

91392

1967/20

IN THE PRIVY COUNCILNo.38 of 1966

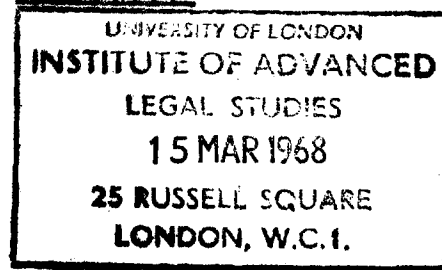
ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

MOHAMMED SAMSUDEEN KARIAPPER (Petitioner)
Appellant

- and -

1. S.S. WIJESINHA
(Clerk to the House of
Representatives)
2. S.N. SENEVIRATNE
(Assistant Clerk to the
House of Representatives) Respondents

C A S E FOR THE RESPONDENTSRecord

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 30th April, 1966, dismissing, with costs, an Application by the Appellant for the grant and issue of a Mandate in the nature of a Writ of Mandamus ordering the Respondents, to recognise him as Member of Parliament representing the Kalmunai Electoral District in the House of Representatives, and to pay him his remuneration, allowances, etc., and other benefits to which he is lawfully entitled as such Member of Parliament.

pp.12-32

2. The discontinuance of the said payments by the Respondents to the Appellant was a direct result of the enactment by the Ceylon Parliament of the Imposition of Civic Disabilities (Special Provisions) Act, No.14 of 1965

10

20

30

Record

(hereinafter referred to as "the impugned Act") which imposed certain civic disabilities on the Appellant and five others.

p.73,1.1.

The impugned Act received the Royal Assent on the 16th November, 1965.

3. The main questions for determination on this appeal are:-

(A) Whether a Mandate in the nature of a Writ of Mandamus can lawfully issue to compel the Clerk of the House of Representatives to pay to a Member of the House his remuneration and allowances as such Member.

10

(B) Whether the impugned Act is a valid enactment of the Ceylon Parliament.

p.12, Cl.25-40

4. Relevant portions of the impugned Act and the Ceylon (Constitution) Order in Council, 1946 (the "Constitution of Ceylon") are included in an Annexure hereto.

5. The facts, briefly stated, are as follows:-

On the 11th September, 1959, the Governor General of Ceylon, acting at the instance of Parliament and under the Commissions of Inquiry Act (C.393), appointed a Commission of Inquiry to investigate and report on -

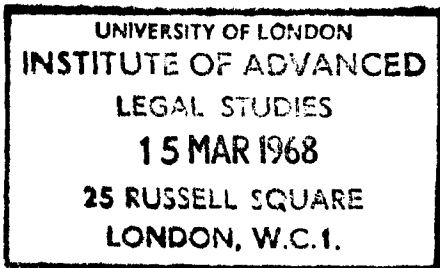
20

(a) whether, during the period commencing on January 1, 1943, and ending 11th September, 1959, any gratifications had been offered, promised, given or paid, directly or indirectly, to any person who then was, or had been, a Member of the Senate, or the House of Representatives or of the State Council, in order to influence his judgment or conduct in respect of any matter with which he, in that capacity, was concerned whether as of right or otherwise; and

30

(b) whether during that period any such gratification had been solicited or received, directly or indirectly, by any such person as a reward for any service rendered by him in that capacity whether as of right or otherwise.

40



By its Final Report the Commission of inquiry found the Appellant (and two others) guilty of having received gratifications as contemplated by the terms of reference. As a result of this finding the Appellant became liable to suffer the civic disabilities imposed by the impugned Act.

Record
p.13,11.3-7

The said Report (together with an Interim Report) was tabled in the House of Representatives on the 16th December, 1960, and ordered to be printed.

In the said Final Report, the Commissioners referred to prior events as follows:-

"The appointment of the Commission was due to serious allegations made in Parliament and in the local press of widespread corruption by members of the Government in power, especially in connection with the grant of independence to Ceylon

p.13,11.14-17

"All investigations were carried out under the direction of the Commission. We received reports, either written or oral. Then the Investigation Officers attached to the Commission were directed to investigate such cases. Those Officers brought the results of their investigations to the Crown Counsel attached to the Commission and any further assistance, if necessary, was obtained on his instructions. The Crown Counsel reported to the Chairman whether there was a prima facie case, and, if the Commission agreed, the person against whom the allegation had been made was summoned before the Commission, informed of the allegations against him and given an opportunity to make any statement he wished to make in explanation or in exculpation. Thereafter if the explanation seemed unsatisfactory the matter was fixed for inquiry

p.13,11.21-33

30

"We decided at the outset that all hearings at the inquiry should be in public. We did so because we wished not merely that justice should be done but should plainly and manifestly be seen to be done. The proceedings of the inquiry were open to the public and we believed were

p.13,11.35-39

40

Record

fully published in the newspapers in all three languages".

p.27,11.38-40

Persons against whom allegations were made were represented by Counsel at the sittings of the Commission.

p.27,1.33 to
p.28,1.20

7. The Government which was in power when the Commission was appointed took no action on the Commission's Final Report. A subsequent Parliament (to which the Appellant was re-elected but which was controlled by political parties previously in opposition) enacted the impugned Act. Without modifying or qualifying the said Final Report, and without effecting any change in the law as it then stood, the said Act subjected those who had been found guilty by the Commission of having received gratifications to the civic disabilities which are referred to in paragraph 3 hereof.

10

8. The preamble to, and the long title of, the impugned Act, and the civic disabilities imposed by it on those found guilty by the Commission, were thus referred to by Sansoni C.J., in his Judgment in the Supreme Court delivered in these proceedings:-

20

p.13,11.40-44

"The preamble recites the appointment of this Commission, the findings that the allegations of bribery had been proved against certain persons, and that it has become necessary to impose civic disabilities on the said persons consequent on the findings of the said Commission.

30

p.13,11.44-47

"The long title of this Act recites that it is an Act to impose civic disabilities on certain persons against whom allegations of bribery were held by a Commission of Inquiry to have been proved, and to make provision for matters connected therewith or incidental thereto.

p.14,11.1-26

"The six persons who were found guilty by the Commission are mentioned in the Schedule to the Act and it is to them and them alone that the Act applies. The disabilities imposed on them are:-

40

- "(1) Disqualification for registration in registers of electors -- Section 2.
- "(2) Disqualification from voting at a parliamentary or local election -- Section 3
- "(3) Disqualification from being a candidate at a parliamentary or local election -- Section 4
- 10 "(4) Disqualification from being elected or appointed as a Senator or a Member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives -- Section 5
- "(5) Disqualification from being a Member of any local authority -- Section 6
- 20 "(6) If any of them was a Senator or a Member of the House of Representatives or any local authority on the day immediately prior to November 16, 1965", the date when the impugned Act received the Royal Assent "his seat in that capacity is deemed to have been vacant on that date -- Section 7
- "(7) Disqualification from employment as a public servant, or from being a member of any scheduled institution as defined in the Bribery Act -- Section 8
- 30 "(8) If any of them was a public servant or a member of a scheduled institution on the day immediately prior to November 16, 1965, he is deemed to have vacated his office in that capacity -- Section 9".

9. In consequence of the imposition of civic disabilities imposed upon the Appellant by the impugned Act, the Respondents did not pay the remuneration and allowances which otherwise they would have paid to him as a Member of the House of Representatives.

Aggrieved by the Respondents' decision, the Appellant applied to the Supreme Court of Ceylon for a Mandate in the nature of a Writ of

Record

Mandamus against them ordering them to make the said payment to him and grant to him other benefits to which, he said, he was lawfully entitled.

Relevant portions of the Appellant's Application, dated the 11th January, 1966, were as follows:-

p.2,1.26 to
p.3,1.11.

"1.(a) The Petitioner was duly elected Member of the House of Representatives for the Kalmunai Electoral District at the General Election held on the 22nd March, 1965, and on the 5th April, 1965, was duly sworn and took his seat . . . and is entitled in law to continue to hold the office of such Member for a period of Five years from the date of such Election under and subject to the provisions of the Ceylon (Constitution) Order-in-Council.

10

"(b) The 1st Respondent is the Clerk to the House of Representatives and is vested with statutory powers duties and functions under the provisions of the Ceylon (Constitution) Order-in-Council.

20

[(c)(d) and (e) dealt with the fact that the 2nd Respondent had acted in the office of the 1st Respondent during the latter's absence abroad; and that the 1st Respondent had resumed the duties of his office on the 15th December, 1965].

10. The Appellant's Application continued as follows:-

30

p.3,11.12-42

"2.(a) Article 75 of the said Ceylon (Constitution) Order-in-Council provides that the remuneration and allowances payable to Members of the House of Representatives is the same as it was paid to Members of the State Council unless Parliament otherwise provides.

"(b) The monthly remuneration, allowances, emoluments and other benefits due in law to all Members of Parliament were

40

provided for in the Annual Appropriation Act passed by Parliament and are set out in detail in the Budget Estimates which form part and parcel of the Appropriation Act.

- 10 "(c) The Appropriation Act No.7 of 1965 and the Budget Estimates of the Revenue and Expenditure of the Government of Ceylon for the Financial Year 1st October, 1965 to 30th September, 1966, under Head No.6 Vote 2 has made provisions for the payment to all Members of Parliament, including the Petitioner, remuneration allowances, emoluments and other benefits. The Petitioner is entitled to be paid his remuneration and allowances from the monies so provided by Parliament.
- 20 "(d) The Clerk to the House of Representatives" [1st Respondent] "is the Officer entrusted with statutory powers, duties and functions of the Accounting Officer and of the Paying Officer of the Department of the Clerk to the House of Representatives and has to make all payments and grant all facilities and other benefits (monetary or otherwise) provided for by Parliament and due to all Members of Parliament as and when they fall due and since the Petitioner became
- 30 a Member of the said House of Representatives duly discharged his public duty and paid his remuneration, allowances and emoluments and benefits due to the Petitioner up to end of October, 1965.

40 11. In paragraph 4 of his Application the Appellant stated that his monthly allowance as Member of Parliament for November, 1965, was not remitted to his bankers as arranged; that on the 6th December, 1965, he had been informed by the 2nd Respondent (by telephone) that as a result of the enactment by Parliament of the impugned Act no payment of remuneration due to him as Member of Parliament would be made to him as from the 17th November 1965; and that subsequent

p.4,1.13 to
p.5,1.9

Record

requests which he had made to the Respondents requesting them to make the said payments had met with no response.

12. As to the impugned Act, the Appellant said, in paragraph 5 of his Application:-

p.5,11.15-29

"(a) The said Act or the relevant provisions thereof are void and in contravention of the Ceylon (Constitution) Order in Council and are in excess of the powers conferred on Parliament by the Ceylon (Constitution) Order in Council and do not constitute the exercise of legislative power but are an unwarranted assumption or exercise of Judicial and/or Punitive power in the guise of legislation against certain specified individuals of whom the Petitioner is one.

10

"(b) The said Act or the relevant provisions thereof do not constitute or effect a lawful amendment of the said Ceylon (Constitution) Order in Council, within the meaning of Section 29 thereof.

20

"(c) The said Act and/or the relevant provisions thereof are not law within the meaning of Section 29 of the said Ceylon (Constitution) Order-in-Council."

p.5,11.30-37

13. In paragraph 6 of his Application the Appellant submitted that the Respondents had unlawfully failed to recognise him as Member of Parliament representing the Kalmunai Electoral District and had thereby unlawfully and in violation of their public duty stopped and/or refused to pay or grant to him, allowances, emoluments and other benefits that were legally due to him as such Member of Parliament.

14. In answer to the Application, the 1st Respondent, by his Affidavit, dated the 14th February, 1966, said, inter alia:-

Record

- 10 "2. I produce, marked 'X' and annexed hereto a certified copy of the Original Bill which became the Imposition of Civic Disabilities (Special Provisions) Act No.14 of 1965 . . . and which has endorsed on it a Certificate under the hand of the Speaker of the House of Representatives that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House (including those not present), in terms of the proviso to Section 29(4) of the Ceylon (Constitution) Order-in-Council, 1946. p.11
- 20 "3. In regard to the statements contained in paragraph 2 of the Petitioner's affidavit, /see paragraph 10 hereof/ "I state that while it is correct that it is the practice for either myself or an officer of my department to make payments provided for under Head No.6 Vote 2 of the Budget Estimates for the current financial year, I am unaware of any statutory duty, power or function to make such payments."
15. The Application was heard by a Bench of the Supreme Court consisting of Sansoni C.J. and G.P.A. Silva J. who, by their Judgments, dated the 30th April, 1966, dismissed it, with costs. pp.12-32
- 30 16. Delivering the main Judgment of the Supreme Court Sansoni C.J., on the question whether a Member of Ceylon's Parliament is entitled to apply for a Writ of Mandamus to compel the Clerk of the House of Representatives to pay him his remuneration and allowances, referred to, and accepted, the argument of the Solicitor-General for the Respondents - p.15,1.27
p.16,1.37
- "(1) that there is no legal duty on the Clerk of the House to pay the petitioner his remuneration and allowances, and p.15,11.27-33
- 40 "(2) that the Clerk, when he pays Members of Parliament their remuneration and allowances, acts as a servant or agent of the Crown and Mandamus does not lie against a servant or

Record

agent of the Crown to compel him to perform a duty which he owes to the Crown."

p.16,11.25-32

In the opinion of the learned Chief Justice, the 1st Respondent was, for the purpose of the law relating to Mandamus, a public officer who was appointed under Section 28(1) of the Constitution by the Governor General, and who, in making payments of public money provided by the Appropriation Act, acted as a public officer answerable only to the Crown. Concluding, on this aspect of the case, the learned Chief Justice said:-

10

p.16,11.33-38

"The legal position that a person cannot ask for a Mandamus against a public officer to pay him money which the latter holds as a servant of the Crown was conceded by Mr. Jayewardene" for the Applicant - present Appellant. "He admitted that his application must fail if the Clerk is a servant of the Crown, and if the money which the petitioner claims is money of the Crown. The petition, therefore, must fail on this ground alone."

20

p.15,11.17-24

17. On the question as to whether or not the impugned Act was invalid because, having regard to its subject matter and the manner in which it was presented to the House, its purported amendment of the Constitution was unlawful, the learned Chief Justice said that it was clear that the legislature had regarded the Act as being within Section 29(4) of the Constitution; for, there was endorsed on the Bill, when it was presented for the Royal Assent, the necessary Certificate of the Speaker that the number of votes cast in its favour in the House of Representatives amounted to no less than two-thirds of the whole number of the Members of the House. As to the actual amendment of the Constitution, he said:-

30

p.17,11.19-28

"So far as Sections 5 and 7 of the impugned Act are concerned they seek to add another disqualification to those provided in Section 13 of the Constitution, and to render the seat of a Member of Parliament

40

10 vacant on a ground not already contained in Section 24(1) of the Constitution. This is undoubtedly an attempt to amend the Constitution and was recognised as such by those who sought to make it. That is why the procedure prescribed in Section 29(4) was adopted; and to make the matter clear there was enacted Section 10 which says that the Act was to be deemed as valid and effectual as though its provisions were an Act for the amendment of the Constitution."

In the learned Chief Justice's view this was a feature which distinguished the impugned Act from the two Acts which were held to be invalid by the Board in Liyanage v. The Queen /1966/2 W.L.R. 682, P.C.

p.19,11.1-7

20 18. The learned Chief Justice referred to, but rejected, the argument advanced on behalf of the Appellant "that the impugned Act was not a law contemplated by Section 29(1) because it was, in effect, a judgment or an enactment interfering with judicial power and could not be saved even by the Section 29(4) Certificate." His answer to that argument was as follows:-

p.19,11.12-15

"An amendment of the Constitution made in accordance with Section 29(4) becomes a part of the Constitution, entitled to all the obedience due to any other part of the Constitution.

o.19,11.15-18

30 "It is not for the Court to say that a law passed by two-thirds of the whole number of Members of the House does not conduce to peace, order and good government" /within Section 29(1)].

p.19,11.18-20

"The Court is not at liberty to declare an Act void because it is said to offend against the spirit of the Constitution though that spirit is not expressed in words

p.19,11.20-22

40 "The Judgment of the Privy Council in Liyanage's Case" /1966/2 W.L.R. 682, P.C.

p.19,1.39 to p.20,1.3

Record

"contains some very significant passages which are relevant to this part of the argument. It said there exists a separate power in the Judicature which under the Constitution as it stands cannot be usurped or infringed by the Executive or the Legislature and again Their Lordships cannot read the words of Section 29(1) as entitling Parliament to pass legislation which usurps the judicial power of the Judicature - e.g. by passing an Act of Attainder against some person or instructing a judge to bring in a verdict of guilty against someone who is being tried - if in law such usurpation would otherwise be contrary to the Constitution. There was speculation during the argument as to what the position would be if Parliament sought to procure such a result by first amending the Constitution by a two-thirds majority. But such a situation does not arise here. In so far as any Act passed without resort to Section 29(4) of the Constitution purports to usurp or infringe the judicial power it is ultra vires. (the italics are mine in each case)

10

20

p.20,11.3-5

"It is that situation we are faced with now and I have given my view after anxious consideration."

30

p.20,1.33 to
p.22,1.12

p.20,11.33-40

19. The learned Chief Justice referred to, but, for reasons that he gave, rejected arguments based upon the view that the procedure by which Parliament had passed the impugned Act was wrong - that the Constitution should first have been amended by a separate Act which empowered the Legislature to exercise judicial power and to pass Bills of Attainder - that the Bill, in the case of the impugned Act, "should have been expressly stated to be a Bill for the amendment or repeal of the Constitution and not one for the imposition of civic disabilities."

40

p.21,11.1-7

The learned Chief Justice referred to the decision of the Board in McCawley v. The King

[1920] A.C. 691 in which the dissenting judgment of Isaacs and Rich J J., in the Court below had been approved. After referring to passages in the said dissenting judgment which effectively answered the said arguments for the Applicant (Appellant), he continued:-

Record

- 10 "Lord Birkenhead referred in McCawley's Case to the difference between a controlled and uncontrolled Constitution. In the case of the latter, he said, the terms 'may be modified or repealed with no other formality than is necessary in the case of other legislation', while the former 'can only be altered with some special formality, and in some cases by a specially convened assembly.' In this sense, the Ceylon Constitution is controlled because it prescribes in Section 29(4) a requirement which has to be complied with in the case of Bills to amend or repeal any of its provisions. But, apart from the Certificate of the Speaker under that subsection, no other condition is to be found anywhere in it. That is the only procedure stipulated by the Constitution, and it would be wrong to require other formalities which are not prescribed by the Constitution itself."
- 20
- 30 In further reinforcement of his views the learned Chief Justice referred to the decision of the Board in Bribery Commissioner v. Ranasinghe (1964) 66 N.L.R. 73, in which Lord Pearce, after explaining the difference between McCawley's Case and Ranasinghe's Case, had said that, in Ceylon, alterations of the Constitutional provisions, whether express or implied, can only be made by laws which comply with the special legislative procedure laid down in Section 29(4).
- 40 20. In rejecting the argument that no Act, even by a constitutional amendment, could deprive the electors of the Kalmunai Electoral District of the services of the Member of Parliament whom they had chosen by imposing penalties on him, the learned Chief Justice referred to certain certain American decisions which had been relied
- p.21,1.48 to p.22,1.9
- p.22,11.13-43
- p.17,11.29-33
- p.17,1.35 to p.18,1.14

- Record on by Counsel for the Applicant in his attack upon the impugned Act as being an ex post facto law and legislation ad hominem. The learned Chief Justice pointed to differences between the American and Ceylon Constitutions and, citing the decision of the Board in Liyanage v. The Queen [1966] 2 W.L.R. 682, P.C. in support of his views, said that in that case Lord Pearce had made it clear that legislation is not necessarily a usurpation or infringement of the judicial power because it is ad hominem and ex post facto and that 'Each case must be decided in the light of its own facts and circumstances, including the true purpose of the legislation, the situation to which it was directed . . . and the extent to which the legislation affects, by way of direction or restriction, the discretion or judgment of the judiciary in specific proceedings.' 10
- Concluding, the learned Chief Justice said:- 20
- p.17,1.38 to p.18,1.7
- p.18,11.38-45
- p.18,11.45-51 "I cannot, however, see any resemblance between the substance of the impugned Act and the two Acts which the Privy Council" [in Liyanage v. The Queen, supra] "considered in their judgment. The former Statute was enacted in order to give effect to the findings of the Commission of Inquiry which had finished its task. The latter Statutes were a legislative plan ex post facto to secure the conviction and enhance the punishment of particular individuals." 30
- p.20,11.6-32 21. The learned Chief Justice accepted the submission made by the Solicitor-General, on behalf of the Respondents, that Sections 5 and 7 of the impugned Act merely extended the power already possessed by the House of Representatives under Section 13(3)(k) of the Constitution to appoint a Commission to enquire into a charge of accepting a bribe or gratification made against one of its Members. Concluding, on this aspect of the case, he said:- 40

"I see no objection to the Ceylon House of Representatives, by a constitutional amendment, extending the power it had under Section 13(3)(k) to this particular case by enacting Sections 5 and 7 of the impugned Act. They do not thereby exercise judicial but legislative power, and retrospectively impose a disqualification on one who was already a Member of Parliament."

Record

p.20, 11.27-32

10 22. G. P. A. Silva J. was in agreement with the Judgment of the learned Chief Justice. His views, as expressed in a separate Judgment, were as follows:-

(A) The whole of the impugned Act is a valid enactment of the Ceylon Legislature but had it been necessary to do so there could have been applied to it the doctrine of severability separating thus the provisions that were found to be ultra vires from those that were not.

p.23,1.9 to
p.24,1.9

20

(B) The Parliament of Ceylon has the power to enact legislation which disqualifies a Member from sitting and voting and from continuing as a Member by reason of a certain state of facts which existed even before such Member contested the election at which he was duly elected a Member of Parliament and which was not a disqualification according to the law as it then stood. An examination of Section 13(3)(k) of the Constitution indicates "that even at the time of the drafting of the Constitution a special jurisdiction as it were was conferred on each House in the sphere of bribery, to disqualify a Member of such House without the normal condition precedent, namely, a conviction by a Court. This provision has in effect given the decision of a Committee of the House the same sanctity as a decision of a Court in regard to the acceptance of a bribe by a Member.

p.24,11.11-17

30

p.24,1.42 to
p.25,1.2

40

Record
p.25,11.2-4

"It seems to me that if such a disqualification can result from a decision of even a Committee of the House, a fortiori, an Act of Parliament which is passed by both Houses would result in such disqualification."

p.25,11.20-22

In the present case Parliament has based the impugned Act on the findings of the Commission as they stand.

p.25,11.38-40

(C) On the subject of ex post facto legislation and usurpation of the functions of the Judicature, the principle that the Ceylon Parliament has the power to pass retrospective or ex post facto legislation has now been well established, and, therefore, the impugned Act cannot be said to be invalid because of its ex post facto nature. And, it is clear that by the provisions of the impugned Act (which "merely disqualified a Member of Parliament for findings of bribery which had already been finalised several years before the legislation was passed") there had been no incursion into the judicial sphere.

10

p.26,11.8-10
p.28,11.22-25

23. Having referred to the observations of the Board in Liyanage v. The Queen [1966] 2 W.L.R. 682, P.C. on legislation which, in that case, was ex post facto and ad hominem and which was held to have interfered with the functions of the judiciary, the learned Supreme Court Judge (G.P.A. Silva J.), distinguishing the circumstances of the instant case, said:..

20

30

p.27,1.48 to
P.28,1.3

"Can it be said in these circumstances that the Parliament which passed the present Act had any plan at all to secure the punishment of any particular individuals who had in some manner offended the Government in power? Far from there being even the semblance of a plan, the whole ground was prepared by one Parliament and the implementation was by another which, as I said before, displaced the earlier one.

40

10 "There was no changing of any law, no placing of any barrier against these individuals in the way of their defences, no violation of any principle of natural justice in securing the findings against these individuals; in short not one factor which shows that the procedure adopted in this case at the instance of one Parliament was anything out of the ordinary either in regard to the appointment of the Commission or the mode of inquiry adopted by the Commission in reaching their decision touching the six persons concerned, nor did the legislation by the other Parliament which enacted the impugned Act have any plan to disqualify the six persons of its choice as the choice had already been made by a Commission appointed during the period of its predecessor.

20 "A vital distinction between the legislation for the trial of the Coup suspects" /in Liyanage v. The Queen, supra/ "and this enactment regarding the restriction of the Act to named individuals is that, while in the Coup case the named persons were awaiting trial, with the presumption of innocence operating in their favour, the six persons named in this Schedule had already been found guilty of
30 allegations of bribery long before the Act was passed.

"Briefly stated, in the one case the enactment intended to regulate the trial preceded the finding against the named individuals; in the other the finding preceded the enactment." p.28,11.19-22

40 24. Rejecting the argument that the disabilities imposed by the impugned Act were in the nature of penalties the imposition of which had impinged on the province of the Judiciary, the learned Supreme Court Judge (G.P.A. Silva J.), said:-

Record
p.28,11.33-43

"There is a further important distinction between legislation intended to punish any particular individuals who would render themselves liable to punishment under the ordinary law of the land and legislation intended to impose certain disqualifications or disabilities on present or prospective Members of the House qua Members. While in regard to the first category a Court would in certain circumstances hold the legislation to be invalid as being an encroachment on the province of the judiciary, a Court will be slow to invalidate any law passed by Parliament imposing certain disabilities or disqualifications on Members of Parliament in view of the power that Parliament has to control its own proceedings and impose its own discipline.

10

p.28,11.43-45

"Further, the offence of bribery mentioned in Section 13(3)(k) of the Order-in-Council" [i.e. the Constitution] "is not the same as that contemplated in the Penal Code

20

p.29,11.1-6

"Bribery among Senators and Members of Parliament is an area where each House by virtue of the Constitution itself exercises a sort of special jurisdiction and a finding by a Commission appointed with the approval of the Senate or the House of Representatives or by a Committee thereof will have the same force as an adjudication by a competent Court.

30

p.29,11.6-10

"What the present Act seeks to achieve is to extend this disqualification to certain persons found guilty of this same offence by a Commission of Inquiry appointed under the Commissions of Inquiry Act. Any legislation therefore in this area will carry with it a further argument in support of validity."

40

p.29,11.11-26

25. In rejecting arguments which sought to show that the impugned Act must be regarded as invalid inasmuch as its provisions interfered with

judicial power, the learned Judge of the Supreme Court (G.P.A. Silva J.) said that the observations of the Board in Liyanage v. The Queen [1966] 2 W.L.R. 682, P.C. did not justify the inference that the separation of judicial power in the Constitution was unalterable. Continuing, on this subject, he said:-

Record

10 "Such an alteration can, I think, be validly achieved if Parliament passes the necessary legislation with a two-thirds majority and the Certificate of the Speaker in terms of Section 29(4) although, as the Constitution stands at present, there is such a separation of power which cannot be infringed by an ordinary Act of Parliament for the good reason that such an infringement will be ultra vires the Constitution which alone conferred on Parliament that very poer to legislate."

p.29,11.26-33

20 In the view of the learned Judge no reasonable interpretation of the Constitution could lead to the conclusion that under the Constitution no law can remove or reduce the powers of the Judicature which have been provided for therein. To draw such an inference would, he thought, add to the limitations imposed on the plenitude of legislative power by Sub-sections (2) and (3) of Section 29 and contravene thus the canon of interpretation - expressio unius exclusio alterius. In his view Parliament
30 could not thus be restricted to pass only these laws which did not conflict with the entrenched principle of the separation of judicial power.

p.29,11.37-51

40 26. The learned Supreme Court Judge (G.P.A. Silva J.) rejected also the argument for the Applicant (present Appellant) that the impugned Act did not contain any law within the meaning of Section 29(1) of the Constitution - an argument which was based on the theory that the impugned Act was, in effect, a legislative judgment, and not therefore legislation which Parliament was empowered to pass. He agreed with the argument of the Solicitor-General that there was nothing in the impugned Act which, in pith and substance, amounted to an incursion

p.30,11.1-40

Record

into the judicial sphere. In his view the impugned Act did not amount to a legislative judgment.

p.31,11.16-50

27. Rejecting the argument that the impugned Act should be deemed to be invalid and ineffective because the original Bill, on its face, was described as a Bill to impose civic disabilities, etc., and not as a Bill to amend the Constitution, the learned Supreme Court Judge (G.P.A. Silva J.) said:-

10

p.31,11.30-34

"In my view there can be either a direct amendment of a particular provision in the Constitution or one which, though not a direct amendment, may have the effect of an amendment of one or more provisions. In the latter case it may not always be practicable to describe a Bill as an Amendment of a particular provision"

p.31,11.37-47

"I do not think that when the proviso to Section 29(4) proceeded to set out the manner of presentation of a constitutional amendment it also intended to prescribe a particular form to be present on the face of it. If so, I should have expected such a form to be attached to the proviso or to an appendix or the proviso to use some phraseology indicating such an imperative requirement, particularly when another imperative requirement is categorically stated, namely, the Certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House."

20

30

p.32,11.1-5

In conclusion, the learned Supreme Court Judge expressed his view that Parliament can, in terms of Section 29(4) of the Constitution, amend or repeal any provision of the Constitution, subject to any objection which a may be raised in view of Section 29(2); and that as there was no such objection in this case there was no justification to declare any of the provisions of the impugned Act to be invalid.

40

28. Finally, on the issue as to whether or not the Clerk of the House of Representatives (the 1st Respondent) is a holder of a public office against whom a Writ of Mandamus does not lie, the learned Supreme Court Judge (G.P.A. Silva J.) said that while, on the material before him, he was unable to say that a Writ against the said Clerk would not lie in any circumstances, in view of the fact that the Clerk was constrained both by the impugned Act and by the orders of the Speaker to follow the course he had adopted the Writ - which was a discretionary remedy - should not, in his opinion, issue in this case.

Record
p. 32, 11.6-15

29. A Decree in accordance with the Judgment of the Supreme Court was drawn up on the 30th April, 1966, and against the said Judgment and Decree this appeal to Her Majesty in Council is now preferred, the Appellant having obtained leave to appeal by Orders of the Supreme Court, dated 21st June, 1966, and the 26th July, 1966.

pp. 32-33

pp. 37-38.
40-41

In the Respondents' respectful submission the appeal should be dismissed, with costs, for the following, among other,

R E A S O N S

1. BECAUSE the Respondents are not under any duty to make any payment or grant any benefits to the Appellant.
2. BECAUSE the 1st Respondent is a Crown servant and the holder of a public office against whom a Mandate in the nature of a Writ of Mandamus cannot, under any circumstances, issue.
3. BECAUSE payments by the Clerk of the House of Representatives to Members of the House in respect of their remuneration and allowances are paid by him as a servant of the Crown, and the payments are made out of monies voted and appropriated by Parliament, by an annual Appropriation Act, and therefore a Mandate in the nature of a Writ of Mandamus will not issue to enforce such payments.

10

20

30

40

Record

4. BECAUSE the circumstances of this case are not such as to justify the exercise of the Court's discretion in the Appellant's favour by granting him the Mandate which he seeks.
5. BECAUSE on the several grounds stated in the Judgments delivered in the Supreme Court the impugned Act has been correctly adjudged to be a valid enactment of the Ceylon Parliament.

10

RALPH MILLNER

R.K. HANDOO

A N N E X U R EIMPOSITION OF CIVIC DISABILITIES
(SPECIAL PROVISIONS) ACT,
NO. 14 OF 1965

10 AN ACT TO IMPOSE CIVIC DISABILITIES ON CERTAIN
PERSONS AGAINST WHOM ALLEGATIONS OF BRIBERY
WERE HELD BY A COMMISSION OF INQUIRY TO
HAVE BEEN PROVED AND TO MAKE PROVISION FOR
MATTERS CONNECTED THEREWITH OR INCIDENTAL
THERE TO.

[Date of Assent : November 16, 1965]

20 WHEREAS, under section 2 of the Commissions of
Inquiry Act, a Commission of Inquiry consisting
of Messrs. Walter Thalgodapitiya, Thomas Webb
Roberts and Samuel John Charles Schokman, was
appointed by the Governor-General by Warrant
dated September 11, 1959, to inquire into and
report upon allegations of bribery made against
certain persons who were or had been members of
the Senate or the House of Representatives or the
State Council constituted under the Ceylon (State
Council) Order in Council :

And whereas the said Commission had in its
Reports found that the allegations of bribery
against certain of the aforesaid persons had
been proved :

And whereas it has become necessary to
impose civic disabilities on the said persons
consequent on the findings of the said Commission:

30 Be it therefore enacted by the Queen's Most
Excellent Majesty, by and with the advice and
consent of the Senate and the House of
Representatives of Ceylon in this present
Parliament assembled, and by the authority of the
same, as follows :-

A person to whom this Act applies disqualified for registration in registers of electors.

2. No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to have his name entered or retained in any register of electors.

A person to whom this Act applies disqualified from voting at elections

3. A person to whom this Act applies shall be incapable, for a period of seven years computed from the relevant date, of voting at any election of a member of the House of Representatives or of any local authority; and accordingly any such person who so votes at such election in contravention of the preceding provisions of this section shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees, or to imprisonment of either description for a term not exceeding one month, or to both such fine and imprisonment.

10

20

A person to whom this Act applies disqualified for being a candidate at elections.

4. (1) No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to be nominated as a candidate at any election of a member of the House of Representatives or of any local authority; and accordingly the disqualification imposed by the preceding provisions of this section shall be deemed, for all purposes, to be a ground on which any nomination paper submitted by a person to whom this Act applies shall be rejected by the returning officer in the case of a parliamentary election and by the returning officer in the case of an election to a local authority.

30

(2) The nomination of any person as a candidate at any election shall, if he is disqualified from being so nominated by virtue of the operation of sub-section (1), be deemed, for all purposes, to be null and void.

40

5. A person to whom this Act applies shall, for a period of seven years computed from the relevant date, be disqualified for being elected or appointed as a Senator or a member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives.

A person to whom this Act applies disqualified for membership of Parliament.

10 6. No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to be elected, or to sit or to vote, as a member of any local authority.

A person to whom this Act applies disqualified for membership of any local authority.

20 7. Where, on the day immediately prior to the relevant date, a person to whom this Act applies was a Senator, or a member of the House of Representatives or of any local authority, his seat as a Senator or such member, as the case may be, shall be deemed, for all purposes, to have become vacant on that date.

Vacation of seats as members of Parliament or of any local authority by persons to whom this Act applies.

30 8. A person to whom this Act applies shall be disqualified, for all time, from being employed as a public servant, or from being elected or appointed or nominated as a member of any scheduled institution or the governing body thereof.

A person to whom this Act applies disqualified for employment as a public servant or for election or appointment or nomination to scheduled institutions or the governing bodies thereof.

Vacation of office as public servants or members of scheduled institutions or governing bodies thereof by persons to whom this Act applies.

9. Where, on the day immediately prior to the relevant date, a person to whom this Act applies -

(a) was a public servant, such person shall be deemed, for all purposes, to have been dismissed on that date from the public service by the person or authority empowered so to do under any appropriate law, and to have vacated his office as such servant on that date ; or

10

(b) was a member of any scheduled institution or the governing body thereof, such person shall be deemed, for all purposes, to have vacated his office as such member on that date.

Special provisions relating to this Act.

10. (1) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of the Ceylon (Constitution) Order in Council, 1946, the said provisions of this Act shall be deemed, for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of that Order in Council enacted by Parliament after compliance with the requirement imposed by the proviso of sub-section (4) of section 29 of that Order in Council.

20

(2) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of any appropriate law, other than the Order in Council referred to in sub-section (1), the said provisions of this Act shall be deemed, for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of such appropriate law enacted by Parliament.

30

(3) The provisions of any appropriate law shall have force and effect subject to the provisions of this Act, and accordingly shall be read and construed subject to such modifications or additions as may be necessary to give the provisions of such appropriate law the force and effect aforesaid.

40

(4) In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any appropriate law, the provisions of this Act shall be read and construed subject to all such modifications or additions as may be necessary to resolve such conflict or inconsistency or, in the event of it not being possible so to do, shall prevail over the provisions of such appropriate law.

10 11. In this Act, unless the context otherwise requires -

Interpre-
tation.

"appropriate law", in any context in which that expression occurs in this Act, means any written law, other than this Act, which makes provision in respect of any matter or thing for which provision or substantially the same provision is made in that context;

20 "candidate", in relation to any election, means a person who, by himself or by any other person or persons on his behalf, seeks, under any appropriate law, nomination as a candidate at such election;

"local authority" has the same meaning as in the Bribery Act;

30 "person to whom this Act applies" means each person specified in the Schedule to this Act in regard to whom the relevant Commission in its Reports found that any allegation or allegations of bribery had been proved.

"public servant" has the same meaning as in the Bribery Act;

"register of electors" has the same meaning as in the Ceylon (Parliamentary Elections) Order in Council, 1946;

40 "relevant Commission" means the Commission of Inquiry consisting of Messrs. Walter Thalgodapitiya, Thomas Webb Roberts and Samuel John Charles Schokman, which was appointed, under section 2 of the

Commissions of Inquiry Act, by the Governor-General by warrant dated September 11, 1959;

"relevant date" means the date of the commencement of this Act;

"Reports", in relation to the relevant Commission, means "The Reports of the Parliamentary Bribery Commission, 1959/1960", published as Parliamentary Series No. 1 of the Fifth Parliament, First Session, 1960, and tabled in the House of Representatives on December 16, 1960, and ordered to be printed on December 22, 1960;

10

"scheduled institution" has the same meaning as in the Bribery Act;

"Senator" means a member of the Senate;

"voting", in relation to any election, means applying to vote, or voting, at such election, and its grammatical variations or cognate expressions shall be construed accordingly.

20

SCHEDULE (Section 11)

HENRY ABEYWICKREMA

MANAMELDURA PIYADASA DE ZOYSA

MOHAMED SAMSUDEEN KARIAPPER

ROBERT EDWARD JAYATILLEKE

CASILA ABDUL SAMED MARIKKAR

DHARMASENA BANDARA MONNEKULAME

A N N E X U R ETHE CEYLON (CONSTITUTION) ORDER IN COUNCIL, 1946(THE "CONSTITUTION OF CEYLON")

3. (1) In this Order, unless the context otherwise requires -

"Member" or "Member of Parliament" means a Member of the House of Representatives;

"Parliament" means the Parliament of the Island;

10 "public office" means any office the holder of which is a public officer;

"public officer" means any person who holds a paid office, other than a judicial office, as a servant of the Crown in respect of the Government of the Island, but does not include -

(a) the Governor-General or any member of the Governor-General's office or of his personal staff,

20 (b) The President, the Speaker, or an officer of the Senate of the House of Representatives,

(c) the Clerk to the Senate, the Clerk to the House of Representatives or a member of the staff of the Clerk to the Senate or the Clerk to the House of Representatives,

30 (d) a Minister or Parliamentary Secretary, or a person who, having held office as a Minister under the existing Orders in Council immediately prior to the date on which Part III of this Order comes into operation, continues to hold office as a Minister at any time during the period commencing

on that date and ending on the date on which Ministers or other authorities assume charge of such functions as may be assigned to them under this Order,

- (e) a Senator or a Member of Parliament by reason only of the fact that he receives any remuneration or allowance as a Senator or Member,
- (f) a member of the Judicial Service Commission, 10
- (g) a member of the Public Service Commission,
- (h) the Auditor-General,
- (i) a member of the Ceylon Defence Force or of the Ceylon Naval Volunteer Force or of any other naval, military, or air force that may be raised under the provisions of any Act of Parliament, by reason only of his membership of any such force, 20
- (j) a Crown Advocate other than a Crown Counsel,
- (k) a Crown Proctor

13. (3) A person shall be disqualified for being elected or appointed as a Senator or a member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives -

- (k) if during the preceding seven years he has been adjudged by a competent court or by a Commission appointed with the approval of the Senate or the House of Representatives or by a Committee thereof to have accepted a bribe or gratification offered with a view to influencing his judgment as a Senator or as a Member of Parliament. 30

24. (1) The seat of a Member of Parliament shall become vacant -

Vacation of
Seats in the
House of
Representa-
tives.

- (a) upon his death; or
- (b) if, by writing under his hand addressed to the Clerk to the House of Representatives, he resigns his seat; or
- (c) if he is elected or appointed a Member of the Senate; or
- 10 (d) if he becomes subject to any of the disqualifications mentioned in Section 13 of this Order; or
- (e) if, without the leave of the House of Representatives first obtained, he absents himself from the sittings of the House during a continuous period of three months; or
- (f) upon the dissolution of Parliament.

28. (1) There shall be a Clerk to the Senate who shall be appointed by the Governor-General.

Staff of
Parliament.

20 (2) There shall be a Clerk to the House of Representatives who shall be appointed by the Governor-General.

(3) The members of the staff of the Clerk to the Senate shall be appointed by him in consultation with the President.

(4) The members of the staff of the Clerk to the House of Representatives shall be appointed by him in consultation with the Speaker.

30 (5) The Clerk to the Senate, the Clerk to the House of Representatives and the members of their staffs shall, while they hold their office as such, be disqualified for being elected or appointed as a Senator or as a Member of Parliament or for sitting or voting in the Senate or the House of Representatives.

(6) The Clerk to the Senate and the Clerk to the House of Representatives shall not be removable except by the Governor-General on an address of the Senate, or of the House of Representatives, as the case may be.

Provided that, unless Parliament otherwise provides, the age for their retirement shall be sixty years.

Power of Parliament to make laws.

29. (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

10

(2) No such law shall -

(a) prohibit or restrict the free exercise of any religion; or

(b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

20

(c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or

(d) alter the constitution of any religious body except with the consent of the governing authority of that body:

Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.

30

(3) Any law made in contravention of subsection (2) of this Section shall, to the extent of such contravention, be void.

(4) In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island:

40

Provided that no Bill for the amendment or repeal of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present).

10 Every certificate of the Speaker under this subsection shall be conclusive for all purposes and shall not be questioned in any court of law.

75. Until Parliament otherwise provides, the remuneration and allowances payable to Members of the first House of Representatives, including the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, shall be the same as the remuneration and allowances paid to the Members of the State Council and the aforesaid officers thereof.

20

Remuneration
of Members of
first House
of Represent-
atives.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT
OF CEYLON

BETWEEN:

MOHAMMED SAMSUDEEN KARIAPPER
(Petitioner) Appellant

- and -

1. S. S. WIJESINHA
(Clerk to the House of
Representatives)
 2. S. N. SENEVIRATNE
(Assistant Clerk to the
House of Representatives)
Respondents
-

C A S E

FOR THE RESPONDENTS

T. L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondents.