilfully refused to reply to the letter dated 23.3.98, and to appear before the Committee on 28.12.98 and 5.1.99. As for the two specific charges, he conceded that the Committee was justified, on the available material, in concluding that the petitioner had failed to attend all eight Group meetings held in 1977 and that this was non-co-operation; and that he had deliberately failed to participate in the Budget debate, in breach of party discipline. While he did submit that the petitioner had a reason for this – that he was not familiar with the subject – he acknowledged that the petitioner had failed to communicate this explanation to the Committee, as he should have. It is not for this Court to entertain pleas which the petitioner deliberately refrained from submitting to the Committee.

Mr. Abeyakoon strenuously urged that the Committee had found the petitioner guilty – without a specific charge having been framed – of acting contrary to clauses 1, 3, and 5 of the "pledge" which the EPDP nominees of the Independent Group had signed in July, 1994, as a condition of receiving nomination. The three relevant clauses were:

1. to act according to the decision of the Secretary-General of the EPDP who is the Leader of the Group;

3. within the Group, not to act contrary to the policies of the EPDP, and upon a breach to abide by the decision taken by the Leader of the Group and Secretary-General of the EPDP;

5. if elected to Parliament, to restrict his Parliamentary activities to the decision of the Leader of the Group and Secretary-General of the EPDP.

The effect of this "pledge" was considered in SC Special Nos. (E) 1 & 2/97:

> ". . . just as much as the party constitution is an agreement or contract between persons for the purpose of association, the "pledge" is a contract between the parties intended to ensure conformity with party politics."

Mr. Abeyakoon admitted that the Group has no constitution or rules. The pledge must therefore, be regarded as setting out the basis on which the EPDP members of the Group decided to associate as a Group. Mr. Abeyakoon strenuously contended that the pledge gave the 1st respondent dictatorial powers, and that the petitioner was forced to sign it in order to get nomination.

It would seem that the Committee did not find the petitioner guilty of a breach of the "pledge" as a distinct and separate ground: the expulsion letter shows that the Committee only found that his "*above-mentioned* actions" imply a contravention of the "pledge". With or without the "pledge", a prolonged refusal to attend Group meetings, without prior excuse or subsequent explanation, and a refusal to perform an important function of a Member of Parliament, would unquestionably be a serious breach of discipline of any political party or group. When to that is added a defiant refusal to attend an inquiry intended to ascertain his explanation, it is not unreasonable to conclude that the petitioner had totally repudiated his obligations to the Group, thereby manifesting an intention no longer to function as a part of the Group. Although the petitioner did not expressly resign from the Group, resignation might well have been implied from his conduct.

In my view, the petitioner cannot question the validity or propriety of the pledge in these proceedings. The Group, almost from the inception, was substantially a part of the EPDP, although in relation

to Parliament it had a separate identity. In the circumstances, a decision that the objectives, policies and Parliamentary activities of the Group should coincide with those of the EPDP was not unreasonable. Whether those were to be determined by the entire membership, or a committee, or a single individual, was primarily a matter for the members. The above three clauses of the pledge reflect an acceptance by the Group that it would be the Leader of the Group, who is also the Secretary-General of the EPDP, who would communicate and even determine them. If the petitioner was later unable to agree with the "pledge", he should have raised the issue within the Group and before the Committee of Inquiry. Even assuming that he might be entitled to question the "pledge" outside the structures of the Group, he cannot do so in these proceedings for the first time.

For the above reasons, I determine that the expulsion of the petitioner was lawful and valid. I award the 1st to 8th and 10th respondents a sum of Rs. 15,000 as costs, payable by the petitioner.

WADUGODAPITIYA, J. – I agree.

GUNASEKERA, J. – I agree.

Expulsion of the petitioners upheld.