

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for a
Mandate in the nature of a Writ of
Certiorari and a Writ of Mandamus under
and in terms of Article 140 of the
Constitution of the

1. A.D. Susil Premajyantha
General Secretary
United People's Freedom Alliance
No. 301, T.B. Jaya Mawatha,
Colombo-10.

2. Sunil Shantha Herath
"Isadara",
New Town
Madampe.

Petitioners

CA 117/2011 and CA 119/2011

Vs.

1. Mr. Dayananda Dissanayake
Commissioner of Elections
Election Secretariat
Rajagiriya.

2. Mr. A.O.M. Nafeel
Returning Officer
Nawagattegama Pradeshiya Sabha
Election Office
Puttlam District Kachchieri
Puttlam.

3. Mr. Tissa Attanayake
General Secretary
United National Party
No. 400, Sirikotha
Pitakotte.

4. Mr. M. Tilvin Silva
General Secretary
Janatha Vimukthi Peramuna
464/20, Pannipitiya Road
Pelawatte
Battaramulla.

Respondents

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

BEFORE: Ali Sabry with Kasun Premaratne and Sanjeewa Dissanayake for petitioner.

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

A.S.M Perera PC for 3rd respondent

Shanky Parthalingam PC with N. Parthalingam for the 3rd respondent In CA application 119/2011

Chrismal Warnasuriya with Himalee Kularatne for 4th respondent in CA Writ No 119/2011.

ARGUED ON: 23/03/2011

DECIDED ON: 12/05/2011

SATHYAA HETTIGE PC, P/CA

The petitioner in this application is the General Secretary of the “United People’s Freedom Alliance” (UPFA) which is a recognized political party under the Parliamentary Elections Act no. 1 of 1981. The 2nd petitioner is the Authorized Agent of the same party appointed for the purpose of local election that was scheduled to be held on 17/03/2011 for Nawagattegama Pradeshiya Sabha. The said party is called and known as “Janatha Eksath Nidahas Sandanaya” in Sinhala.

At the outset all parties agreed that the issue involved in this application and the connected application No. CA 119/2011 is the same and similar in nature and therefore both the matters can be taken up for hearing together and also parties agreed that the judgment in this application will be applicable and binding on all parties in both the applications.

The petitioners state that on 27th January 2011 , on behalf of the UPFA the 1st petitioner through the 2nd petitioner, the authorized agent submitted the duly completed nomination paper along with the required documents to the 2nd respondent to contest the local authorities elections that was scheduled for 17/03/2011 in compliance with the law .

The petitioners also state that they along with the nomination paper submitted the oath / affirmation in the Form set out in the Seventh Schedule to the Constitution and duly prepared affidavits of the youth candidates as required by law. The draft nomination paper retained by the petitioner is annexed to the petition marked P 2.

However, the petitioners plead that after the closure of the period for accepting nomination and the period for objections to be raised, the 2nd respondent acting under section 31 (1) of the Local Authorities Elections Law by the letter dated 28/01/2011 rejected the said nomination paper of the UPFA for the reason stated therein. The said rejection letter is marked P 3.

The reason for rejection of the nomination paper stated in the communication marked P 3 is that the 1st petitioner's signature which appears on the bottom of the nomination paper had not been duly attested by a Justice of the Peace. The petitioners state that the 2nd respondent stated that the reason for rejection was due to the failure to fix the official seal of the Justice of the Peace at the bottom of the nomination paper after he placed the signature.

The petitioners are seeking inter alia, the following reliefs from court on the basis that the decision of the returning officer marked P 3 is bad in law , contrary to law and ultra vires the powers vested in the Returning Officer.

- a) A writ of Certiorari quashing the decision contained in P3 rejecting the nomination paper of the UPFA
- b) A writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the petitioners to contest the local authorities election for Nawagattegama Pradeshiya Sabha.

The petitioner submits that the decision of the 2nd respondent to reject the nomination paper of the UPFA for Nawagattegama Pradeshiya Sabha local election is bad in law , contrary to the guidelines given by the 1st respondent in respect of the local election for 2011 and the said decision is contrary to and against the Wednesbury Rule of reasonableness and the said decision had been taken having wrongfully interpreted the provisions of Local Authorities Elections law.

The learned Deputy Solicitor General DSG for 1st and 2nd respondents produced the original nomination paper that was submitted by the petitioners for perusal by court at the hearing of this application. On perusal of the nomination paper the court observed that the Justice of the Peace had attested the signature of the General Secretary of the party in question by placing his signature as required by law. The petitioner has annexed to this petitioner a photo copy of an enlarged copy of a photograph taken immediately after the period of nomination when it was exhibited on the board marked P2A(1).

The court observed that the signature of the General Secretary of the political party in question had been authenticated by the Justice of the Peace by placing his signature.

The question that arises is as to whether, for the purpose of the Act it is necessary to fix the official seal of the Justice of the Peace. The relevant provisions of law contained in section 28 (5) of the Local Authorities Elections Ordinance as amended reads as follows:

“ 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 leader of that group (such candidate is hereinafter referred to as the group leader) and shall be attested by a Justice of the Peace or Notary Public.

Learned Deputy Solicitor General submitted in assisting court on the point that the rejection of the nomination paper cannot be justified for want of official seal of the Justice of Peace. There is no legal requirement for the seal of the Justice of the Peace to be placed to prove the attestation.

Learned DSG further drew our attention to the provisions in section 12(3) of the Oaths and Affirmation Ordinance which reads as follows:

“ Every commissioner is before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, shall state truly in the Jurat or attestations at what place and on what date the same was administered or taken and shall initial all alterations, erasures and interlineations appearing on the face thereof and made before the same was administered or taken.”

Therefore counsel submitted that there is no legal requirement for a seal to be placed. Counsel for the petitioner submitted that legal requirement of an attestation as contained in section 28 (5) of the Law has been met by placing the signature of the Justice of the peace at the space provided in the nomination paper. The counsel for the petitioner invited court's attention to the Statutes namely Judicature Act and the Oaths and Affirmation Ordinance and submitted that none of those Statutes provide

for such a seal to be placed by a justice of the Peace when attesting a signature.

It was further submitted on behalf of the petitioner that the whole purpose of the attestation is to certify the signature which appears in the bottom of the nomination paper of the Secretary of "United People's Freedom Alliance".

Mr Shanky Parthalingam PC who appeared in CA application no. 119/2011 for the 3rd respondent raised the following preliminary objections

- 1) The petitioners have not complied with Rule 3 (1) (a) of the Court of Appeal Rules of 1990 in that the petitioner has not annexed to the petition the original of the rejection letter marked P 3 or a certified copy thereof as required by Rule 3 (1)(a) of the Rules and therefore the application should be dismissed in limine.
- 2) The petitioners have failed to state that the petitioners submitted the nomination paper on behalf of a duly recognized political party but the petitioners have merely stated that nomination paper was submitted on behalf of a registered political party which is contrary to the provisions of the Local Authorities Elections Ordinance as amended. The learned President's Counsel submits that failure to state the correct and valid name of the political party amounts to a material defect in the application.

I have considered the preliminary objections of the 3rd respondent and overrule the objections on the basis that the petitioner in this application has come to court challenging the rejection of the nomination paper of a recognized political party which was known to the public and no prejudice has been caused to any party and non compliance of the Rules in the circumstances of the case should not be considered as a material defect in this application.

At this stage I would quote from **Halsbury Laws of England, Vol. 15, 04th 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 that the objection raised by Mr. Parthalingam PC that there is difference of the name of the political party stated in the nomination is not a material defect in view of the above legal position.

However, the right of the 3rd and 4th respondents to raise such objections on non-compliance of the Rules in an appropriate case will not be affected by the judgment of this application.

Mr Warnasuriya who appeared for 4th respondent submitted that the petitioners have failed to add the necessary parties to the application.

I have considered carefully the objections of the 3rd and 4th respondents when coming to the conclusion of this case.

Our attention was drawn to the case of **Ediriweera v Kapukotuwa 2003 (1)** SLR page 228 wherein His Lordship Sarath N Silva CJ, quoting Sansoni J in **Meyappan v Manchanayake** 62 NLR 529 held that

" Sansoni J (as he then was) considered the validity of a cheque endorsed by a partnership in an action for recovery of money from the

partners. The endorsement bore the rubber stamp of the partnership, but not the signatures of the partners. It was held that the endorsement in question is invalid. Sansoni J made a general observation relevant to the facts of this appeal.

“As a matter of language, giving the words their ordinary meaning, when a person’s signature is required on a document, the person’s name should be written by hand with a pen or pencil..

I would add that the signature placed in this manner represents the person who writes it and denotes his act”.

When considering the legal position discussed above, counsel submits that it is obviously clear that the legal requirement of an attestation had been sufficiently satisfied in the present case, by placing the signature of the Justice of the Peace.

It should be noted that the rejection of the entire nomination paper by the 2nd respondent has affected not only the rights of the candidates but also the rights of franchised people of electing a candidate of their choice.

The power given to the returning officer under section 31(1) of the Law to reject the nomination paper has been exercised in a wrongful and unreasonable manner. The returning officer cannot extend the power beyond the four corners of the powers given.

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”

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.”

In the circumstances , the court of the view that the decision of the 2nd respondent rejecting the nomination paper cannot be justified and the petitioner’s application should be allowed granting the relief sought.

Accordingly, Writ of Certiorari is issued quashing the decision of the 2nd respondent contained in P3 rejecting the nomination paper as per subparagraph “b” of the petition,

Court issues a Writ of Mandamus as per paragraph (C) of the petition directing the 1st and 2nd 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 Abeyrathne J,

I agree.

JUDGE OF THE COURT OF APPEAL.