

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

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

1. Maththaka Gamage Pawaresena
Group Leader, Independent Group
“Wasanthi”, Wijaya Mawatha
Elpitiya.

Petitioner

CA 75/2011, CA 128/2011, CA 140/2011,
CA 141/2011, CA 146/2011, CA 153/2011,
CA165/2011, CA 166/2011,
CA 161/2011, CA 177/2011,
& CA 189/2011,

Vs.

1. Dayananda Dissanayake,
Commissioner of Elections
Elections Secretariat
Sarana Mawatha
Rajagiriya.
2. A.B.I. de Silva
Returning Officer
Elpitiya Pradeshiya Sabha
Election Office, 1st Floor
District Secretariat Building
Galle.
3. Hon. Attorney General
Attorney General's Department
Colombo-12
And others.

Respondents.

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

COUNSEL: D.P.Mendis PC with Saliya Mathew for petitioners
Shavindra Fernando DSG with Sanjaya Rajaratnam DSG ,
Nerin Pulle SSC, Ms Yuresha de Silva SC and Ms Vichithri
Jayasinghe SC for 1st, 2nd 3rd and 55th respondents.
Chrismal Warnasuriya for 30th respondent.

Mrs.Chamantha Unamboowa for petitioner In CA 189/2011

Nihal Jayamanne PC for 3rd respondent in CA 189/2011

Viran Corea for 6th respondent CA 189/2011

A.S.M Perera PC for petitioner in CA 177/2011.

Argued on 22/03/2011

Decided on 12/05/2011

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

The petitioners in this application are the members of an Independent group who tendered their nominations paper marked A to contest the Local Authorities election that was scheduled to be held on 17th March 2011 for the Hingurakgoda Pradeshiya Sabha

At the outset of hearing all counsel agreed that the issues involved in this application and the connected applications Nos. CA 128/2011, CA 140/2011, CA 141/2011, CA 146/2011, CA 153/2011, CA 161/2011, CA 165/2011, CA 177/2011 and CA 189/2011 are the same and similar and as such counsel agreed that the all the cases can be consolidated and heard together and the judgment in this application will be binding and applicable to all parties in the connected applications as well.

The petitioners state that the 1st petitioner as the leader of the Independent Group handed over the duly completed nomination paper with the annexes, oath and copies of the birth certificates of the ten candidates who were youth candidates . The petitioner states that 9 out of the 10 certificates were true photocopies certified by the Justice of the Peace.

After the expiry of the period for objections the 1st respondent announced that the nomination paper of the petitioners' Independent group was rejected on the basis that copies of the birth certificates certified by the Registrar of Birth and attested by the Justice of the Peace with his signature and seal.

The petitioners are seeking inter alia, the following reliefs

- (a) a writ of certiorari quashing the decision of the 1st and 2nd respondents rejecting the nomination paper of the petitioner marked (A) for Hingurakgoda Pradeshiya Sabha.
- (b) A writ of Mandamus on the 1st, 2nd and 3rd respondents to accept the nomination paper of the petitioners

Mr. Mendis PC at the hearing conceded the fact that only true copies of the 9 youth candidates certified by the Justice of the Peace had been annexed to the nomination paper and tendered to the 1st respondent.

The impugned document marked A 3 is the letter that was issued by the 2nd respondent informing the leader of the petitioner's Independent group of the rejection. The reason for rejection is that the petitioner's Independent group has not tendered the certified copies of birth certificates of nine (9) youth candidates.

Learned President's Counsel contended that in terms of the provisions contained in section 4 (1) (a) of the Evidence (Special Provisions) Act No. 14 of 1995

the documents reproduced, by the use of electronic or mechanical process are to be legally accepted and therefore the rejection of the entire nomination paper is bad in law on the basis that the photocopies certified by a Justice of the peace as true copies is sufficient proof in proving the age of the youth candidate.

The learned Deputy Solicitor general and counsel for the other respondents strongly objected to any relief being granted to the petitioner on the basis that the requirement contained in section 28 (4) A of the Local Authorities Election Ordinance as amended by Act No. 25 of 1990 it is mandatory for a youth candidate to furnish either certified copy of the Birth Certificate or an Affidavit for the purpose of establishing the date of the birth of the youth candidate.

The section 28 (4) (A) of the Law reads as follows.

“ A certified copy of the Birth certificate of every youth candidate whose name appears in the nomination paper or an affidavit signed by such youth candidate , certifying his date of birth shall be attached to such nomination paper”

It was strenuously argued by the learned counsel for respondents that requirement of the certified copy of the birth certificate or the affidavit is mandatory and must be strictly observed by the youth candidates.

It is also important to note that “ youth” has been defined clearly in the provisions in section 89 of the Local Authorities Elections Ordinance as amended for the purpose of elections which this court has to consider as relevant.

Section 89 of the law reads as follows:

“ youth” means a person not less than eighteen years of age at first June of the year in which the revision of the operative electoral register commenced under Registration of Electors Act No. 44 of 1980 and not more than thirty five years of age on the last day of the nomination period specified under this Ordinance in respect of the election at which he seeks to be a candidate.”

For the purpose of above section a youth candidate contesting a local authority election for the year 2011 should have reached the age of 18, as at 1/06/2009.

On a careful reading of the above provisions in section 28 (4) A of the Law it is imperative to strictly comply with the requirement of furnishing a certified Copy of the birth certificate issued by the Registrar of Birth or an affidavit and failure to observe the above requirement in proof of age of the youth candidate as required by section 28 (4) (A) will result in the nomination paper being rejected by the returning officer.

It is to be noted that the requirement of a 40% of the total number candidates nominated should be youth candidates was brought in by the Local Authorities Election Ordinance (amendment) Act no 25 of 1990.

Section 28(1) A of the Act reads as follows:

“Notwithstanding any provisions in this Act to the contrary, in each nomination paper submitted in respect of an election for the electoral areas of a local authority, not less than forty per centum of the total number of candidates nominated in each nomination paper shall consist of youth”

And as such the issue to be determined by this court is as to whether the true copy of a birth certificate certified by a justice of the peace and attached to the nomination paper by a youth candidate is sufficient to satisfy the requirement in section 28 (4) (A) of the Law.

Mr. A.P Niles who appeared for the 3rd respondent in this application submitted that the Local Authorities Election Ordinance as amended does not define what constitutes a “Certified Copy” in relation to a birth certificate. And therefore this court has to resort to the provisions contained in Birth and Deaths Registration Act which provides for registration of births in order to obtain a definition.

Section 56 (1) of the Births and Deaths Registration Act provides as follows:

" Any person shall be entitled on making a written application to the appropriate District Registrar or to the appropriate Additional District Registrar or to the appropriate registrar and under such conditions and on payment of such fees as may be prescribed to refer to any book or document in the possession of such District Registrar , Additional District Registrar or registrar , and kept under this Act or under any past enactment , and to demand a certified copy of or a certified extract from , any entry in such book or document . The Registrar - General or Assistant Registrar General may , on payment of such fees as may be prescribed , issue a certified copy or an extract from any registration entry ."

Therefore counsel submits that a certified copy of a birth certificate is necessarily a copy that is certified by the custodian of the records pertaining to the registration of births. As such it can be seen that mere photo copies certified as true copies by a Justice of the Peace do not constitute a certified copy of the birth certificate.

Learned DSG drew our attention to the provisions in section 63 of the Evidence Ordinance which deals with secondary evidence. Under section 63 thereof secondary evidence means and includes certified copies under the provisions contained therein . section 64 thereof states that documents must be proved by primary evidence except in cases specified therein . Mr. Fernando further submitted that under section 75 of the Evidence Ordinance secondary evidence may be given inter alia, when the original is a document of which a certified copy is permitted by this Ordinance or by any other law in force in Ceylon to be given in evidence. Therefore it was submitted that the Original Birth Registration Entry is in the possession of the Registrar of Births and Deaths. Under section 57 (1) of the Registration of Births and Deaths Act as amended provides that third copy of the birth certificate (Birth Registration Entry) issued under section 11 A of the Act or a certified copy of or a certified extract from , a registration entry obtained section 56 shall be prima facie evidence of the birth, death or still birth to

which that copy or extract relates if that entry purports to have been made in accordance with the provisions of this Act.

In view of the statutory provisions of law above referred to it can be seen that certified copy of a birth certificate is issued only by the Registrar of Births and Deaths or his Assistant Registrar and no other person is authorized to issue certified copies of birth certificates. A true copy of a birth certificate issued by a justice of the Peace is not a certified copy as required by law.

I agree with the submission of Mr Shavindra Fernando and Mr. Niles on that point in that, that the Justice of the Peace is not the custodian of the original records relating to birth certificates and not authorized to issue certified copies of birth certificates. And a certified copy of the birth certificate can be issued only by the Registrar General of Births and or his Assistant Registrar General.

Now I will deal with powers of the returning officer under section 31 (1) and Section 31 (1) (b b b) to reject a nomination paper which reads as follows:

31 (1) " The returning officer shall , immediately after the expiry of the nomination period , examine the nomination papers received by him and reject any nomination paper-

Section 31 (1) (bbb) reads as follows:

" Where as required by section 4 A 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 .."

The returning officer has jurisdiction to reject a nomination paper if the provisions of section 28(4) A have not been strictly observed by the youth candidate.

Section 28(4) A of the law requires a youth candidate to either to attach a certified copy of the birth certificate or an affidavit signed by him to prove his date of birth . Once the youth candidate opts to furnish a birth certificate or a certified copy thereof, the youth candidate cannot decide to furnish a true copy of a photocopy of a birth certificate.

At the hearing of this application along with the connected applications learned President's Counsel heavily relied on the judgment of **Justice S. Tilakawardane in CA application No. 325 /2002** wherein Her Ladyship held that a photocopy of a birth certificate shall be sufficient as there has been a substantial compliance with section 28(4) A of the Law.

However, in the case of CA Writ NO.515/2002 decided on 10-09-2002 wherein it was held that

"Learned President's Counsel drew the attention of court to the case of Jayaratne v Vaas Gunawardane and 114 others (CA 325/2002 CA minutes of 28-02-2002) wherein Ms Tilakawardane J. took the view that the returning Officer should have considered whether there has been substantial compliance with the provisions of section 31 (1) (bbb) of the Local Authorities Elections Ordinance as amended and accepted the nomination paper when a photo copy of the birth certificate is annexed to the nomination paper. With utmost respect , I am unable to agree with the view expressed by Her Ladyship Ms. Shiranee Tilakawardane J for the reasons stated in this judgment above. I am strongly of the view that there would be chaos if the court goes outside the intention of the Legislature and creates a procedure to meet exigencies where court considers that the law in force would work injustice. Legislation in my view, is not a matter for the judiciary and the function of the court is to give effect to the expressed intention of Parliament as gathered from the language used. Where the meaning of a statute is plain nothing can be done but obey it. The learned

Deputy Solicitor General raised objections that the petitioner is guilty of laches and that the necessary parties have not been made respondents. I did not consider the two objections raised by the learned Deputy Solicitor General in view of the conclusion arrived that the petitioner cannot succeed in this application. The application is dismissed without costs”.

Learned Deputy Solicitor General invited our attention to the paragraph at page 102 and 103 of **Granville Williams in Learning the Law** and quoted the following.

“Granted that words have a certain elasticity of meaning, the general rule remains that the judges regard themselves as bound by the words of a statute when these words clearly govern the situation before the court. The words must be applied with nothing added and nothing taken away”.

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.

N.S. Bindra’s Interpretation of Statutes, 9th Edition at page 401

“ 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”

In CA application No. 406/2006 decided on 10/03/2006 wherein a similar issue was involved the court held

“ Having perused the said documents , court observed that what has been submitted were copies and not certified copies of Birth certificates as contemplated by section 31 (1) (bbb) of the Local

Authorities Elections Ordinance as amended by Act no. 25 of 1990.....”

In the case of CA Writ No.383/2006 decided on 24-03- 2006 court held that

“ No certified copy of the birth certificate is annexed as contemplated by section 28 (4) A Accordingly court is satisfied that the returning officer strictly complied with section 31 (1) (bbb) of the Local Authorities Elections Ordinance as amended. The court does not see any material to allow the application . The application is therefore dismissed.”

In a line of authorities of this court and the Supreme Court the issue presently placed before this court has been decided concluding that the statutory requirement for the youth candidate to furnish a certified copy of the birth certificate is mandatory as required by section 28(4) A of the law. Hence the provisions contained in section 28(4) A have to be construed as mandatory. Furthermore , I observe that the failure on the part of the youth candidate who intends to contest the local authorities election to strictly comply with provisions in section 28(4) A of the Law is fatal to his application.

I further observe that the Returning officer has not committed any errors of law when discharging his duties and exercising his powers under section 31 (1) (bbb) of the Local Authorities Elections Ordinance as amended is justified in rejecting the nomination papers of the petitioner in this application and in the connected applications on the basis that the youth candidates have failed to furnish certified copies of birth certificates along with the nominations as required by section 28(4) A of the Law.

This court is satisfied that the 2nd respondent has acted in compliance with the law in rejecting the nomination papers and given reasons for such rejection.

For the reasons stated above Court is of the view that reliefs sought by the petitioners in this application and connected applications cannot be granted in favour and the applications should be dismissed.

Accordingly this application and the applications nos. CA 128/2011, CA 140/2011, CA 165/2011, CA 166/2011, CA 189/2011 , CA 141/2011 , CA 146/2011, CA 153/2011, CA 161/2011 and CA 177/2011 are dismissed. I order no costs.

PRESIDENT OF THE COURT OF APPEAL

Upaly Abeyrathne J,

I agree.

JUDGE OF THE COURT OF APPEAL.