

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

In the matter of an application for the issue
of Writs in the nature of Writ of Certiorari
and Writ of Mandamus under and in terms
of Article 140 of the Constitution.

Balapitiyage Liyanage Dixon
Leader Independent Group,
Seruvila Pradeshiya Sabha
No. 155, RB-4,
Kiliveddy.

Petitioner.

CA 137/2011

Vs.

1. Dayananda Dissanayake
Commissioner of Elections,
Elections Secretariat
Rajagiriya.

2. **Nalaka Ratnayaka**
Returning Officer for Seruwila
Pradeshiya Sabha,
District Secretariat
Trincomalee.

3. **Tissa Attanayaka**
Secretary, United National Party
“Sirikotha”
No. 400, Kotte Road,
Pitakotte, Sri Jayawardenapura.

4. **A.D. Susil Premajyantha**
Secretary, United People’s Freedom
Alliance,
301, T.B. Jayah Mawatha
Colombo-10.

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

6. **Maval Senathiraja**
Secretary, Ilangai Tamil Arasu Katchi
No. 30, Martin Road, Jaffna.

7. The Attorney General,
Attorney-General's Department
Colombo-12.

Respondents.

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

COUNSEL: N.M. Saheed for the petitioner

Shavindra Fernando DSG with Sanjaya Rajaratnam DSG, Nerin Pulle SSC, Ms Yuresha de Silva SC & Ms Vichithri Jayasinghe SC for 1st ,2nd & 7th respondents.

Kuvera de Soyza with Senake de Seram for 4th respondent

ARGUED ON: 23/03/2011,

DECIDED ON: 12/05/2011

SATHYAA HETTIGE PC , P/CA

The petitioner is the Independent Group leader who delivered the nomination paper in terms of the provisions of the Local Authorities Elections Ordinance as amended to contest the local authorities election for Seruwila Pradeshiya Sabha for 2011. The 2nd respondent is the Assistant

Commissioner of Elections for the electoral area of Seruwila Pradeshiya Sabha who accepted the nomination paper of the Independent Group

The nomination paper of the petitioner's Independent group setting out the names of the candidates nominated to contest was submitted to the 2nd respondent. Petitioner states that the nomination paper (a true copy of a form of the nomination paper is annexed to the petitioner marked P 1.) was prepared perfectly in compliance with provisions of the Local Authorities Elections Ordinance as amended and duly signed by the petitioner as the group leader and tendered to the 2nd respondent .

The respondent rejected the nomination paper of the petitioner's independent Group and by the letter dated 27/01/2011 the 2nd respondent informed the petitioner stated that the nomination paper was rejected under section 31 (1) of the Law on the ground that the nomination paper submitted by the petitioner did not comply with provisions in section 28 of the Local Authorities Elections Ordinance as amended. The said letter rejecting the nomination paper is annexed to the petition marked P 2. The petitioner states that later he came to know that the reason for rejecting the nomination paper was on the ground that the petitioner had not mentioned the name of the Pradeshiya Sabha on the top of the nomination paper.

It is stated in the petition that the petitioner did prepare two sets of nomination papers out of abundance of caution , and wanted to submit one copy to the 2nd respondent and to retain the other copy for his personal use. By an error he appears to have submitted the copy of the nomination paper without the name of the Pradeshiya Sabha being entered .

The petitioner submitted that the determination to reject the nomination paper of the petitioner's independent group is illegal, void and of no force or avail in law for the following grounds:

- a) The 2nd respondent has no power or authority to reject the nomination paper on the grounds set out in P 2 and the said decision

is ultra vires the powers of the 2nd respondent under the provisions of section 31 (1) of the Local Authorities Elections Ordinance as amended.

- b) The decision contained in P 2 as communicated is wrong and contrary to law and ultra vires the powers of the 2nd respondent under section 31 (1) of the law.
- c) The purported decision in P 2 is unreasonable, irrational and based upon a mere technicality.
- d) The purported rejection of the nomination paper on the ground that the name of the Pradeshiya Sasbha was not mentioned at the top of the nomination paper , defeats the very purpose of the legislation intended to ensure the participation of the Independent Group.
- e) The 2nd respondent's decision in P 2 is in breach of the 2nd respondent's duty to advance franchise.

The petitioner in this application is seeking inter alia,

- (i) a Writ of Certiorari quashing the decision of 2nd respondent rejecting the nomination paper contained in P 2.
- (ii) A Writ of Mandamus directing the 2nd respondent to accept the nomination paper of the petitioner according to law and to take all consequential steps as mandated by law

The learned DSG submitted that the petitioner has admitted in paragraph 10 of the petition that he had erroneously submitted the nomination paper without the name of the Pradeshiya Sabhawa. The respondents submit that the grounds for rejection of a nomination paper are set out in section 31 (1) of the Local Authorities Elections Ordinance as amended.

Section 31 (1) thereof reads that "*The returning officer shall immediately after the expiry of the nomination period , examine the nomination papers received by him and reject any nomination paper..*"

Therefore it is a mandatory provision to be complied with if the grounds stated therein are met. Mr. Fernando DSG submitted that the 1st and 2nd respondents do not agree with the submissions of the counsel for petitioner that the provisions in section 31 (1) are directory.

Learned DSG cited the judgment in CA Writ application 438/2002 decided on 24/03/2006 wherein it was held " in exercising his jurisdiction , the returning officer is obliged to act in strict obedience to the law which imposes on him a simple and definite duty in respect of which he has no choice"

Thus it can be seen that under section 31 (1) of the Law the returning officer has no alternative and confines his role to mere visual examination of the nomination paper and decide whether to reject or accept.

However, Mr Fernando DSG agreed that the provisions in section 28 of the Local Authorities Elections Ordinance as amended do not require the returning officer to examine as to whether the name of the relevant Pradeshiya Sabha has been entered in the nomination paper .

It should be mentioned that the returning officer has stated in the decision that he communicated to the petitioner by the letter marked P2 rejecting the nomination paper referring to section 28 of the Law. The returning officer has failed to refer to the exact limb of the section 28 of the Law where the requirement is laid down for the purpose of the rejection.

As such it seems to me that the rejection of the nomination paper contained in the impugned letter marked P 2 is bad in law and has been made without jurisdiction since the reason given by the returning officer does not fall within any of the grounds stipulated in section 31 (1) of the Law.

In view the above legal position the learned DSG submitted that the respondents cannot support the rejection and have no objection to the Writ being issued to quash the rejection of the nomination paper contained P 2 .

Further it must be noted that the returning officer has no power to reject a nomination paper on any other grounds except the grounds in Section 31 (1) in terms of the law. The returning officer's powers are limited to the grounds stipulated in section 31 (1)of the Statute. He cannot extend the powers conferred on him beyond that limited grounds in the section.

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 can be seen further that in view of the wrong decision of the returning officer contained in P 2 dated 27/01/2011 the whole electoral process as far as the local election in respect of Seruwila Pradeshiya Sabha is concerned has been interrupted and holding of election as was scheduled has been unnecessarily delayed. Further the rights of all candidates nominated to contest at the local election for Seruwila Pradeshiya Sabha have been affected depriving the people of exercising their franchise to choose the 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.”

In the circumstances I am of the view that the decision of the returning officer rejecting the nomination paper in P 2 should be quashed and the relief sought by the petitioner should be granted.

Accordingly, this court issues a Writ of Certiorari quashing the decision rejecting the nomination paper in P 2 as prayed for in sub paragraph “b” of the petition.

This court issues a Writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the Independent group submitted by the petitioner according to law and to take all consequential steps as mandated by law as prayed for in sub paragraph (c) of the prayer to the petition.

No costs.

PRESIDENT OF THE COURT OF APPEAL

Upaly Abeyrathne J,

I agree.

JUDGE OF THE COURT OF APPEAL.