

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

Eksath Janatha Nidahas Sandanaya

(United People's Freedom Alliance)

301,/T.B. Jaya Mawatha

Colombo-10

Petitioner

CA No. 130/2011

Vs.

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

2. Suranga Ambagathanne
Returning Officer
Monaragala Pradeshiya Sabawa
Election Office
Moneragala

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
Pelawatte, Battaramulla

And Others.

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: Nihal Jayamanne PC with Kushan de Alwis

Shamika Senaratne, Chandana Liyanapatabendi,

Kanchana Ratwatte, Dihan de Silva and Chamath Fernando

For the petitioner.

Shavindra Fernando DSG with Sanjaya Rajaratnam DSG, Nerin Pulle

SSC, Ms. Yuresha de Silva SC & Ms VichithrJayasinghe SC. for

1st and 2nd respondents.

A.P Niles with Saman de Silva for the 3rd Respondent.

Chrismal Warnasooriya with Ms Himali Kularatne for

4th 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 the Recognized Political Party called and known as United People's Freedom Alliance (UPFA) and in Sinhala the said party is called and known as "Eksath Janatha Nidahas Sandanaya."

The 3rd, 4th, 5th and 6th respondents are Secretaries of Recognized political parties and the 7th respondent is the Group Leader of an Independent Group which submitted the nomination papers for the election of members to local authorities .

The 2nd respondent is the Returning officer appointed for the purpose of election of members for the Monaragala Pradeshiya Sabha in respect of the local authorities election that was scheduled for 17/03/2011.

The petitioner states that one Mr. L.K.Ajith Kumara an Attorney at Law was appointed as the Authorized Agent in respect of the election of members to the Monaragala Pradeshiya Sabha in terms of the provisions of Local Authorities Election Ordinance as amended.

On 27/01/2011 the Authorized Agent submitted the nomination paper consisting of names of 12 candidates on behalf of UPFA in compliance with the provisions of law contained in section 28 of the Local Authorities Elections Ordinance as amended within the time frame stipulated in the law. The said nomination paper was accordingly accepted by the 2nd respondent. A copy of the said nomination paper has been annexed to this petition marked P 3.

After the nomination paper was duly tendered by the Authorized Agent, the 2nd respondent after the nomination period and the period provided for raising objections (no objections were raised by any of the rival parties contesting at the same election) the 2nd respondent rejected the nomination paper of the UPFA and informed the petitioner of the reason for rejection of the nomination paper as follows:

Reason: *"the absence of the oath/affirmation in terms of the 7th Schedule to the Constitution in respect of one of the candidates."*

A copy of the said decision rejecting the nomination paper is annexed marked P 5

The petitioner in this application submits that the said decision of rejecting of the nomination paper by the 2nd respondent is contrary to law, arbitrary, illegal, void and of no effect or avail in law. The learned President's Counsel strongly submitted that the 2nd respondent has no power or authority to reject the nomination paper on the ground set out in document marked P 5 and the said decision is ultra vires the powers vested in the 2nd respondent under section 31 of the Local Authorities Elections Ordinance as amended. The President's Counsel drew the attention of court to paragraph 21 (a) to 21 (L) of the petition wherein the petitioner states that the decision of rejecting the nomination paper (P 5) is bad in law on the grounds of law set out therein.

The petitioner further submits that the electors in Monaragala Pradeshiya Sabha area have consistently voted for the UPFA and the single and arbitrary action of the 2nd respondent the electors would be deprived of their democratic right of voting and electing a candidate of their choice from a party of their choice.

The petitioner in this application seeks a Writ of Certiorari to quash the decision of the 2nd respondent contained in P 5 dated 27/01/2011 and a Writ of Mandamus directing the 2nd respondent to accept the nomination paper submitted by the petitioner according to law and to take all such consequential steps as mandated by law .

The complaint of the petitioner is that the rejection of the nomination paper submitted by UPFA for Monaragala Pradeshiya Sabha by the letter marked P 5 was made under section 31(1) (d) of the Local Authorities

Elections Ordinance as amended for the reason that the nomination paper was not in compliance with the Seventh Schedule to the Constitution.

Section 28 (4) of the Local Authorities Elections Ordinance as amended is relevant to refer to which reads as follows:

“ The written consent of each candidate to be nominated by a recognized political party or independent group , shall be endorsed on the nomination paper and there shall be annexed to the nomination paper , an oath or affirmation as the case may be, in the form set out in the Seventh Schedule to the Constitution, taken and subscribed or made and subscribed , as the case may be , by every such candidate.”.

Section 31(1) (d) of the Law provides as follows:

“ Where the consent of one or more candidates 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 or more candidates has or have not been annexed to the nomination paper”.

It was the contention of the learned Deputy Solicitor General that failure to comply with provisions contained in section 28 (4) of the Law above referred to would result in the nomination paper being rejected.

The learned President's Counsel for appearing on behalf of the petitioner strongly contended that the decision or order made by the 2nd respondent contained in P 5 does not identify which one of the 12 candidates whose names appear in the nomination paper marked P3 had failed to attach the oath or affirmation in terms of Seventh Schedule to the Constitution and the decision does not specify why the oath or affirmation is not in compliance with 7th Schedule requirement. It was strenuously argued by Mr Jayamanne PC inviting our attention to the provisions in section 31 (2) of the Law that the 2nd respondent must specify the reason in a manner that the petitioner

and the candidates whose names are in the nomination paper and the general public and the voters affected by the decision will know the exact cause for such rejection. In the present case the identity of the candidate from and out of 12 candidates who appears to have defaulted is not known and in view of which the entire list is rejected.

Section 31(2) of the local Authorities Elections Ordinance as amended reads as follows:

"Where any nomination paper has been rejected by the Returning officer under section 31(1) the returning officer shall inform the secretary if the recognized political party or the group leader, as the case may be, who had submitted such nomination paper the fact of such rejection. The decision of the returning officer to reject such nomination paper shall be final and conclusive."

The learned President's Counsel for the petitioner vehemently argued that the impugned decision contained in P 5 rejecting the entire nomination paper was ultra vires, unreasonable, arbitrary, and unlawful for failing to give adequate reasons.

The respondents contend that on perusal of the above provisions in section 31(2) of the Law the impugned document itself will reveal that adequate reasons have been given by the returning officer for rejection. However, petitioner's grievance seems to be that rejection was couched in vague in that the returning officer failed to provide the exact reason. On perusal of the impugned document marked P 5 it is not specifically stated which candidate had not complied with the Seventh Schedule requirement of the Constitution. No adequate reason has been given by the returning officer. The name of the particular candidate should have been given and identified the person. Section 31(2) above referred to states that the decision is final and conclusive.

What is the remedy available to the aggrieved party whose rights have been affected by the decision of the returning officer. The petitioner or the affected party has a right to know the exact reason why the nomination paper was rejected. The public authorities should explain as to why they reached their decision. By the decision of the returning officer all the candidates included in the nomination list are affected and the adverse outcome of the decision is an issue which involves the franchise of the people. The candidates who have validly submitted their nominations will have a legitimate expectation that they will be elected to the particular Pradeshiya Sabha. Therefore, I do not agree with the submission of the learned Deputy Solicitor General that the facts are in dispute in this application and the petitioner cannot seek a judicial review of the returning officer's decision. The 1st and 2nd respondents have not filed any objections or affidavit stating the correct position to prove that the facts are in dispute.

Mr. Niles appearing for 3rd respondent objected to this application on the basis that the petitioner has suppressed material facts and misrepresented facts to court in this application. Mr Warnasuriya appearing for the 4th respondent strongly objected to this application stating that the petitioner has failed to add the necessary parties (candidates) who may be affected by the decision and the petition should fail for want of compliance with the mandatory provisions in section 28(4A) and the rejection under section 31(1) must be upheld.

Mr. Jayamanne PC cited a unreported judgment of Justice Thilakawardane in CA application no. 309/2002 decided on 28/02/2002 wherein the court very carefully considered the adverse consequences of a single act by a returning officer under section 31 of the Local Authorities Election Ordinance as amended.

Her ladyship said at page 3 thereof “ 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.”

In the case of CA Writ Application no. 330/2006 Sripavan J stated that

“the rejection of the nomination paper undoubtedly affects the rights of the petitioners and the candidates whose names appear in the nomination paper intending to contest at the election. Therefore, the returning officer is under a legal duty furnish reasons for the rejection of the nomination paper. This is considered to be a good practice for Returning Officers to formulate the grounds of rejection and for those affected to be furnished of such reasons... The failure to give proper and adequate reasons may be considered as an error on the face of the record even if the duty to give reasons is not mandatory”.

I would like to add that when the decision of the returning officer is **final and conclusive** the returning officer has a legal duty to give adequate reasons why the returning officer reached such decision and the affected party has a right to know why the returning officer came to such a conclusion.

It should be noted that the Writ jurisdiction of this court is discretionary. If the court is satisfied that if a single act of a public officer or any functionary exercising power under a statute affects the rights of subjects the court intervenes to grant redress .

Having considered the material placed before court and the submissions of all counsel I am of the view that the facts are not disputed in this application in the absence of any material by way of an affidavit was

placed before court and the decision of the returning officer should be quashed.

Accordingly this court issues a writ of Certiorari quashing the decision of the returning officer, the 2nd respondent rejecting the nomination paper of the petitioner for Monaragala Pradeshiya Sabha for 2011 as per sub paragraph (b) of the prayer to the petition.

This court issues a Writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the petitioner and to take all the consequential steps according to law.

No costs.

PRESIDENT OF THE COURT OF APPEAL

Upaly Abeyrathne J,

I agree.

JUDGE OF THE COURT OF APPEAL