

**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.

Mohamed Shihabdeen Seyed Ameer Ali  
alias Ameer Ali Shihabdeen

**SC Application Special  
[Expulsion] No. 01/2009**

**Vs.**

**Petitioner**

1. Sri Lanka Muslim Congress  
"Dharussalam",  
51, Vauxhall lane, Colombo 2.
2. Rauff Hakeem  
Leader  
Sri Lanka Muslim Congress  
"Dharussalam",  
51, Vauxhall lane, Colombo 2.
3. M.T. Hassan Ali  
Secretary General  
Sri Lanka Muslim Congress  
"Dharussalam",  
51, Vauxhall lane, Colombo 2.
4. Dammika Kitulgoda  
Acting Secretary General of Parliament  
Parliament of Sri Lanka  
Sri Jayawardenapura, Kotte
5. Dayananda dissanayake  
Commissioner of Elections  
Elections Secretariat  
Sarana Road, Rajagiriya.

**Respondents**

**Before :** J.A.N. de Silva J.  
Jagath Balapatabendi J.  
S.I. Imam J.

**Counsel:** D.S. Wijesinghe P.C. with N.M. Shaheid and Kaushalya Molligoda instructed by Earnest Law Chambers for the Petitioner.

M. Nizam Kariappar with A.M. Faiz, M.C.M. Nawaz, M.I.M. Iynullah and A. Rajah instructed by R. Rupasinghe for 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

S. Rajaratnam D.S.G. for 4<sup>th</sup> and 5<sup>th</sup> Respondents.

**Argued on :**

**Decided on:**

**J.A.N. de Silva J**

The Petitioner in this application has been a member of the 1<sup>st</sup> Respondent party Sri Lanka Muslim Congress (SLMC). He contested the general elections held in April 2004 from the Batticaloa district as a candidate nominated by the SLMC and returned to Parliament as the only successful candidate of the SLMC from that district.

The Petitioner has filed this application in terms of the proviso to Article 99(13) (a) of the Constitution seeking a declaration from this court that his purported expulsion from the SLMC on the ground he lost his membership is invalid and the seat held by him in Parliament has not become vacant consequent to such expulsion. This case has deep tangled roots.

The circumstances leading to the impugned expulsion is as follows.

After the General Elections in the year 2004 there had been some conflicting opinions amongst the members of the SLMC whether to support the government in power or to sit in the opposition.

The Petitioner has been of the view that it was important to extend support to the government in its endeavour to arrive at a lasting solution to the ethnic issue in the larger national interest as well as in the interest of the Muslim community of the country. Hence the Petitioner with some other SLMC members joined the government.

On or about 30-10-2004, the Petitioner took oaths as Minister of Rehabilitation and District development (Batticaloa district) of the United People's Freedom Alliance (UPFA) government.

Consequent to the Petitioner taking oaths as Minister of Rehabilitation and District Development in the UPFA government, the SLMC and its leader initiated disciplinary proceedings against him. The Petitioner alleged that the whole process was illegal, violative of the basic principles of natural justice and tainted with arbitrariness and mala fides. However the process culminated in the SLMC deciding to expel the Petitioner from the membership of that party. That decision was communicated to the Petitioner on 4-4-2005.

The Petitioner challenged the said purported decision of the SLMC in this court (in application no 2/2005) and the Supreme Court on 1-7-2005 declared that the expulsion of the Petitioner was invalid. According to the Petitioner after the decision of the Supreme Court he continued to

be a member of the SLMC. However the SLMC did not thereafter invite him for any of its Parliamentary group meetings or other group or party meetings.

The Petitioner states that thereafter he continued to serve the people of Batticaloa in his capacity as a Member of Parliament.

The Petitioner states that he became aware that on or about October 2005 a group of SLMC members had joined hands in forming a political party by the name of All Ceylon Muslim Congress (ACMC). This was a political party established under and in terms of the provisions of the Parliamentary Elections Act no 1 of 1987. According to the Petitioner All Ceylon Muslim Congress was formed to carry forward the principles and standards introduced by the late leader of SLMC Mr. Ashroff and which principles and standards were being grossly disregarded by the current leadership of the SLMC.

The Petitioner has admitted in the above circumstances he was openly supportive of the cause of the ACMC and its underlying Policies and attended several meetings and public gatherings.

According to the Petitioner the 2<sup>nd</sup> Respondent the leader of the SLMC too was seen and present at those meetings. The Petitioner's position is that despite the close association and participation in the activities of the ACMC he continued to be a member of the SLMC with the full knowledge and acquiescence of the leader of the SLMC, Mr. Rauf Hakeem.

In the year 2005 with the election of the new president his Excellency Mahinda Rajapakse the Petitioner took oaths as the Minister of Disaster and Relief services, a Minister of non cabinet rank.

Approximately one year after Petitioner joined the government the 2<sup>nd</sup> Respondent the leader of the SLMC too crossed to the government with other elected members of SLMC. He was given a Cabinet rank ministry viz. Minister of Post and Telecommunications. According to the Petitioner, in December 2007, Just before the 3<sup>rd</sup> reading of the Budget the 2<sup>nd</sup> Respondent crossed back to the opposition with the idea of destabilizing the government. (The Respondents of course state that they crossed back due to non fulfillment of promises given to them)

On 16-11-2008 the Petitioner received an invitation by the ACMC to participate in a conference at Ammer Hall Puttalam. Among the invitees there had been several SLMC members and Parliamentarians. At the said conference various names were suggested for various office bearers of ACMC. The Petitioners name was suggested for the post of Chairman of the ACMC. On or about 27-11-2008 a press conference had been organized by ACMC at Galadari Hotel Colombo and at the said press conference the Petitioner had been referred to as the Chairman of the ACMC although his name had merely been suggested for the said post at the delegate conference of the ACMC, to which he had not expressed any objection as ACMC ideology was identical to that of SLMC.

According to the Petitioner soon after the press conference the secretary general of the ACMC met the Petitioner and handed over to him a membership application from ACMC informing him that in order to be appointed as Chairman it was necessary that he submits his application form for obtaining membership of the Party. It was also brought to the notice of the Petitioner that to be an office bearer of ACMC the constitution requires that a membership is a must. At this stage the Petitioner had promptly informed the Secretary General of ACMC that he is unable to become a member of ACMC and confirmed his position in writing.

In these circumstances the Petitioner states that he was never appointed as the Chairman of the ACMC and/or became a member of that party.

By letter dated 15<sup>th</sup> December 2008 the secretary general of SLMC the 3<sup>rd</sup> Respondent in this case wrote to the Petitioner informing him amongst other things that

“It was reported in many news papers and electronic media that you are elected as Chairman of a political party viz. All Ceylon Muslim Congress: as a result you have lost your membership in SLMC the party from which you were nominated to contest the; last general election”.

The same letter directed the Petitioner to publish a correction if the facts referred to therein were false and also in the event of his failure to do so SLMC will take action on the basis that the Petitioner has lost his membership in SLMC.

The Petitioner received this letter on the 29<sup>th</sup> of December on his return from India and on the 30<sup>th</sup> in writing protested to the contents of the letter and gave a detailed account of what transpired at the conference and the subsequent press briefing. In this letter the Petitioner stated thus.

“The high command appears to have arrived at its decision on news paper reports without verifying the correct position”. The Petitioner has released a copy of his reply to several media agencies as per the request of SLMC in the letter date 15-12-2008. He further stated that to his knowledge the island newspaper and daily news on 6-1-2009 carried this explanation.

On the 24<sup>th</sup> of February 2009, the Secretary General of SLMC wrote back to the Petitioner (P12) informing him that the party high command rejected his explanation as he had not complied with the directions given in the earlier letter. Amongst other things the letter also carried the following passage.

“Therefore the high command of Sri Lanka Muslim Congress came to the conclusion that the matters contained in your letter dated 30-12-2008 are not correct and written only for the purpose of retaining the membership in Parliament”.

Thereafter the Petitioner by his letter dated 5-3-2009 again protested against the said purported decision of the high command specifically to the reference that he “lost” his membership in the Sri Lanka Muslim Congress. But the 3<sup>rd</sup> respondent has reiterated that there is no change in the position of the SLMC by letter dated 20-3-2009.

MR. Nizam Kariappan who appeared for the Respondents raised the objection that the Petitioner's application as presently constituted is misconceived in law and the Petitioner is not entitled to challenge the decision as there has been no expulsion of the Petitioner from the party and he has ipso facto ceased to be a member of the party.

Mr. D.S. Wijesinghe P.C. submitted that the SLMC rejected the explanation and the subsequent publication of the same on the basis that it was not up to the expectation of the high command even without telling the Petitioner what they really expected. He submitted that the Petitioner did what was told to him in P9 and released it to the press. The Petitioner was not called upon by the letter of the 3<sup>rd</sup> respondent dated 15-12-2008 to hold a press conference and inform the public that he has not accepted the post of chairmanship of ACMC he was only called upon to correct unspecified news item if it were false, which the Petitioner had complied with what was told to him. In the above circumstances the learned counsel submitted that the contents of P12 i.e. the decision of the high command is illegal, contrary to all basic norms of reasonableness and natural justice, capricious and highly loaded with mala fides.

In summary the learned counsel submitted that

- (a) The said letter and the purported decision of the high command is based on a nonexistent factual platform and based on a completely erroneous assumption that the Petitioner had failed to correct unspecified and erroneous news items.

- (b) The Petitioner was not informed of any specific newspaper or papers which carried this news in the letter sent to him (P9).
- (c) The contents of the said letter are self contradictory and perverse in as much as it is unconceivable as to what action could be taken against the Petitioner if he has already lost his membership in the SLMC.
- (d) In the letter there is no reference to the provisions of the constitution of the SLMC under which the Petitioner is alleged to have lost his membership of the SLMC.
- (e) In the totality of circumstances the said purported decision of the high command of the SLMC as communicated by the letter of the 3<sup>rd</sup> respondent dated 24-2-2009 for all intents and purposes, a decision to expel the Petitioner from SLMC. The phrase “lost your membership” is a ruse adopted by the SLMC to prevent the Petitioner from invoking the jurisdiction of this court.

In terms of Article 99(13)(a) there are three situations in which a member of a political party can cease from his membership in that party. Firstly the member can cease to be a member by “resignation”. The second situation is that he is expelled from his party. The third situation, “otherwise” exist independent of resignation and expulsion, for example death.

Mr. Wijesinghe P.C. contended that the cessation of membership of a Member of Parliament cannot be determined by the label that has been affixed to a situation by the high command of the SLMC. It is indeed a question of fact and a determination has to be made after considering

all the attendant circumstances whether a member resigned his seat or was expelled or that he “otherwise” ceased to be a member. We are inclined to agree with the submissions of the learned counsel.

When the jurisdiction of the Supreme Court is invoked under Article 99(13)(a) there is duty cast on this court to examine the basis upon which the Petitioner is seeking relief.

In the expulsion case of *Gamini Dissanayake v. M.C.M. Kaleel* (1993 2SLR 135) Kulatunga J observed that “the right of a member of Parliament under Article 99(13)(a) is a legal right and forms part of his constitutional rights as a member of Parliament. If his complaint is that he has been expelled from the membership of his party in breach of the rules of natural justice he will be ordinarily entitled to relief and this court may not determine such expulsion to be valid unless there are overwhelming reasons warranting such a decision”.

Again Justice Dheeraratne in *Thilak Karunaratne v. Bandaranayake* (1993 1 SLR 91) discussing the same Article of the constitution stated that “if the expulsion is determined to be valid the seat of the member becomes vacant. It is this seriousness of the consequences of expulsion which has prompted the framers of the constitution to invest unique original jurisdiction in the highest court of the island, so that a Member of Parliament be amply shielded from being expelled from his party unlawfully and/or capriciously”.

Somewhat similar situation to the case in hand was discussed by the Supreme Court in Galappati v. Bulegoda (1997 1 SLR 393) where the Respondents claimed that the Petitioner was not expelled but he ceased to be a member of the party due to nonpayment and/or refusal to pay his membership fees for the year. The Supreme Court held that apart from the fact that the Respondents failed to prove that he ceased to be a member “there has been a violation of the audi alteram partem rule by the failure of the Respondents to hold an inquiry and to give opportunity to the Petitioner to meet the case against him” held that the expulsion was invalid.

Mr. Wijesinghe finally submitted that the SLMC has copied the disciplinary provisions of the United National Party and grafted them to the SLMC constitution without giving due consideration to the ill effects of those provisions.

The Petitioner has stated in his affidavit to this court as well as in the letters sent to the SLMC that he did not join the All Ceylon Muslim Congress nor at any time conducted his affairs to the detriment of the SLMC, but acted all the time with a view of furthering the fundamental founding principles of the SLMC. The Secretary General of the ACMC too has filed an affidavit denying that the Petitioner is a member of that party. He has named the person who is holding the position of chairmanship of ACMC.

In the light of the above circumstances it was the burden of the Respondents to place some evidence before the court to justify the conclusion they reach. Mr. Kariappan submitted that the Petitioner should have published his denial in Tamil papers as most of the members of the SLMC are Tamil speaking people from the eastern province. However it is noted that P9 does

not refer to any Tamil language papers. Even the high command refers to Thinakaran paper only at the meeting of 07<sup>th</sup> February 2009 vide (R6). One cannot expect the Petitioner to read the mind of the Respondents and the high command of SLMC and take remedial action accordingly. This court is satisfied that the Petitioner has complied with what was requested of him in P9.

On a consideration of the submission made by counsel and the other material placed before court we hold that the Respondents have failed in every respect to notify this court as to the validity of the conclusion they reached.

We accordingly declare that the contents of the letters dated 24-2-2009 marked P12 and confirmed by P14 is bad in law and quash the same. This application is allowed with costs payable to the Petitioner by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. We also declare that the Petitioner has not ceased to be a Member of Parliament and that he continues to be and remain a member Parliament.

**J.A.N. de Silva J**

**Jagath Balapatabendi J**

**S.I. Imam J**

**Judges of the Supreme Court**