

**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.

CA (Writ) 90/2011 - 108/2011

**A.D. Susil Premajayanth**

Secretary,

United People's Freedom Alliance ,

301, T.B. Jayah Mawatha,

Colombo-10.

**Petitioner**

Vs.

**1. Dayananda Dissanayake**

Commissioner of Elections,

Elections Secretariat,

Rajagiriya.

2. Mrs. R. Ketheswaran  
Returning Officer  
Kilinochchi District  
District Secretariat  
Kilinochchi.
  
3. Mr. M.T. Hassan Ali  
Secretary  
Sri Lanka Muslim Congress  
No. 53, Vauxhall Lane  
Colombo-02.
  
4. Mr. K.K. Kanagarajah  
Secretary  
Tamil United Liberation Front  
No. 5/3A, Wijayaba Mawatha  
Kalubowila, Dehiwela.

**Respondents.**

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

**COUNSEL:** Faiz Musthapha PC. with Nihal Jayamanne PC Manohara de Silva PC , Kushan de Silva, Sanjeewa Jayawardane, Fiazer Musthapha, Abdul Najeem, Ali Sabri, Shantha Jayawardane, Fiazer Marker and Isuru Balapatabendi for the petitioner.

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

Kanag –Isvaran PC with Lakshman Jeyakumar and Niran Anketell for 4<sup>th</sup> respondent.

Viran Corea for the 3<sup>rd</sup> respondent in CA (Writ) 91/2011 – 108/2011.

Chrishmal Warnasooriya for 4<sup>th</sup> respondents in CA (Wirt) Nos. 94/2011 and 96/2011.

**ARGUED ON:** 23/03/2011

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

**SATHYAA HETTIGE PC P/CA**

At the outset of the hearing of all cases above referred to all counsel appearing for the parties agreed to take up CA (Writ) No. 90/2011 application for hearing and all counsel representing all the parties further agreed that the judgment in CA (Writ) 90/2011 application will be applicable and binding on the parties in all connected applications no. CA 91/2011 -

108/2011 as well on the basis that the issue involved in all the applications are similar.

The petitioners in this application and CA 91/2011 and CA 92/2011 have sought reliefs challenging the rejection of the nominations delivered by them for Local Authorities elections for Pradeshiya Sabhas 2011 in the Kilinochchi District whereas the petitioners in (Writ) applications bearing nos. CA 93/2011 – CA 108/2011 are seeking reliefs challenging the rejection of the nominations for Local Authorities election for Pradeshiya Sabhas 2011 in the Jaffana District.

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 in English the said party is called and known as **United People's Freedom Alliance (UPFA)**.

The petitioner states that said party is called and known as **Iyikkiya Makkal Sudandira Munnai** or **Iyikkiya Makkal Sudandira Koottamaippu** in Tamil. The petitioner has annexed to the petition a copy of a list of recognized political Parties published in English by the 1<sup>st</sup> respondent marked P1.

The procedure applicable for submission of nomination papers 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 2.

The petitioner as the General Secretary of the UPFA appointed one Mr M.K.P. Chandralal, an Attorney at law as the Authorized Agent in respect of the election of members to the Poonagary 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 Poonagary 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 Tamil language as **“Iykkiya Makkal Sudandira Kottamaippu.”** 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 and was attested by a Justice of the Peace as required by provisions of law contained in section 28 (5) of the Local Authorities Election Ordinance as amended. A copy of a draft nomination paper prepared by the UPFA is annexed to the petition marked P4 (The original copy of the nomination paper which is in question was produced by the Learned Deputy Solicitor General for perusal of court and other parties.)

The petitioner in this application complains that the 2<sup>nd</sup> respondent rejected the said nomination paper informing in writing that the said nomination paper was rejected on the ground that the nomination paper had not been submitted by a recognized political party. Copies of the said letters in Sinhala and Tamil are annexed to the petition marked P5a, P5b and P5c.

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 P5, P5 (b) and P5© rejecting the nomination paper submitted by the UPFA for Poonagary Pradeshiya Sabha and a Writ of Mandamus directing the Returning Officer to accept the nomination paper submitted by the UPFA.

The Interim Order sought by the petitioner restraining the Election Commissioner from taking steps and conducting the Local Authorities Election scheduled for 17<sup>th</sup> February 2011 was granted by court on 24/02/2011 until final determination of the application in view of the circumstances of the case .

The reason for rejection of the nominations given by the returning officer in all these applications is that the nominations were not delivered by the recognized political party as the name of the recognized political party given in the nominations and the name published in the Government Gazette as the recognized political party was different. The name of the recognized political party that appears in the nomination paper marked p 4 is **"IYKKIYA MAKKAL SUDANDIRA KOOTAMAIPPU"** whereas the name of the recognized political party that is entered in the Gazette Notification No.1639/18 dated 3<sup>rd</sup> February 2010 declaring the recognized political party as **"IYKKIYA MAKKAL SUDANDIRA MUNNANI"** in Tamil.

The same recognized political party is called and known as **"Eksath Janatha Nidahas Sandaya"** in Sinhala and same recognized political party is called and known as **"United People's Freedom Alliance"** in English as published in the Government Gazette No. 1639/18 dated 3/02/2010 containing the list of names of all political parties as recognized political parties for the purpose of elections. As such there appears to be a discrepancy with regard to the name of the recognized political party stated in the nomination paper marked P 4 and the gazette notification published under section 27 A of the Local Authorities Election Ordinance as amended . It is due to this reason that the Returning Officers rejected the nominations of the petitioner on the basis that the nomination paper was not delivered by the recognized political party.

The substantive issue to be determined by this court is as to whether the reason that was given by the Returning officer, the 2<sup>nd</sup> respondent for rejection of the nomination paper of UPFA is a material discrepancy that will empower the returning officer to reject a nomination paper in terms of the law and whether the decision of the Returning officer can be justified under the law.

When this matter was taken up for argument on 23/03/2011 learned President's Counsel for the petitioner submitted that the Returning Officers

both the districts have admittedly accepted the nomination papers duly signed by the petitioner and delivered by the authorized Agent appointed by the UPFA.

It was further contended by the petitioner that in the rejection letters marked P 5 (a) and P (b) , the returning officers have addressed the petitioner and informed that the nomination paper has not been submitted by a recognized political party. In all the nomination papers the petitioner has referred to himself as the Secretary of the "United People's Freedom Alliance" and also the petitioner submitted that the nomination paper was submitted by the petitioner's party , the **"United People's Freedom Alliance."**

Therefore the rejection of the nomination paper of the UPFA is untenable in law on the ground stated therein and without jurisdiction.

Learned president Counsel for 4<sup>th</sup> and 5<sup>th</sup> respondents strongly objected to this application and raised several preliminary objections as follows.

- 1) The petitioner cannot have and maintain this application as the petitioner has failed and neglected to produce before court the crucial Gazette Notification which contained the list of names of the relevant recognized political parties as required by the Court of Appeal Rules. And as a matter of law the petitioners have failed to comply with Rule 3 (1) (a) of the Court of Appeal Rules.

However, the said Gazette Notification bearing no. 1639/18 dated 03/02/2010 was produced by the counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents for perusal.

- 2) The impugned decision is a ministerial act which does not attract Writ jurisdiction. The impugned decisions contained in P5a, P5b and P5c of the 2<sup>nd</sup> respondent are merely ministerial in nature and

therefore do not attract writ jurisdiction of this court. The Counsel cited the judgment in the case of **Vigneshwaran and Stephen v. Dayananda Dissanayake and others 2002 (3) Sri.L. R. p.39** wherein Justice Amaratunga ruled that the function of a returning officer under section 19(1) of the Elections Act is ministerial in nature and no decision or determination made by the returning officer.

The learned President Counsel further submitted that only a recognized political party can submit a nomination paper.

Mr. Kanag-Isvaran PC drew the attention of court to the concept of "recognized political party" with the enactment of Ceylon Parliamentary Elections (Amendment) Act No. 11 of 1959 and explained the meaning of a recognized political party for the purpose of elections. Counsel further 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 the learned president's Counsel 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. Kanag-Isvaran submitted , that the name of the correct Recognized political party registered and published in the government Gazette dated 2010/02/03 for the purpose of Local Authorities elections for Poonagary Pradeshiya Sabha in Tamil was the **Iykkiya Makkal Sudandira Munnani** and not the **Iykkiya Makkal Sudandira Kootamaippu**.

It is pertinent to note that the relevant section 28 (A) in Ceylon Parliamentary Elections (Amendment) Act no. 11 of 1959 introduced the concept of "recognized political party" on which the 4<sup>th</sup> and 5<sup>th</sup> respondents rely on which reads as follows.



***“The Secretary of any political party may make on behalf of such party a written application to the Commissioner that, in respect of such election, such party be treated as a recognized political party for the provisions of section 29 relating to the deposit to be made by candidates”***

However, section 28(a) was later repealed and was substituted with a new section by the Ceylon (Parliamentary Elections) Order in Council (Amendment) Act no. 36 of 1984 which provides as follows:

***“Subject to other provisions of this Act, a political party entitled to be treated as a recognized political party under the Parliamentary Elections Act No. 1 of 1981, on the day preceding the date of the notice ordering the holding of an election, shall be entitled to be treated as a recognized political party for the purpose of elections under this Order.”***

It was submitted that the amended section 7 of Parliamentary Elections Act No 1 of 1981 as amended by Act no. 58 of 2009 brought in an express statutory scheme whereby the concept of a recognized political party was entrenched in the electoral process. And as such the Mr. Kanag-Isvaran PC submitted that in terms of section 28 (2) of the Local Authorities Elections Ordinance as amended only a recognized political party can submit a nomination paper namely, either by the “United People’s Freedom Alliance” or “Eksath Janatha Nidahas Sandanaya”

I do not agree with the submission of the learned Counsel for the 3rd respondents that there was no recognized political party valid in law by the name Iykkiya Makkal Sudandira Kootamaippu which submitted the nomination paper. The contention of Mr Kanag-Ishvaran cannot be accepted on the basis that the powers of the Returning Officer to reject a nomination paper is only on the grounds stipulated

in section 31 and the reason for rejection given by him cannot be accepted in law.

The question to be determined before this court is as to whether the rejection of the nomination paper submitted by the UPFA was within the provisions contained in the Local Authorities Elections Ordinance as amended. If the rejection of the nomination paper is not within the law a person's legal right to franchise has been affected and the decision of the Returning Officer is bad in law.

Is the signature of the General Secretary of the Recognized Political party in question endorsed by the Justice of the peace as required by law sufficient proof to show that the nomination paper was delivered by the said recognized political party. What is the name of the recognized political party referred to in English in the nomination paper marked P4. Is it the identical name that appears against the signature of the petitioner in the nomination paper. On the face of the original document ( nomination paper marked P4) it seemed to me that the signature of the General Secretary of the recognized political party in question and the seal of the Secretary of the party appeared in English and it had been delivered by the Authorized Agent of the Secretary as required by the law.

Sub section ( 5) of section 28 of the Local Authorities Election Ordinance as amended 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 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.

As such I agree with the submission of Mr. Mustapha PC that the petitioner has satisfied the requirements in section 28 (5) of the Law when the nomination paper was delivered to the returning officer.

The learned President's Counsel for the petitioner contended that the words "**Kootamaippu**" and "**Munnani**" have both been used by the party as per the documents marked **P 6 A**, **P 6 B** and **P 6 C** and they refer to one and the same, namely "United People's Freedom Alliance"

The petitioner has stated in paragraph 15 of the petition that "lykkiya Makkal Sudandira Munnani" and "lykkiya Makkal Sudandira Kootamaippu" refer to one and the same party namely, the "Eksath Janatha Nidhahas Sandanaya". In any event, the court observes that the 1<sup>st</sup> respondent has translated the term "alliance" in to Tamil by using the terms "Munnani" and "Kootamaippu"

I will now consider the submissions of Mr. Shavindra Fernando DSG who appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Learned DSG took up the position that the 1<sup>st</sup> and 2<sup>nd</sup> respondents cannot support the rejection of the nomination paper since the rejection of a nomination can only be made on the grounds stipulated under the provisions

contained in section 31 of the Local Authorities Election 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.

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 Elections Ordinance as amended. It seems to me that 2<sup>nd</sup> respondent's 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.

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.

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"*

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 Election 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 P5a, P5b and P5c is unlawful for want of jurisdiction.

The learned Deputy Solicitor General 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"***

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.

Mr Viran Corea appearing for 3<sup>rd</sup> respondent in CA appl. Nos. 91/11 – CA 108/11 made submissions raising preliminary objections as follows.

- a) That there is no valid application before court duly supported by an affidavit by virtue of the failure to file a petition in conformity with section 181 of the Civil Procedure Court
- b) In any event and without prejudice to the above mentioned, preliminary objection was raised that the petitioner has failed to make the necessary parties added to this application.
- c) Counsel associated himself with preliminary objections raised by Mr. Kanag- Ishvaran in CA 90/2011.

The counsel for the petitioner submitted that the petitioner has cited all secretaries of recognized political parties and the leaders of independent groups whose nominations have been accepted by the respective returning officers to this application. And further Mr. Musthapha PC submitted drawing attention of the court to the Latin maxim of “**falsa demonstratio,**” and under the above maxim even if there is an error or discrepancy in the Tamil name of the political party entered in the nomination paper that error or incorrect part of the document should be disregarded and dropped.

Mr. Kanag-Ishvaran PC however, strongly objected and submitted that the above maxim does not apply to this case since the present issue relates to interpretation of the statute. However, I do not agree with the submission of Mr. Kanag-Ishvaran PC as this issue does not relate to statutory provisions but it relates to the discrepancy or error if any, as to the name

of the political party entered in the nomination paper which the court can consider in determining the issue ( **Harikrishna Lal v Babu Lal Marandi 2003 INSC 543** Supreme Court of Jharkhand at Ranchi India wherein it was held



that a wrong description or erroneous part of a document will not vitiate the correct part of a document.)

I would at this stage 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 P 5 a, P5 b and P5 c rejecting the nomination paper.

Court also 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.

The judgment in this application is applicable and binding on all the parties in connected applications CA 91/2011, CA 92/2011, CA 93/2011, CA 94/2011, CA 95/2011, CA 96/2011, CA 97/2011, CA 98/2011, CA 99/2011, CA 100/2011, CA 101/2011, CA 102/2011, CA 103/2011, CA104/2011, CA 105/2011, CA 106/2011, CA 107/2011 and CA 108/2011.

**PRESIDENT OF THE COURT OF APPEAL**

Upaly Abeyrathne J,

I agree.

**JUDGE OF THE COURT OF APPEAL**