

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

In the matter of an application for Writs in the nature of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

A.D. Susil Premjayanth

General Secretary

United People's Freedom Party

301, T.B. Jaya Mawatha

Colombo-10.

**Petitioner.**

CA Writ No. 109/2011

Vs.

1. Dayananda Dissanayake  
Commissioner of Elections  
Elections Secretariat  
Sarana Mawatha  
Rajagiriya.

2. U. Amaradasa

Returning Officer

Kandy District

District Secretariat

Kandy.

3. Tissa Attanayake

Secretary

United National Party

Sirikotha

No. 400, Kotte Road

Pitakotte, Sri Jayawardenepura.

4. M. Tilvin Silva

Secretary

Janatha Vimukthi Peramuna

No. 464/20, Pannipitiya Road

Pelawatta, Battaramulla.

5. M.T. Hassan Ali

Secretary

Sri Lanka Muslim Congress

“Sama Mandiraya”,

No. 53, Vauxhall Lane,

Colombo-02

And also of

No. 51, Vauxhall Street,

Colombo-02.

**Respondents.**

**BEFORE:** Hon. Sathya Hettige P.C. J, President of the Court of Appeal  
Hon. Upaly Abeyrathna J, Judge of the Court of Appeal.

**BEFORE:** Faisz Musthapha PC with Nihal Jayamanne PC ,  
Manohara de Silva PC,  
Kushan de Alwis , Sanjeewa Jayawardane , Faizer Marker and  
Isuru Balapatabendi for petitioner.

Shavindra Fernando DSG with Sanjaya Rajaratnam DSG , Nerin Pulle  
SSC, Ms Yuresha de Silva SC and Vichithri Jayasinghe SC for 1<sup>st</sup>  
and 2<sup>nd</sup> respondents.

Viran Corea with Lal de Silva for 3rd respondent.

Chrismal Warnasooriya for 4<sup>th</sup> respondent.

**ARGUED ON** 23/03/2011

**DECIDED ON:** 12/05/2011

**SATHYA HETTIGE P.C J (P/CA)**

The petitioner in this application is the General Secretary of a recognized political Party under the provisions of the Parliamentary Elections Act No. 1 of 1981 and the said party is called and known as **Eksath Janatha Nidahas Sandanaya** in Sinhala, and the said party is called and known as **United People's Freedom Alliance (UPFA)** in English.

The procedure applicable to submission of nomination papers dated 11.01.2011 for the election of members to the Local Authorities as set out by the 1<sup>st</sup> respondent has been annexed and marked P 1.

The petitioner appointed one Mr U.J.G. Kirindigoda an Attorney at law as the Authorized Agent in respect of the election of members to the Yatinuwara Pradeshiya Sabha on behalf of United People's Freedom Alliance .

The Authorized Agent on behalf of United People's Freedom Alliance submitted the nomination paper setting out the names of all the candidates to be elected to the said Yatinuwara Pradeshiya Sabha to the 2<sup>nd</sup> respondent in compliance with the law. The petitioner states that the said nomination paper was prepared in Sinhala language as "Eksath Janatha Nidahas Sandhanaya." The said nomination paper was duly signed by the petitioner who was described therein as the General Secretary of the United People's Freedom Alliance with the seal and was attested by a Justice of the Peace as required by provisions of law contained in section 28 (5) of the Local Authorities Elections Ordinance as amended. A copy of a draft nomination paper prepared by the UPFA is annexed to the petition marked P3.

The petitioner complains that the 2<sup>nd</sup> respondent rejected the said nomination paper and the petitioner was informed in writing that the nomination paper was rejected on the ground that the nomination paper had not been submitted by a recognized political party. Copy of the said letter in Sinhala is annexed to the petition marked P4.

The petitioner states that the nomination paper was prepared in Sinhala and name of the party was set out inadvertently as "Eksath Janatha" instead of "Eksath Janatha Nidahas Sandanaya. And the said nomination paper was signed at the bottom of the Nomination paper by the petitioner describing

himself as the Secretary of the recognized political party called and known as **“Eksath Janatha Nidahas Sandanya”**

The petitioner complains that the nomination paper submitted by the UPFA for Local Authorities Election of Yatinuwara Pradeshiya Sabha that was scheduled for 17/03/2011 was rejected by the 2<sup>nd</sup> respondent on the ground that the nomination paper had not been submitted by a recognized political party.

The petitioner in this application among other things, is seeking a Writ of certiorari quashing the decision of the 2<sup>nd</sup> respondent contained in P 4 rejecting the nomination paper submitted by the UPFA for Yatinuwara Pradeshiya Sabha.

The petitioner’s grievance is that that the rejection of the nomination paper of the UPFA as set out in document marked P 4 by the 2<sup>nd</sup> respondent is illegal, void and of no effect or avail in law as the said decision is ultra vires the powers of the 2<sup>nd</sup> respondent under section 31 of the Local Authorities Election Ordinance as amended and the said decision is occasioned by the failure to take into consideration the relevant circumstances and is therefore unsupported by evidence and is unreasonable. It was submitted that the said decision is vitiated by the failure to give reasons for arriving at the said decision and is vitiated by error of law.

It was submitted by the learned President’s Counsel for the petitioner that the local Authorities election for Yatinuwara Pradeshiya Sabha was scheduled to be held on 17/03/2011 and if the election was held accordingly prior to the determination of this application grave prejudice would be caused to the electors in the Electoral area of Yatinuwara Pradeshiya Sabha for not being able to choose the representative of their choice and thereby affecting the rights of the franchised people.

The petitioner sought an interim relief restraining the 1<sup>st</sup> and the 2<sup>nd</sup> respondents from taking steps in terms of Local Authorities Elections Ordinance as amended for conducting the election of members for Yatinuwara Pradeshiya Sabha scheduled be held on 17/03/2011 until final determination of this application and also sought an Interim order to stay the conduct or holding of the election of members to the Yatinuwara Pradeshiya Sabha scheduled for 17/03/2011. Accordingly this court having heard the parties issued notice and an Interim Order on the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 24/02/2011 until final determination of this application.

When this application was taken up for hearing on 23/03/2011 Mr. Viran Corea appearing for the 3<sup>rd</sup> respondent strongly objected to any relief being granted to the petitioner. The learned Counsel associated himself with the preliminary objections raised by Mr. Kanag-Isvaran P.C. in the connected CA Writ applications NOS. 90/2011 -108/2011 and raised the following objections :

- A) There was no nomination paper in law submitted by the petitioner to the 2<sup>nd</sup> respondent , the returning officer since it did not have the name of the recognized political party.
- B) The petitioner has failed to produce the purported nomination paper which was allegedly submitted to the 2<sup>nd</sup> respondent
- C) Petitioner has failed and neglected to produce before court the crucial Gazette Notification in terms of section 4 (b) of the Parliamentary Elections Act No.1 of 1981 as amended which sets out the list of names of the recognized political parties in all three languages in terms of Rule 3 (1) a of the Court of Appeal Rules of 1990.

- D) It was also submitted that the 2<sup>nd</sup> respondent's impugned action was merely ministerial in nature and does not attract Writ jurisdiction of this court and moved for dismissal of the application in limine.
- E) The learned Counsel further submitted that only a recognized political party can submit a nomination paper in terms of section 28(2) of the law..

Mr Viran Corea associated himself with the submission made by Mr. Kanag-Isvaran PC in CA application No. 90/2011 explaining the concept of a recognized political party for the purpose of elections and submitted that the political parties named as recognized political parties by the most recent Gazette notification by the Commissioner of Elections (this was produced by Mr Kanag-Isvaran PC in the connected application for perusal by court) is the exhaustive list of political parties which are deemed "recognized political parties" in terms of the Local Authorities Elections Act and further strongly submitted that Gazette notification No.1639/18 dated 03.02.2010 accordingly contained the exhaustive list of recognized political parties which were deemed recognized political parties by the Local Authorities Elections Act. Accordingly Mr. Viran Corea submitted, that the name of the correct Recognized political party registered and published in the government Gazette No. 1639/18 dated 2010/02/03 for the purpose of Local Authorities elections for Yatinuwara Pradeshiya Sabha is "**United People's Freedom Alliance**" in English and or "**Eksath Janatha Nidahas Sandanaya in Singhala**" and not "**Eksath Janatha**",

Counsel also submitted that the individuals who have signed the purported nomination paper have only agreed to be nominated as purported candidates of Eksath Janatha which is not a recognized political party according to the said Gazette dated 03/02/2010.

And the petitioner failed to add the individuals as parties to this application.

Further the counsel submitted that the functions of a returning officer is ministerial in nature and there is no decision or determination made by the returning officer.

With permission of court the learned Deputy Solicitor General produced the original Nomination Paper rejected by the 2<sup>nd</sup> respondent to Court for perusal. The court examined the same and found that the contents of the draft nomination paper annexed to the petition marked P3 and the contents of the original Nomination paper submitted by the petitioner to the returning officer were the same. The name of the recognized Political party that appeared in the original nomination paper was "Eksath Janatha" However, the court observed that at the bottom of the nomination paper the petitioner has signed and the seal of the petitioner was placed which was endorsed and attested by the Justice of the peace as required by law.

On examining the impugned document marked P4 the court observed that the reason given for rejection of the nomination paper by the 2<sup>nd</sup> respondent was that the said nomination paper has not been submitted by a Recognized political party. However, the said letter marked P4 had been addressed to the petitioner, Mr. Susil Premajayanth with copy to the Authorized Agent. The Learned President's Counsel for the petitioner submitted that the nomination paper marked P 3 was submitted to the returning officer for Yatinuwara Pradeshiya Sabha by the UPFA and none other. The P4 addressed to the Same General Secretary of UPFA by the 2<sup>nd</sup> respondent rejecting the nomination paper based on P 3.

Mr Viran Corea also submitted that the Petitioner has failed and neglected to produce before court the crucial Gazette Notification in terms of section 4 (b) of the Parliamentary Elections Act No.1 of 1981 as amended which sets out the list of names of the recognized political parties in all three languages in terms of Rule 3 (1) a of the Court of Appeal Rules of 1990.



Counsel also submitted that the individuals who have signed the purported nomination paper have only agreed to be nominated as purported candidates of "Eksath Janatha" which is not a recognized political party according to the said Gazette dated 03/02/2010.

And the petitioner failed to add the individuals as parties to this application.

Further the counsel submitted that the functions of a returning officer is ministerial in nature and there is no decision or determination made by the returning officer.

Mr. Musthapha PC submitted that the returning officer by addressing the said impugned letter to Mr. Susil Premajayanth as the General Secretary of the UPFA has regarded both as one and the same.

The issue to be determined by this court is as to whether the rejection of the nomination paper by the Returning Officer, the 2<sup>nd</sup> respondent is bad in law or whether the 2<sup>nd</sup> respondent has arbitrarily acted in excess of his powers vested under section 31 of the Local Authorities Elections Ordinance as amended. It is to be noted that the reasons given in the impugned document marked P4 the 2<sup>nd</sup> respondent does not refer to any sub paragraph of section 28 of the Law but merely refers to section 31 (1) (a) of the Local Authorities Elections Ordinance as amended under which the rejection is made.

The section 28 (2) of the Local Authorities Election Ordinance as amended provides as follows:

***"Any recognized political party or any group of persons contesting as independent candidates ( hereinafter referred to as an independent group) may for the purpose of election as members of any local authority submit one nomination paper substantially in the form set out in the first***

***schedule setting out the names of such number of candidates as is equivalent members to be elected for that Local Authority increased by three. The returning officer shall as soon as practicable make a copy of each nomination paper received by him and display such copies of nomination paper on his notice – board”***

Sub section ( 5) of section 28 of the Law) provides that

***“ each nomination paper shall be signed by the secretary of a recognized political party and in the case of an independent group by the candidate whose name appears in the nomination paper of that group and is designated therein as the group leader of that group ( such candidate is hereinafter referred to as “group leader”) and shall be attested by a Justice of the Peace or the Notary Public.***

On perusal of the above provisions in section 28(5) it appears that there is an imperative requirement of law that the nomination paper has to be signed by the General Secretary of the registered political party or the group leader in case of an Independent Group and attested by a Justice of the Peace or a Notary Public. On perusal of the original nomination paper which was produced by the learned Deputy Solicitor General the court found that the above imperative requirement by signing the nomination paper by the General secretary of the recognized political party in question and the Justice of the Peace has been met by the petitioner.

In view of the above provisions of law this court has to consider as to whether the reason given by the 2<sup>nd</sup> respondent for rejection of the nomination paper is in fact a ground for rejection of the entire nomination paper under the above provisions in section 31 of the Local Authorities Election Ordinance as amended. It seems to me that 2<sup>nd</sup> respondent' powers of rejecting a nomination paper is limited to the grounds stipulated in section 31 of the Local Authorities Election Ordinance as amended above referred to.

With regard to exercise of powers for rejection of nomination papers by returning officer is limited to the grounds under Section 31 of the Local Authorities Elections Ordinance as amended.

Section 31 of the Law provides for the grounds upon which a nomination paper can be rejected by the Returning Officer as follows:

- a) That the nomination paper has not been delivered in accordance with the provisions of subsection (5) of section 28 or
- b) The nomination paper does not contain the total number of candidates required to be nominated under sub section 2 of section 28; or
- bb) that the nomination paper does not contain the total number of youth candidates as required to be nominated under sub section 1 A of section 23; or
- (b) where, as required by subsection 4 of section 28 , a certified copy of the birth certificate of a youth candidate or an affidavit signed by such youth candidate has not been attached to the nomination paper ; or
- © in respect of which the deposit required under section 29 has not been made; or
- (d) where the consent of one or more candidates nominated has or have not been endorsed on the nomination paper or where the oath or affirmation in the form set out in the Seventh Schedule to the Constitution of one or more candidates has or have not been annexed to the nomination paper;
- (e) where the signature of the Secretary in the case of a recognized political party or of the group leader in the case of an Independent Group does not appear on the nomination paper or where such signature has not been attested as required by subsection (5) of section 28.

The returning officer has no power to reject a nomination paper on any other ground in terms of the law. The returning officer's powers are limited to the grounds stipulated in section 31 of the Statute. He cannot extend the power conferred on him beyond that limit.

As Sharvananda J ( as he then was) observed in

**Sirisena and Others vs. Kobbekaduwa, Minister of Agriculture and Lands 80 NLR 1 at 172) that**

***" It is of the utmost importance to uphold the right and indeed the duty of the courts to ensure that powers shall not be exercised unlawfully which have been conferred on a local authority ,or the executive or indeed anyone else , when the exercise of such powers affect the basic rights of an individual. The courts should be alert to see that such powers conferred by such statute are not exceeded or abused"***

The basic principle that legality should prevail has been discussed in the unreported judgment of Lord Green MR., in the case of

**Minister of Agriculture and Fisheries vs Hulkin 1950 1 KBD at page 154 which reads as follows.**

***"The power given to an authority under a statute is limited to the four corners of the powers given. It would entirely destroy the whole doctrine of ultra vires if it was possible for the donee of a statutory power to extend his power by creating an estoppel"***

It seems to me that the returning officer , the 2<sup>nd</sup> respondent appears to have acted outside the law exceeding his powers warranting the intervention of this court to consider the petitioner's grievance. It appears that one single and arbitrary action of the 2<sup>nd</sup> respondent has caused

unnecessary harassment and greater damage to the petitioner and also has deprived the electors of their democratic rights of electing a candidate or candidates of their choice.

In the unreported case of **Dr. A..L.M.Hafrath Secretary General Sri Lanka Muslim Congress V L.L.C Siriwardane Returning Officer C.A.Appl. 413/2002** Justice Ms.Tilakawardane held that

*“ The returning officer’s decision to reject the nomination paper affected not only the rights of all the candidates of the political party in question but also the rights of the voters who exercise their franchise for that party and for the particular candidate of that political party.”*

The issue as to whether the failure to provide a part of the registered name of the party or failure to provide the entire registered name of the political party is a ground for rejection of a nomination paper has to come within the above provisions of law in section 31 (a) to 31 (e) of Local Authorities Elections Ordinance as amended for the Returning Officer to act upon. It seems to me that the Returning Officer has no power or authority to reject a nomination paper on any other ground which falls outside section 31 of the law. As such the reason given by the 2<sup>nd</sup> respondent in this application for rejection of the nomination paper is contrary to law and his decision contained in P4 is unlawful for want of jurisdiction.

The learned Deputy Solicitor General at the hearing has correctly conceded the fact that the returning officer cannot reject a nomination paper on any other ground which is not envisaged by section 31 of the Local Authorities Election Law. The statute is clear and it cannot be given an extended interpretation.

The Rule is that the statutory provisions must be strictly interpreted when its language and meaning is clear and unambiguous.

Learned DSG quoted the following from **N.S. Bindra's Interpretation of Statutes**, 9<sup>th</sup> Edition at page 401 in support of the correct interpretation of the statutory provision in the written submissions.

***" Where the words of the statute are clear enough , it is not for the courts to travel beyond the permissible limits' under the doctrine of implementing legislative intention.***

***When the legislation is unambiguous , the doctrine of telescoping the pragmatic construction and contemporaneous construction have no application"***

The name of the recognized political party as is reflected in the list of recognized political parties published in the Government Gazette no. 1639/18 dated 03/02/2010 is Eksath Janatha Nidahas Sandanaya" (All parties agreed that the list of recognized political parties are published each year but so far the list for 2011 is not yet published .)

Mr Faisz Musthapha PC strenuously contended that assuming that there is an error in the name of the recognized political party (UPFA) as published in the Government Gazette it was obviously clear that the entire nomination paper marked P 3 was signed by the **General Secretary** of the Recognized political party with his official seal and attested by the Justice of the Peace which was an imperative requirement of law and the said endorsement is adequate enough to establish the fact that it was the recognized political party (UPFA) that submitted the nomination paper as required by law.

Did the General Secretary of the recognized political party sign the nomination paper consisting of the names of the candidates and was

endorsed by the Justice of the Peace or Notary Public as required by section 28 (5) of the Local Government Election law as amended when same was submitted to the returning officer. Even if the full name of the recognized political party is not entered by the candidate Is there a substantial compliance in any event ?

The question that arises is as to whether the failure to state the full name of the recognized political party at the space provided on top of the nomination paper would tantamount to rejection of the entire nomination paper. It seems to me that as was contended by the learned President's Counsel for the petitioner what is required by law is that the nomination paper has to be signed by the General Secretary of a recognized political party with the party seal and has been attested by the Justice of the Peace or the Notary Public.

Petitioner's counsel strongly argued that even if there is error in one part of the document and other part is correctly and sufficiently set out, the doctrine of "**Falsa Demonstratio non nocet**" applies. "**Falsa Demonstratio**" means an erroneous description of a person or a thing in a written instrument or document.

Under the said maxim the incorrect part must be ignored and dropped and the correct portion of the document must be accepted. The learned President's Counsel relied on judgments delivered in Supreme Court of Jharkand at Ranchi in **Harkrishna Lal V Babu Lal Marandi 2003 INSC 543** wherein it was held that a wrong description or erroneous part of a document will not vitiate the correct part of a document.

Is the defect in the nomination paper was of substantial character. Is it a lapse or inadvertence on the part of the candidate to write the full name. What is the purpose or intent of the parties that submitted the nomination paper. Whether the reason given by the 2<sup>nd</sup> respondent for rejection of the nomination paper is in fact a ground for rejection of the entire

nomination paper under section 31 of the Local Authorities Elections Ordinance as amended.

The issue as to whether the failure to provide a part of the registered name of the party or failure to provide the entire registered name of the political party is a ground for rejection of a nomination paper has to come within the above provisions of law in section 31 (a) to 31 (e) of Local Authorities Elections Ordinance as amended for the Returning Officer to act upon. It seems to me that the Returning Officer has no power or authority to reject a nomination paper on any other ground which falls outside section 31 of the law. As such the reason given by the 2<sup>nd</sup> respondent in this application for rejection of the nomination paper is contrary to law and his decision contained in P4 is unlawful for want of jurisdiction.

Mr. Fernando accordingly submitted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents had no objection to the Writ being issued quashing the rejection and a Writ of Mandamus being issued directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to accept the nomination of the petitioner.

In view of the erroneous interpretation given by the Returning Officer to the statutory provisions and taking a wrongful and arbitrary decision in rejecting the nomination, not only the rights of all the candidates nominated by the political party in question but also the rights of the voters who exercise their franchise have been affected. This court has to consider the adverse and serious consequences that had flowed from the single and arbitrary act on the part of the 2<sup>nd</sup> respondent in rejecting the nomination paper of the political party in question.



The returning officer , the 2<sup>nd</sup> respondent appears to have acted outside the law exceeding his powers warranting the intervention of this court to consider the petitioner's grievance. It appears that one single and arbitrary action of the 2<sup>nd</sup> respondent has caused unnecessary harassment and greater damage to the petitioner and also has deprived the electors of their democratic rights of electing a candidate or candidates of their choice.

In the unreported case of **Katugaha Ratnayake ,Paranakatugaha Pattiyagetdera V Returning Officer for Badulla District for Local Authorities District Secretariat Badulla CA 309/2002** decided on 28/02/2002 Her Ladyship

Justice Tilakawardane held

***“ the Returning Officer's decision to reject the nomination paper affected not only the rights of all the candidates of the political party in question , but also the rights of voters who exercise their franchise for that party and for the particular candidate of that political party.”***

The rejection of a nomination paper in excess of the powers vested in the returning officer under section 31 of the Local Authorities Election law as amended is contrary to the grounds of rejection stipulated by law and it defeats the whole purpose and intention of the Legislation and would cause serious consequences depriving the candidates reflected in the nomination paper of their rights of being elected and the franchised population.

It seems to me that the 2<sup>nd</sup> respondent by disregarding the signature and the endorsement by the General Secretary with the seal of the Recognized Political Party attested by the Justice of the Peace as required by law certifying the name of the recognized political party has acted outside the law and such action of the 2<sup>nd</sup> respondent warrants the intervention of this court to do justice .

At this stage I would quote from **Halsbury Laws of England, Vol. 15, 04<sup>th</sup> edi., paragraph 476 at page 370** which reads as follows under the heading

**"Particulars of Candidate in the Nomination Paper:**

***"NO misnomer or inaccurate description of any person or place named in a nomination paper affects the full operation of the nomination paper where the description of the person or place is such as to be commonly understood. Thus it has been held that a mere misspelling of a surname, not calculated to mislead electors, does not give good ground for objection. It has also been held that the use of abbreviation which everybody understands instead of setting out the forename in full, such as "Wm" for "William" is permissible."***

I would add further to the above that, even though the above refers to persons or places stated in a nomination paper I am of the view that it can be applied to a situation where the description or the name of a political party stated in a nomination paper is in issue.

I wish to note that the assistance given by Mr. Shavindra Fernando DSG and his team of legal officers of the Attorney General's department at the hearing of this application is appreciative and commendable.

In the circumstances I come to the conclusion that the 2<sup>nd</sup> respondent has acted outside the relevant law in rejecting the nomination paper of the political party in question and the decision of the 2<sup>nd</sup> respondent is bad in law.

For the reasons set out above, I am of the view that the application of the petitioner should be allowed and relief sought should be granted.

Accordingly, Writ of Certiorari is issued quashing the decision of the 2<sup>nd</sup> respondent contained in P4 rejecting the nomination paper.

Court issues a Writ of Mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to accept the nomination paper submitted by the petitioner according to law and take all other consequential steps in terms of the law.

I order no costs.

**PRESIDENT OF THE COURT OF APPEAL**

Upaly Abeyrathna J,

I agree.

**JUDGE OF THE COURT OF APPEAL.**