

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an Application for
mandates in the nature of writ of Certiorari,
Mandamus and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Tasma – Tajma Plantation (Pvt) Ltd,
No.114, Main Street,
Colombo 11.

Petitioner

C.A. Writ Application No: 1371/2005

Vs

1. Hon Anura Priyadarshana Yapa,
Hon. Minister of Plantation
Industries, Ministry of Plantation
Industries, 55/75, Vauxhall Lane,
Colombo 2.
And five (05) others.

Respondents

<u>BEFORE</u>	:	S. SRISKANDARAJAH, J (P/CA) H.N.J.PERERA, J
<u>COUNSEL</u>	:	Ikram Mohamed PC with N.Udalagama for the Petitioner, Ms. Uresha de Silva, S.C for the Respondents
<u>Argued on</u>	:	25.08.2011
<u>Decided on</u>	:	23.01.2012

S.Sriskandarajah, J.

The learned President's Counsel for the Petitioner informed court that the Petitioner is only seeking the relief sought in prayer "e" of the Petition of this application namely to issue a writ of mandamus to compel the Respondents to execute the proposed lease agreement marked A18 in favour of the Petitioner.

The Petitioner in order to manufacture organic tea in Sri Lanka identified Opalgala Estate belonging to Sri Lanka State Plantation Corporation. The Petitioner sought the assistance of the Board of Investment to obtain the said estate on a long term lease to carry out the aforesaid project. The Board of Investment granted approval to the said project by letter dated 01.01.2002. The Respondents submitted that there were further steps that had to be taken by the BOI prior to the release of the estate for the BOI project by the Sri Lanka State Plantation Corporation. The Ministry of Plantation Industries had informed the Petitioner to take further steps leading to the alienation of the said land and by letter dated 05.04.2002 the Petitioner was informed that on the fulfilment of the conditions stipulated therein the said estate would be leased to the Petitioner.

The Respondents submitted that the alienation of the said land could not be affected by virtue of the circular issued by the Secretary to the Minister of Lands, dated 14th March 2002. The Ministry of Finance by its letter dated 07.03.2006 addressed to the Chairman Sri Lanka State Plantation Corporation had informed that that the enterprises referred to in the said letter are being restructured with the assistance of PERC and it is the government policy not to privatize any of the activities of the public enterprise. Since handing over of estates of these enterprises on an adhoc basis would be an impediment to the restructuring of these enterprises these transactions have to be stopped immediately. The Respondents further stated that on 03.07.2006, the Strategic

Enterprises Management Agency (SEMA) informed the Chairman Sri Lanka State Plantation Corporation to suspend all activities relating to leasing, renting etc, without prior written approval from SEMA, according to the present Government policy. As these approvals are not forthcoming the Petitioner could not alienate the said estate on lease.

The Petitioner's only claim to the said land is that the Petitioner had a legitimate expectation that the said land would be leased to the Petitioner on the terms and condition of the draft lease agreement.

The Supreme Court of India in *BALCO Employees Union (Regd.) Vs Union of India and Ors.* AIR 2002 SC 350 quoted with approval the following observations made in the majority decision in *Narmada Bachao Andolan v. Union of India and Ors.*, (2000) 10 SSC 664 at page 763.:

“While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not (SIC) its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has

been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small Section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision".

And held: "In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to

law or mala fide, a decision bringing about change cannot per se be interfered with by the Court."

In the Judicial Review of Administrative Action by de Simith, Woolf & Jowell (Fifth Edition) at Page 526 the authors observed:

"A public body with limited powers cannot bind itself to act outside of its authorised powers; and if it purports to do so it can repudiate its undertaking, for it cannot extent its powers by creating an estoppel."

The Petitioner has not established that the refusal to grant the lease to the Petitioner is illegal or mala fide to quash the said decision and as the said decision was taken based on a policy decision of the Government the Petitioner cannot rely on legitimate expectation in the given circumstances.

The condition precedent to issue of mandamus is that the applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. In order, therefore that a mandamus may issue to compel something to be done under a statute it must be shown that the statute imposes a legal duty; Halsbury's Law of England III rd Edition Volume II Page 104.

The Petitioner neither had a legal right nor a legitimate expectation conferring a substantive right to the lease of the said land and hence the Petitioner is not entitled for a mandamus. In view of the above finding I dismiss this application without costs.

President of the Court of Appeal

H.N.J. Perera J,

I agree,

~~Judge of the~~ Court of Appeal