

## Case of J.S Tissainayagam

### Background

J.S Tissainayagam was arrested on March 7<sup>th</sup> 2008 when he visited the Terrorist Investigation Department in search of his colleague and publisher V. Jasikaran. He was held without charge for almost six months and then on August 25<sup>th</sup> he was charged with writing to incite ethnic disharmony. The trial lasted one a half years and Mr. Tissainayagam was convicted for 20 years hard labour on 31<sup>st</sup> August 2009. He became the first journalist to be convicted for his work under Anti Terrorism Legislation.

### The charges.

J.S Tissainayagam had three charges against him.

- 1) Writing to incite ethnic violence
- 2) Conspiring to incite ethnic violence with unknown persons through writing
- 3) Collecting money to publish a magazine which his writings were published in and thereby furthering violence which was an act of terrorism.

### Evidence

The prosecution presented evidence for the charges as below:

1) Two paragraphs written in 2006 which is displayed in full below:

- July 2006 the editorial of the *North Eastern Monthly Magazine* under the heading “Providing security to Tamils now will define northeastern politics of the future” stating, “it is fairly obvious that the government is not going to offer them any protection. In fact it is the state security forces that are the main perpetrator of the killings.”
- In the November 2006 *North Eastern Monthly Magazine*, under the heading “With no military options Govt. buys time by offering watered-down devolution” he states, “Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel, with the hope of driving out the people of Vaharai and depopulating it. As this story is being written Vaharai is being subject to intense shelling and aerial bombardment.”

2) A confession written by Mr. J.S Tissainayagam while in custody. This purported confession was written in Tissainayagam’s own handwriting.

### The Trial

The defence counsel challenged the veracity of Tissainayagam’s confession on the basis that a) Tissainayagam was threatened and mentally tortured in order to give it

b) It was not given to an Assistant Superintendent of Police as required by law c) It mirrored word for word a statement written on March 7th in the hand of the officer who was present at the time of Tissainayagam's detention. Tissainayagam accused this same officer of torture. d) The confession was clearly tampered with - someone had written over it in blue ink when Tissainayagam had been forced to write in black ink.

The defense also said that Tissainayagam never caused violence as there was no evidence presented to show that any violence had taken place due to the above two articles. There was no evidence presented regarding Tissainayagam's *intention* to cause violence through these two articles, neither was there evidence presented to show that his past actions were violent.

The defense presented five ethnic Sinhalese witnesses. Four of them (A Presidential Advisor, Attorney at Law & Commissioner on several Presidential Commissions of Inquiries into Disappearances, Senior Buddhist Monk and former parliamentarian & leader of an Organization of Family Members of the Disappeared who were mainly Sinhalese in late 1980s) said what Tissainayagam wrote would not cause ethnic disharmony. One witness said that what Tissainayagam had written were factually incorrect, but yet it did not incite ethnic disharmony.

The Prosecution did not bring any witnesses to show that Tissainayagam had incited violence. The prosecution also did not challenge at any point Tissainayagam's position that he was a peaceful man who stood for the rights of all Sri Lankans regardless of ethnicity. The prosecution did not bring evidence that Tissainayagam had received money from the LTTE they only said that the account of the magazine had received 105,000 Sri Lankan Rupees (913 USD) from an unknown source. The prosecution also did not bring any evidence to court to show that this was used to publish the magazine or any other criminal activity.

The court official who was asked by the Judge to examine the confession in Tamil accepted that the confession had been tampered with.

### Critique of Judgement

- 1) The judge accepted the confession on the basis that it was written in Tissainayagam's own handwriting and the evidence of the aforesaid officer's contention that "journalists cannot be easily threatened." Clearly disregarding her own official's contention that tampered evidence had been submitted to court by the prosecution and the other multitude of discrepancies put forward by the defence.
- 2) The judge notwithstanding the evidence based her judgement that these articles could incite ethnic disharmony on the defense witness who said that these articles were factually incorrect. She dismissed the evidence of the other four witnesses saying they were of the same political beliefs and their ideas on the war were irrelevant. Clearly indicating any difference of political opinion was not tolerated.

- 3) Given that the Judge has not found fault with the Prosecution for providing no witness to prove their main charge - that of writing to incite ethnic violence - but only relied on the defence witness to prove this contention, shows that the Judge put no burden on the prosecution to prove the defendant guilty, but relied on the defence to prove the defendant innocent. Such a contention goes against all principles of fair trial.
- 4) The judge's sister wrote up the charges against Tissainayagam. Showing a clear conflict of interest.

The larger implications of this trial:

- 1) The written word was made an act of Terrorism. Mr. Tissainayagam was not accused of being a member of the LTTE or taking money from the LTTE. In fact no where on the charge sheet was the LTTE mentioned. According to the charges the only act of Terrorism Mr. Tissainayagam was suspected of was writing.
- 2) The fact that the prosecution provided no evidence, the judge allowed and accepted the prosecution's contention that J.S Tissainayagam's writing were offensive (to the prosecution) only because of his ethnicity, clearly indicates there is a little or no protection under the law for minorities in a country that is looking for reconciliation.
- 3) The fact that although Tissainayagam received minimum sentence on two of the charges, the judge ensured that the sentence be served consecutively making it into the maximum 20 years total, shows the vindictive nature of the judge. In Sri Lankan courts where first offenders are death with leniently even to the extent where a man who had plotted and carried out the murder of his parents, was found guilty on all 8 charges and convicted to 15 years for each of those charges, the judge allowed him to serve each sentence concurrently in order that it won't be a life sentence but only a total of 15 years (The State Vs. Thevanayagam). For two paragraphs this man is serving 20 years.

Given the above facts we asked that for the sake of freedom of expression and reconciliation that the President of the country release Tissainayagam unconditionally. The President does not and in cases in the past has not waited for the defendant to exhaust all judicial measures to release the prisoners (in a case for a politician from a minority party that supports the govt.<sup>1</sup> and an opposition Member of Parliament)<sup>2</sup> and therefore he can rectify this injustice and ensure that Sri Lanka doesn't spiral further into a State that does not tolerate dissent.

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<sup>1</sup> Arumugam Thondaman from the Ceylon Workers Congress (CWC) party

<sup>2</sup> S.B Dissanayake from the main opposition United National Party (UNP)