

GILL v REGISTRAR OF POLITICAL PARTIES

(2011) SLR 69

A Amesbury for the appellant
R Govinden for the respondent

Judgment delivered on 30 March 2011 by

KARUNAKARAN J: The last decade of the twentieth century will not be forgotten in the political history of Africa. This was the decade when the freedom struggle against the last vestiges of racial oppression in Africa came to an end. Nelson Mandelawrote a eulogy to his *Long Walk to Freedom*. The Rainbow Nation was in full blossom on the horizon of Good Hope. The People of Seychelles - after experiencing a cycle of different political systems - eventually attained political maturity and national stability. They embarked on their historic voyage from a single-party state towards a vibrant pluralist democracy. They ensured that the torch of liberty was passed on from one generation to another to burn forever as steady as a lighthouse on their shores.

In 1993, their voyage began with a dream - The Seychellois Dream - if I may call it that, a dream of a modern sovereign democratic republic, in which life was better, richer and fuller for every Seychellois without discrimination, whether based on race, colour, religion, creed, sex or political views; with equality of opportunity to enjoy freedom, justice, welfare, fraternity, peace and unity. Their dream was not based on an illusion but on a vision that sprouted from their ability to go beyond the obvious, to see the invisible and touch the future. Their dream is not about problem-solving, but the pre-emption and prevention of problems. The People of Seychelles thus decided to rewrite their own political destiny and they did with a style of their own.

Differing political thoughts converged, were reconciled and conceived in consonance. The Constitution of Seychelles (The Third Republic) was born after much brainstorming, reflection, ideological debate and intellectual labour and finally delivered through referendum.

"The Seychellois Dream" has now taken shape with roots that give it a stronghold on ground realities and wings that give it the ability to reach new heights. It is beautifully animated in the Preamble which, I am sure we all know, is a part of the Constitution (vide *SR Bommai v Union of India* (1994) SC 1918). The Preamble is a key to reaching into the minds of the makers of it. The People of Seychelles solemnly resolved to constitute Seychelles into a sovereign democratic republic. The people, as descendants of different races had learnt to live together as one people and as one nation under God constituting a classless society. They wished to serve as an example for a harmonious multi-racial society. They proclaimed so in the Preamble. They recognised the inherent dignity, equality and inalienable rights of all members of the human family. They reaffirmed, in the Preamble, that these rights include the pursuit of happiness free from all types of discrimination.

Pluralism flourished. People celebrated unity in diversity. The Constitution of

Seychelles proclaimed a philosophy of its own founded on all these ideals, hopes, intentions, wishes and the aspirations of the people. This is the essence of "The Seychellois Dream".

Although this "dream" is the perpetual pursuit of a unique goal that is close to the heart and sacred to every right-thinking Seychellois man and woman, some individuals, who have indeed, embraced the same democratic system, do not endorse the "General Will" (vide Rousseau's *Social Contract Theory* 1762) of the people of Seychelles. For reasons best known to them, they disown "The Seychellois Dream". They aspire to tear down that "dream" and create a wonderland of their own based on "Individual Will" (vide Rousseau supra). These individuals do not subscribe to the Seychellois philosophy of One People-One Nation. They wish to fragment society and compartmentalise the people. They do not realise that for a State, the size and composition of Seychelles, unity is our greatest strength and means of survival amongst the many countries that dwarf us. They do not believe that men are born equal and all Seychellois are equal before law and equal in civil and political status. They do not believe in a classless society. For them, there are and ought to be two classes of citizens. They claim that one class or breed self-styled as "Seselwa Rasin" amongst the people of Seychelles is superior to the other class, whom they tag "Seselwa Fabrike". They do not accept the existing constitutionalism nor have they any respect for the equality and dignity of human beings. They want to do away with the Constitution of the Third Republic. They refuse to share or be part of "The Seychellois Dream" enshrined in the Constitution. They want to have the exclusive right to politically control and govern Seychelles. They want to establish a government of the "Rasin" by the "Rasin" and for the "Rasin". They believe and expressly state that the Seselwa Resin have a duty and obligation to remove the "PP Collaborators" (presumably, PP means Party in Power) from power, unless they renounce their collaboration. According to them, the removal of the PP Collaborators from power must be accomplished, first, by exhausting all peaceful means available, and then, as an absolute last resort, by revolutionary direct action. Undoubtedly, what matters for them is the end, not the means. This is the essence of their political thoughts, beliefs, agenda and their ultimate dream; a dream, obviously, based on an illusion.

These individuals want to rewrite the political philosophy and the destiny of every Seychellois and of the generations to come. In short, they want to establish a "Fourth Republic" founded on a political philosophy of their choice. To achieve that, they need political power. To acquire that power, they obviously need a political organisation. Hence, they have now organised themselves as a "political group". According to them, since the present Constitution has given them freedom of thought, belief, expression and all civil and political rights, they have the fundamental right to express their political views and do away with the present Constitution. Moreover, since the Constitution has guaranteed and conferred on them the right to form a political party, they want to have their "political group" registered as a political party in Seychelles.

Is this political group entitled to be registered in the eye of law, as a political party in Seychelles?

This is the question that arose before the Registrar of Political Parties for determination. The Registrar answered in the negative. Now, the Court is invited to

review his decision and pronounce on the correctness, accuracy, legality, constitutionality and propriety of his decision. Hence this judgment.

This matter is before the Court by way of an appeal preferred by the appellant under section 8(1) of the Political Parties (Registration and Regulation) Act (Chapter 173) (hereinafter referred to as the "Act") against the refusal of the Registrar of Political Parties (hereinafter referred to, as the "Registrar") to register a political group called "Mouvman Seselwa Rasin" (hereinafter referred to, as the "MSR") as a "political party" under the provisions of the Act.

One Mr Christopher Gill, a resident of Praslin, who claims to be the leader of MSR, hereinafter called the "appellant", submitted an application to the Registrar on 13 July 2010 in the prescribed form for the registration of MSR as a political party. The application was made in terms of section 5 of the Act, which reads thus:

- (1) An application for registration shall be signed by the office bearers of the political party and shall be accompanied by: A political party consisting of not less than 100 registered members may apply in the prescribed form to the Registrar for registration under this Act.
- (2) An application for registration shall be signed by the office bearers of the political party and shall be accompanied by:
 - (a) Two copies of the constitution, rules and political programme or manifesto of the party duly certified by the leader of the party,
 - (b) The particular of the registered office of the party;
 - (c) A list giving the name, address and national identity number of not less than 100 registered members of the party;
 - (d) A list giving the name, address and national identity number of the leader and other office bearers of the party;
 - (e) Such further information or document as the Registrar may require for the purpose of satisfying himself that the application complies with this Act or that the party is entitled to be registered under this Act.
- (3) A list referred to in paragraph (c) and paragraph (d) shall be signed by each of the persons named therein.
- (4) A person shall not be considered to be a member of a political party for the purposes of this Act unless;
 - (a) He has attained the age 18 years;
 - (b) He is a Seychellois; and
 - (c) He is resident in Seychelles.

The application was thus duly signed by the office bearers of MSR and accompanied by all documents required under section 5. The application was under consideration by the Registrar. During that time, one of the office bearers, Mr Francis Gill, whose name appeared in the original list submitted to the Registrar, was withdrawn by the applicant. Be that as it may, the Registrar meticulously scrutinised all the documents accompanied the application, including the constitution of the MSR and the relevant provisions of law. Thus, after giving due consideration to the application, the Registrar rejected the application. He refused registration of MSR as a political party in terms of section 7 of the Act. This section is couched in the following terms:

- (1) The Registrar may refuse to register a political party if he is satisfied that -
 - (a) the application is not in conformity with this Act;
 - (b) the name of the party –

- (i) is identical to the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application;
 - (ii) so nearly resembles the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application as to be likely to deceive the members of the party or the public; or
 - (iii) is provocative or offends against public decency or contrary to any other written law as to be undesirable;
 - (c) any purpose or object of the party is unlawful.
- (2) A political party shall be deemed to have a purpose or object which is unlawful for the purposes of this Act if –
- (a) it seeks, directly or indirectly, to further ethnical, racial or religious discrimination or discrimination on the ground of colour;
 - (b) it advocates or seeks to effect political changes in the Republic through violence or unlawful means;
 - (c) it seeks to secede any part of the Republic from the Republic.
- (3) For the purposes of determining whether a political party has an unlawful purpose or object the Registrar *may consider any document* (emphasis mine), statement or matter made by or on behalf of the political party or by an office bearer of the party.
- (4) Where the Registrar refuses to register a political party, he shall forthwith serve upon the party a notice in writing to this effect and shall specify the ground for his refusal.

Having thus refused registration, the Registrar accordingly, served upon the appellant a notice in writing dated 12 October 2010 specifying the grounds for his refusal.

The grounds specified by the Registrar in his notice inter alia, read:

According to the Political Party (Registration and Regulation) Act, 1991 no party can be registered if its objects are unlawful.

The objects of a political party are reflected in a political party's constitution.

I have scrutinized the applicant's constitution in the light of the provisions of the said Act and highlight some of the salient issues:

- Article IV provides that the applicant has the exclusive (sic) to political control and to govern Seychelles.
- Article VII provides that the applicant will create two categories of citizenship one for naturalized Seychellois and the other naturally born Seychellois. Upon assuming power the former that the applicant called "fabrike" is entitled to be to be (sic) deported.
- Article XV and XIII promotes revolutionary changes of government.

All the above provisions are contrary to article 1 of the Seychelles Constitution which creates Seychelles as a democratic Republic, which is defined in article 47 of the Constitution (sic) as inter alia, where there exist

the existence of human right and tolerance of the freedoms and right of others and where political changes occurs through the democratic process. The constitution of the applicant is unlawful.

Under section 7 (of the said Act), I hereby reject your application for the registration of MouvmanSelselwaRasin as a political party.

However, if you are aggrieved by this decision you may appeal to the Supreme Court within 21 days of this notice.

H. Gappy (Sd)
Registrar of Political Parties

The appellant being aggrieved by the above decision wrote a letter dated 14 October 2010 to the Registrar, which inter alia reads thus:

Dear MrGappy,

I am writing further to your letter dated October 12, 2010 in which you rejected the application of Mouuman Seselwa Rasin. Reason being the constitution is unlawful.....

Beliefs cannot be illegal in a democratic society. It is absurd. Beliefs of a party cannot be contrary to law or unlawful, if the belief is intended to change the law once given a mandate.....

Attorney Conrad Lablache has suggested to reword the Manifesto to placate your obvious nervousness in regards to MSR registration. The language can be interpreted in the wrong light especially when your office is dabbling in constitutional interpretation without any standards of interpretation in place.

Standards of interpretation must be in place and known to the public, before an apparatus of the State can know how to rule on a fundamental right.

In order to do this, our member will be consulted and they will be undertaking an exercise to review our manifesto. Their comments will be compiled and opinion noted we submit an alternative manifesto to you.

Sincerely,
Christopher Gill (Sd)
Leader, MSR

Subsequently, on 21October 2010, the Registrar received the "Second Submission of the MSR Manifesto" - supposed to be consonant with the Constitution and laws of Seychelles - from the appellant in respect of his application for registration. In fact, the second submission of the MSR Manifesto was nothing but a replica of the first one that was originally submitted to the Registrar. The contents in respect of Articles IV, VII, XV, and XIII were the same except its jacket that carried a change of title from "The Constitution of MSR" to read "Manifesto of MSR". The Registrar again refused registration in his letter dated 4November addressed to the appellant stating in verbatim thus:

I acknowledge receipt of the second submission to this Office in respect to the application to register MouvmanSelselwaRasin as a political party.

In my opinion Articles IV, XIII and XV of your Manifesto are not in consonant with the provision of Section 7 of Cap 173. You should revisit these Articles.

(Sd) H. Gappy
Registrar of Political Parties

In response to this letter, the appellant again submitted another Manifesto of MSR entitled the "Third Submission" to the Registrar again insisting on the registration of MSR as a political party.

Obviously the third submission is also nothing but the same old wine in a new bottle. The appellant had made some cosmetic changes to the previous but in pith and substance both constituted the same political ideology. The changes were superficial. For instance;

- (1) Article II was changed to read as follows: Day of Betrayal and Atonement: Henceforth, June 5th of every year shall continue as a national holiday to be remembered by all Seselwa Rasin as the Day of Betrayal and of Atonement. On this day, we will henceforth remember the betrayal of Seselpou Seselwa and atone for the ways we individually may have personally betrayed SeselPou Seselwain the prior year and resolve and define ways to improve our individual commitment and dedication to SeselPou Seselwa during the coming year.
- (2) Article IV in the original Constitution of MSR read thus:
Seselwa Rasin have the exclusive right to politically control and govern Seychelles. Seselwa Rasin have the exclusive right to be elected to, or appointed to, any position in Seychelles that involved governing, or which has any powers *to govern, any part of Seychelles* (emphasis mine).

This article was also completely deleted in the third submission and replaced by the following:

POLITICAL CONTROL OF SEYCHELLES

MSR shall pursue amendments to the Constitution to ensure that no "Fabrike" shall be permitted to seek any political office in the Republic and for all posts of high office to be reserved for Seselwa Rasin.

- (3) Article VII in the original Constitution of MSR that created two classes of citizens was kept intact in the Third Submission.
- (4) Article XV in the original Constitution of MSR read thus:

If direct revolutionary action is needed, every Seselwa Rasin must do all that he or she can do to assist in the effort, even if that is simply providing *those who are engaged* (emphasis mine) with a glass of water.

This article too was completely deleted in the third submission and replaced as below:

Due Process of Law: No Seselwa Rasin shall be denied life, liberty, property, privacy, equality of opportunity and the pursuit of happiness without due process of law.

(5) Article XIII of the original Constitution of MSR read thus:

REMOVAL OF PP COLLABORATORS

We Seselwa Rasin have a duty and obligation to remove the PP Collaborators from power, unless they renounce their collaboration and implement SeselPou Seselwa. The removal of the PP Collaborators from power must be accomplished first by exhausting all peaceful means available, and then, as absolute last resort, *by Revolutionary Direct Action.....* (emphasis mine)

This article was completely deleted in the third submission and replaced to read as below:

SESELWA RASIN - SELF-EDUCATION - RECRUITMENT- DEFENSE

It is the duty of every Seselwa Rasin to politicize and educate himself or herself about The Rasin-ist Creed, and thereafter, to recruit, educate and politicize three other persons about the Rasin-ist Creed and to become a Rasin-ist, who in turn must do the same thing.

It is the duty and obligation of every Rasin-ist to educate himself or herself according to each individual's highest abilities and capabilities so that each Rasin-ist may have the highest level of skill, abilities and capabilities to individually protect and defend SeselPou Seselwa and the principles contained in the Rasin-ist Creed.

The Registrar, having been again dissatisfied with the contents of the Third Submission again refused registration and served upon the appellant a notice in writing dated 13 November 2010 accordingly, specifying the grounds for his refusal. The said notice read thus:

The Third Submission for the registration of "Mouvman Seselwa Rasin," as a political party, is not substantially dissimilar to the previous ones. You are still insisting to discriminate between groups of Seychellois; ie between what you call the Seselwa Rasin and the non- Seselwa Rasin.

This is a clear violation of the Constitution of the Republic of Seychelles and also the Political Party (Registration and Regulation) Act.

Pursuant to Section 7(4) of the Political Party (Registration and Regulation) Act, I hereby give you notice on the above stated grounds and I shall not register the "Mouvman Seselwa Rasin".

H.P. Gappy (Sd)
REGISTRAR OF POLITICAL PARTIES

The appellant being aggrieved by the decision of the Registrar's refusal to register MSR as a political party has now appealed to this Court against the entire decision on the following grounds:

(1) The reasons given by the respondent for refusing to register the political party is devoid of merit and contrary to section 7 of the Political Party (Registration and Regulation) Act, and is therefore illegal; and

(2) By refusing to register the political party the respondent has violated the rights of the appellant's under articles 21(1) 'freedom of thought', art 23 "to form or belong to a political party" art 24(a) and article 22(1) "freedom of expression."

Mrs Alexia Amesbury, counsel for the appellant submitted in essence that the original "MSR Constitution" first submitted to the Registrar, was subsequently amended and replaced by the MSR Manifesto (the Third Submission), which does not contain anything unlawful, illegal or unconstitutional. Seychelles is a democratic country and every Seychellois has a fundamental right to hold or subscribe to any political view or belief and to believe in any political ideology. The appellant as a Seychellois has every political and civil right to hold and express any political belief and to form a political party and to have it registered under the Act. Accordingly, the appellant applied for registration of the MSR. He complied with all statutory requirements in terms of section 5 of the Act. Hence, the appellant is entitled to have the MSR registered as a political party. That is fundamental human right of the appellant or that of any other Seychellois for that matter. However, the Registrar unlawfully and illegally refused to register for no valid reason.

Moreover, it is the submission of Mrs Amesbury that (i) "freedom of thought and expression" and (ii) right to form or belong to a political party is fundamental human right. They are guaranteed not only by the Constitution of Seychelles under the Seychellois Charter of Fundamental Human Rights and Freedoms as sacrosanct, but also by the International Covenant on Civil and Political Rights (ICCPR) to which Seychelles is a party having signed and ratified it. According to counsel, the Registrar's decision in refusing registration is not only illegal but such decision is in gross violation of the appellant's fundamental human right guaranteed by the Seychelles Constitution as well as by the international instrument. In support of her submission, counsel also cited the case of *PartridulComunistilor and Ungureanu v Romania* Application No 46626/99 - the judgment of which was delivered by the European Court of Human Rights on 3 February 2005.

For these reasons, Mrs Amesbury urged the Court to allow the appeal and direct the Registrar to register "Mouvman Seselwa Rasin" as a "political party" under the provisions of the Act.

On the other side, Attorney-General MrGovinden submitted in essence that the decision of the Registrar to refuse registration is proper, lawful, legal and constitutional. The impugned decision is consonant with the provisions of the Act and that of the Constitution of Seychelles. Indeed, MrGovinden in his submission read out and drew the attention of the Court to a number of Articles found in the MSR Manifesto, which are in violation of various provisions of the statutes and the Constitution of Seychelles. He clearly demonstrated to the Court how the appellant's attempt to register MSR as a political party would destroy every fabric of our society and the democratic system. The MSR's intended discrimination and the classification of people into "Seychellois Rasin" and "Seychellois Fabrike" not only violate various provisions of our Constitution but also violate "international human rights norms". He also drew an analogy between the MSR Manifesto and the so-called Nuremberg Laws, which Hitler had decreed against the Jews in Nazi Germany creating classification of its citizens and the resultant holocaust. Furthermore, MrGovinden

submitted that purpose and object of the MSR (vide Article XV and XIII of the Manifesto) is to bring about political changes including change of government through revolutionary means. This is unconstitutional and unlawful. Hence, according to the Attorney-General, the decision of the Registrar is lawful. He rightly refused registration of MSR as a political party in terms of section 7(1)(c) of the Act.

For these reasons, the Attorney-General urged the Court to uphold the decision of the Registrar refusing registration and to dismiss this appeal accordingly.

I meticulously examined all the documents produced by the parties including all correspondence between the appellant and the Registrar of Political Parties in this matter. I diligently perused the relevant provisions of the Constitution of Seychelles and other related laws as well as the Romanian case law cited by counsel Mrs Amesbury. I gave careful thought to the arguments advanced by counsel on both sides, for and against this appeal.

At the outset, it is pertinent to note that section 7(3) of the Act clearly empowers the Registrar to consider any document, statement or matter made by or on behalf of the political party or by an office bearer of the party, for the purposes of determining whether a political party has an unlawful purpose or object. Evidently, the Act has given an unfettered discretion to the Registrar in so far as the consideration of all relevant documents in this respect. Hence, the Court holds that it was lawful, proper and reasonable for the Registrar to examine and consider all documents that emanated from the appellant including the First, Second and Third Submissions for the purpose of determining on the registration of MSR as a political party. To my mind and in law he has rightly done so in this matter.

Moreover, I find that all certified copies of the documents produced by the Registrar as exhibits herein are obviously official documents, maintained in the course of his official duties and kept at his office as official records. They are indeed public documents. For all legal intents and purposes, they are presumed to be genuine and authenticated documents, in the absence of any evidence to the contrary vide Latin maxim: *omniapraesumunturlegitimefactadonecprobetur in contrarium*.

Be that as it may, I will now move on to the merits of the case. Needless to say, political parties constitute the lifeblood of democracy. Without political parties, democracy loses its meaning. Although political parties in civilized democracies differ in their political beliefs and ideology, they all share certain characteristic features. Indeed they all basically espouse an expressed ideology or vision bolstered by a written platform with specific goals aiming for the betterment of the nation and its people. The aims of political parties shall be based on respect for the nation's sovereignty, independence and territorial integrity and for democracy. They all recognise citizen's equality before the law and equal protection of laws. They uphold the unity, security and dignity of the nation. They all believe in the ballots and in democracy, not in the bullets and in oligarchy or anarchy. The primary objective of a political party is to influence government policy, usually by nominating their own candidates and trying to seat them in political office. They compete for political power to form their own government and implement their policy. Political parties participate in electoral campaigns, educational outreach or protest actions. When they are in power they try to ensure good governance through good people and good

laws; preserve public accountability and transparency, try to narrow down the gap between the rhetoric and the reality, although the gap has a perpetual tendency to reopen. Above all, the means employed to achieve the aims of political parties shall be in accordance with the existing constitutional framework and legal order of the nation. As I observe, these are the standard elements found as characteristic features of political parties that vie for political power in a democratic system.

Bearing the above standards in mind, I carefully perused the political Manifesto of MSR. On the face of it, it seems to me that MSR's aims, objects and its intended activities do not reflect those general characteristic features normally expected of a responsible political party in any pluralistic democratic society.

Unconstitutionality

From a meticulous examination of the documents on record I find that the MSR's Constitution in Article XV and XIII undoubtedly promotes, advocates and incites change of government by revolution. They believe that if the ballots could not bring about the change they want, they will resort to the bullets as last resort. They say they will engage their cadets to achieve it by revolutionary direct action. Besides, they impose a legal obligation on all Seychellois men and women to assist those cadets in their engagement by providing them at least a glass of water. Thus, the MSR strives to gain political power in order to establish their class rule undermining the "rule of law" and "democracy". This means that the constitutional and legal order in place since 1993 in Seychelles has been inhumane and unacceptable to them, to the so-called Seselwa Rasin. Is this not glaring unconstitutional thinking, belief, attitude and unlawful object and approach?

According to MSR, the existing Constitution of Seychelles should be eliminated, whatever the means employed but it ought to be replaced by what they believe in. Is this not an abrogation of the existing Constitution of Seychelles? Is this not a threat to the sovereignty of the nation? Alas! Here, the image that comes to my mind is that of a man attempting to saw off the very branch he is sitting on.

Again, under Article IV of the Manifesto of MSR, they claim Seselwa Rasin have the exclusive right to politically control and govern Seychelles. Is this not a threat to our popular pluralist democracy and republicanism?

In the same breath, they say that they shall have power "to govern any part of Seychelles". Is this not a threat to the territorial integrity of the nation?

Freedom of Thought, Belief and Expression

The appellant Mr Gill also expressed his conviction in open court that mere belief cannot be illegal in a democratic society. He claimed that he has the constitutional right to believe in any political philosophy of his choice.

I quite agree with him. He has a right to believe in any philosophy that predominates in his mind, provided such belief is not wrong or erroneous and does not infringe the rights of other right-thinking people in society. In fact, human belief is an abstract entity, a synthesis - if I may use the dialectic term. It is based on the perception of reality by a human mind (see, Hegel's dialectic philosophy). As long as it remains as

a belief - a thought unexpressed - within the mind of the believer, nobody will bother or read his mind to verify whether it is a right belief or wrong belief. The believer may enjoy his freedom of belief within his mind, without any restriction imposed by anyone for any reason whatsoever. However, if the same belief is once expressed, relied and acted upon either by the believer himself or by any other person for that matter, and if that act results in harm or likely to result in harm to his neighbour, then such belief whether political or otherwise, is liable to be scrutinised as this Court now does herein. And, if it is found to be wrong, then that belief is liable to be condemned as it adversely affects the interest of his neighbour. Incidentally, I should mention that I use the term "neighbour" herein, in a broad sense as used in the "golden rule" ("Thou shalt love thy neighbour as thyself" - Leviticus 19:18) that sense was extended by Lord Atkin from the sermon on the Mount to the law of negligence in *Donoghue v Stevenson* [1932] AC 562 (House of Lords), the most famous case in the common law. I prefer to extend it further to the law of human rights and freedoms.

Now, one might ask: Who, then in law, is my neighbour? The answer seems to be-

persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions based on my beliefs, which are called in question.

Indeed, the active man, who acts on wrong beliefs, is more dangerous to society than the one who is blissfully ignorant of the subject-matter and remains inactive. As Thomas Jefferson once mentioned "Ignorance is preferable to error; and he is less remote from the truth who believes nothing, than he who believes what is wrong". Obviously, the appellant in this matter is too remote from the truth as he believes in what is wrong in the eye of law.

In any event, the exercise of one's civil or political right is always subject to non-infringement of the rights of others. This reminds me of a story, that an Englishman walked along swinging his walking-stick and it struck the nose of another person. When the injured person objected, the wielder of the walking-stick said that England had ensured freedom to all people and that in swinging his walking-stick he was only exercising his right. The objector then replied "Sir, your freedom ends where my nose begins".

As rightly submitted by the appellant's counsel, it is true that our Constitution has ensured freedom and fundamental human rights including the "right to form political parties" to all people without discrimination. I endorse her proposition in this respect. For, freedom is an indivisible word. If we want to enjoy it and fight for it, we must be prepared to extend it to everyone, whether they are rich or poor, whether they agree with us or not, no matter, whatever be their race, religion, creed or colour of the skin, and whatever be the political belief or philosophy that predominates their mind, but we must be prepared to extend it to all. That is the bottom-line.

The appellant's understanding on the concept of "free individuality" (the freedom of thought, speech, expression and action) appears to be biased against the State. His understanding is obviously based on the wrong belief that individualism is above the concept of State. As German philosophers Kant, Fichte and Hegel rightly

propounded, the legal philosophy of free individuality ought to be based on human mind that is, on the self- consciousness of a reasonable being. After all, man is a social animal (per Aristotle)! By nature, he lives in community and ought to interact with fellow human beings for survival and civilisation. Freedom of action of one human being should respect the equal right of another. Firstly, individual freedom is of necessity mutual. Secondly, the sphere of legal relations is that part of mutual personal relations which regulates the recognition and definition of the respective sphere of liberty, on the basis of free individuality. Thirdly, the State comes in to control and regulates the rights of the individuals.

The relationship between the individual and the State is based on three principles:

1. The individual becomes a member of the State by the due performance of civic duties and acquires his contractual status as a citizen;
2. The law guarantees and limits the rights of the individual; and
3. Outside the sphere of civic duties, the individual is free and responsible only to himself. In that mode he is a man, not a citizen.

Contrary to these principles, the appellant's political belief in effect, does not allow the individual to become a member of the State by the due performance of his civic duties. The appellant does not recognize guarantees and limits the rights of individuals. He simply wants an individual to be free and be responsible only to himself as a man, but not to the State, as a citizen.

Besides, it must, however, be understood that fundamental rights are not absolute rights. They are subject to restrictions and "rule of law". Thus our Constitution tries to strike a balance between the individual rights and social interest. Although our Constitution guarantees the right to form political parties to all people, it also stipulates that such right is subject to such restrictions as can be imposed under article 23(2) of the Constitution by law and necessary in a democratic society. The required law, the Political Parties (Registration and Regulation) Act, is in place and in force has, as contemplated by the Constitution, imposed such restriction as is "necessary in a democratic society" to protect the rights and freedoms of others.

For the purpose of determining whether such a restriction is necessary in a democratic society, the adjective "necessary", within the meaning of article 23(2), implies the existence of a "pressing social need".

The Court reiterates that its examination of whether the refusal to register MSR as a political party met a "pressing social need" must concentrate on the following points:

- (i) Whether there is plausible evidence on record to show that MSR's objective is to jeopardize democracy and rule of law;
- (ii) Whether the intended class rule, revolutionary direct action, abrogation of the Constitution, classification of citizenry and all these factors taken together constitute the mission, vision and the objective of the political group, for which the appellant seeks registration as a political party;
- (iii) Whether the model of society conceived and advocated by MSR is compatible with the concept of a "democratic society"; and

- (iv) Its overall examination of the above points must also take into account of the historical context in which the refusal to register the party concerned took place.

The task of Court here is not to take the place of the Registrar of Political Parties and decide on the issue of registration, but rather to review under section 8 of the Act the decisions he made in exercise of the power conferred on him by section 7(1) of the Act. This does not mean that the Court's supervision is limited to ascertaining whether the Registrar exercised his discretion lawfully, reasonably, carefully and in good faith. It must look at the refusal complained of in light of the case as a whole, in order to determine whether it was "proportionate to the legitimate aim if any, pursued" by MSR, and whether the reasons given by the Registrar to justify his refusal are "relevant and sufficient". In so doing, the Court has to satisfy itself that the Registrar applied standards which were in conformity with the principles embodied in the Constitution and the Act and, moreover, that he based his decisions on an acceptable assessment of the relevant facts vide the Romanian case cited *supra* and see *mutatis mutandis*, *Ahmed and Others v United Kingdom* (22954/93) Grand Chamber, ECHR 2 September 1998, and *Goodwin v United Kingdom*, (17488/90) Grand Chamber, ECHR, 27 March 1996.

It is truism that while in a dictatorship laws are enforced, in a democracy laws are voluntarily observed. The rule of law in a democracy must be maintained by inner restraints and self-discipline. But, maintained, it must be. This applies not only to individuals, who believe and live in democracy; but also to the so-called political groups like MSR who believe in oligarchy. At the same time, they also vie for political power while operating within the same democratic system. This double thinking, as I see it, is clearly unconstitutional and unlawful; to say the least, it is paradoxical to the core.

I perused the authority of the Romanian case cited by counsel Mrs Amesbury in support of her argument. I find that the case of MSR is distinguishable from the Romanian case that differs in every aspect of law and facts. I carefully perused the judgment of that case in which, the appellants complained that the refusal of their application to register the PCN as a political party by the Romanian Government had infringed their right to freedom of association within the meaning of article 11 of the European Human Rights Convention. Having regard to the grounds on which the Romanian authority had refused registration, they further submitted that they had been discriminated against on the basis of their political opinions, in breach of article 14 of the Convention. The European Court of Human Rights (ECHR) allowed the appeal stating that refusal for registration in that particular case had been a violation of article 11 of the Convention.

Obviously, in the Romanian case, PCN's Manifesto did not contravene or infringe any provision of the Constitution or the domestic laws of Romania. PCN did not advocate, promote or incite violence or revolution. Unlike MSR, they believed in democracy, national sovereignty, unity etc. In fact, the PCN manifesto *inter alia*, reads as follows:

The PCN shall respect national sovereignty, the territorial integrity of the State, its legal order and the principles of democracy. None of its members shall defame the country and the nation, promote war and national, racial,

class or religious hatred, encourage discrimination, territorial separatism or public violence, or engage in obscene and immoral activities.

The PCN is a free association of citizens in Romania, which supports political pluralism, upholds the principles of a democratic law-based state and strives to defend their own interests without denying those of others, unlike what MSR intends to do in Seychelles. That is why the ECHR held that the refusal by the Romanian Government to register PCN as political party was in violation of article 11 of the Convention. Although MSR claims to be a political movement in Seychelles, by no stretch of the imagination can it be equated or compared to the Romanian Political Party PCN. Hence, I hold that the authority cited by Mrs Amesbury is neither relevant to the point in issue nor supportive of her proposition. On the contrary, it rather strengthens the case of the respondent in this matter.

Before I conclude, it is pertinent to observe that the purpose or object of MSR is not only unlawful and inconsistent with the Constitution and other laws of Seychelles but also it is repugnant to the Universal Declaration of Human Rights 1948 and International Convention on the Elimination of All Forms of Racial Discrimination 1965.

The Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. All human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination.

Any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and there is no justification for racial discrimination, in theory or in practice, anywhere; the discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State; the existence of racial barriers is repugnant to the ideals of any human society and civilization.

Any political parties or organisations which, through their aims or activities, campaign against the basic structure of the Constitution such as democracy, political pluralism, the principles of the rule of law, or the sovereignty, integrity or independence of the Republic of Seychelles, or attempt to disturb the multi-racial social harmony, unity and stability of Seychelles, shall be unconstitutional. Besides, the means employed to achieve the aims of political parties shall be in accordance with Seychelles constitutional and legal order. Hence, in the instant case the Registrar has rightly refused to register MSR as a political party on the ground that its object was unlawful.

It is also pertinent to observe that a political party may campaign for a change in the law or in the Constitution or in the legal and constitutional structures of the State, on three conditions:

- (1) Firstly, the means used to that end must in every respect be legal, constitutional and democratic; and the end can never justify the means.
- (2) Secondly, the change proposed, if any, must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite or resort to violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognized in a democracy, cannot claim legitimacy to represent or stand or continue to stand as a political party that will truly preserve, protect and defend the Constitution of Seychelles. In any event, the Registrar in exercise of his power under section 9(1)(c) of the Act may even cancel the registration of such irresponsible political parties, at any time, on proof to his satisfaction that those political parties have a purpose or object, which is unlawful; and
- (3) Thirdly, although there is no constitutional or implied limitation on the power of the Legislature to amend any part of the Constitution, that power to amend does not include the "power" to disfigure or abrogate the Constitution itself. The word "amendment" used in the Constitution postulates that the old Constitution must survive without loss of identity and it must be retained though in the amended form. The Constitution is a living institution. It has a soul that represents the heirs of the past as well as the testators of the future. Obviously, it shall not opt to commit suicide simply by providing an inbuilt mechanism for amendments. Therefore, the power to amend does not include the "power" to destroy the soul of the Constitution or abrogate the basic structure or features of the Constitution. The basic structure of the Constitution of Seychelles includes (i) Supremacy of the Constitution, (ii) Republican and democratic form of Government, (iii) Secular character of the Constitution, (iv) Separation of powers between the legislature, the executive and the judiciary, (v) Rule of law, (vi) Equality before law, and (vii) Free and fair elections, which is a basic postulate of democracy. See, *Kesavanand v State of Kerala*, (1973) AIR SC 1461 (decided by a special bench of 13 judges) and *Indira Nehru Gandhi v Raj Narayan* (1975) AIR SC 2299.

However, eschewing the said three conditions, MSR intend to cause or campaign for drastic structural changes in the supreme Law of the land as well as in the legal and constitutional structures of the State disregarding the "due process of law" and defeating the "general will" and the "sovereignty" of the People of Seychelles. Undoubtedly, it is an unlawful attempt by MSR to shatter "The Seychellois Dream" enshrined in the Preamble of the Constitution of Seychelles.

In light of all the above, this Court in its judgment, holds that:

1. The reasons given by the Registrar of Political Parties for refusing to register the "Mouman Seselwa Rasin" (MSR) as a political party are legally and constitutionally valid. His decision in this respect cannot be faulted for any reason whatsoever;
2. The Registrar has exercised his discretion lawfully, reasonably, carefully and in good faith and in accordance with section 7 of the Political Party (Registration and Regulation) Act and his decision is therefore proper and

legal; and

3. By refusing to register MSR as a political party, the Registrar has not violated any of the appellant's fundamental human rights and freedoms guaranteed by the Constitution of Seychelles nor has the Registrar infringed any international human rights norms secured by international human rights instruments.

In the final analysis, I conclude that this appeal is devoid of merits and liable to be dismissed in its entirety. Hence, I decline to allow the appeal. I make no order as to costs.

Further order dated 30 March 2011 by

KARUNAKARAN J: I direct the Registrar of the Supreme Court to transmit the judgment delivered herein to the Registrar of Political Parties by serving on him a certified copy of this judgment in conformity with rule 18 of the Political Parties (Registration and Regulations) (Appeal) Rules cap 173.