

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

In the matter of an application to obtain a  
mandate in the nature of Writ of Certiorari  
and Mandamus in terms of Article 140 of  
the Constitution.

1. Mohamed Shafie Raheem  
Authorised Agent of Sri Lanka Muslim  
Congress to hand over nomination for  
Attanagalla Prasedhiya Sabha, 25/A , St.  
Lazaras Road  
Rahumania Lane,  
Negombo.
  
2. M.I. Hassan Ali  
Secretary General  
Sri Lanka Muslim Congress  
51, Vauxhall Lane,  
Colombo-02.

Petitioners.

1. **Dayananda Dissanayake**  
**Commissioner of Elections**  
**Department of Elections**  
**Sarana Road, Rajagiriya.**
  
2. **M.A. P.C. Perera**  
**Returning Officer, Attanagalla**  
**Pradeshiya Sabha**  
**Assistant Returning Officer**  
**Gampaha District**  
**District Secretariat, Gampaha.**
  
3. **Hon. Susil Premajyantha**  
**General Secretary**  
**United People's Freedom Alliance**  
**301, T.B. Jayah Mawatha**  
**Colombo-01.**
  
4. **Hon. Tissa Attanayake**  
**Secretary**  
**United National Party**  
**Sirikotha**  
**400, Kotte Road, Pitakotte.**

5. Tilvin Silva  
Secretary  
Janatha Vimukthi Peramuna  
464/20, Pannipitiya Road  
Pelawatte  
Battaramulla
  
6. Dimuthu BandaraAbeykoon  
Eksath PrajathanthrawadeePeramuna.
  
7. Rev. Battaramulle seelaratne Himi  
Janasetha Peramuna.
  
8. 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:** Nizam Kariappar for the petitioner

Shavindra Fernando DSG with Sanjaya Rajaratnam DSG, Nerin Pulle SSC, Ms yuresha de Silva SC & Ms Vichithri Jayasinghe SC for 1<sup>st</sup>, 2<sup>nd</sup> & 8<sup>th</sup> respondents

Daya Palpola for 4<sup>th</sup> respondent.

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

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

**SATHYAA HETTIGE PC, P/CA**

The 1<sup>st</sup> petitioner in this application is the authorized agent appointed by the Sri Lanka Muslim Congress, a recognized political party under the Parliamentary Elections Act. The 2<sup>nd</sup> petitioner is the General Secretary of the said Sri Lanka Muslim Congress

The 1<sup>st</sup> petitioner was appointed by the 2<sup>nd</sup> petitioner for the purpose of handing over the nomination paper of the Sri Lanka Muslim Congress for the local authorities election in respect of Attanagalle Pradeshiya Sabha for 2011.

Sri Lanka Muslim Congress prepared its nomination paper to contest the local authorities election for the electoral area of Attanagalle Pradeshiya

Sabha and the 2<sup>nd</sup> petitioner signed the nomination paper in terms of section 28 of the Local Authorities Elections Ordinance as amended.

The 1<sup>st</sup> petitioner on 27/01/2011, handed over the said nomination paper along with the required documents to the returning officer for contesting the local authorities election in respect of Attanagalle Pradeshiya Sabha. The returning officer, the 2<sup>nd</sup> respondent read out the names of the parties and announced that the nomination paper submitted by the Sri Lanka Muslim Congress was rejected.

On 31/01/2011 the 2<sup>nd</sup> petitioner received a letter stating that the nomination paper of the Sri Lanka Muslim Congress was rejected in terms of section 28(4)A of the Law due to the reason that there was no birth certificate or affidavit of one of the youth candidates annexed to the nomination paper. A copy of the said decision of the returning officer rejecting the nomination paper is marked P 4.

On perusal of the decision rejecting the nomination I observe that the reason for rejection of the nomination paper is that a youth candidate called M.D.M Mackie had not annexed the oath/ affirmation to the nomination paper as required by section 28 (4) of the Local Authorities Elections Ordinance as amended.

Section 28 (4) of the above Law 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.”***

It is very clear on perusal of the above provisions of law in section 28 (4), it is mandatory to attach an oath or affirmation to the nomination paper by

each candidate. The impugned document marked P 4 gives the reason for rejection of the nomination paper as follows: "the candidate no. 33 M.D.M. Mackie has failed to attach the oath or affirmation".

The 2<sup>nd</sup> respondent categorically states in the Statement of Objections dated 23/03/2011 the candidate M.D.M. Mackie has failed to attach the birth certificate or certified copy of the birth certificate or an affidavit in proof of his date of birth to the nomination paper.

The learned counsel for the petitioner submitted that the petitioner has stated in paragraph 19 of the petition that to the best of petitioner's recollections he tendered all the relevant birth certificates of youth candidates. The decision of the returning officer to reject the nomination paper of the Sri Lanka Muslim Congress is unreasonable, arbitrary, ultra vires and unlawful.

The petitioner is seeking inter alia, a writ of certiorari quashing the decision of the 2<sup>nd</sup> respondent rejecting the nomination paper marked P 4 and a writ of Mandamus compelling the 2<sup>nd</sup> respondent to accept the nomination paper submitted by the 1st petitioner of the Sri Lanka Muslim Congress for Attanagalle Pradeshiya Sabha.

Learned DSG submitted that the petitioner has failed to annex an affidavit from the person concerned to establish that in fact, he tendered an oath or affirmation to the returning officer. It was strongly submitted by the learned DSG that the facts in this application are in dispute. Therefore this court must dismiss this application as no Writ jurisdiction can be invoked when the facts are disputed.

The learned DSG relied on the case in CA Application No. **Thadjudeen v Sri Lanka Tea Board and Another 1981 (2) SLR 474** wherein it was held that

when the question of facts are in dispute they can and must only be settled by a regular action before the appropriate court.

In the case of **Thajudeen v Sri Lanka Tea Board and Another** 1981 2 SLR 474

*It was held that "When , however, such questions of fact are in dispute they can and must only be settled by a regular action between the disputants before the appropriate court of First Instance , both oral documentary and the cross examination of witnesses are all questions which can be best decided by way of regular procedure falling within the ordinary jurisdiction of the Courts of First Instance.*

*In this view of the matter , it appears to me that , as the major grounds of fact , upon which the petitioner's claim for the payment of the sum of money in question are founded , are being disputed by the respondents , and as the most appropriate procedure for the settlement of such a dispute is an action by way of regular procedure before the appropriate Court of First Instance, and as such an action by way of regular procedure also constitutes an equally convenient , beneficial and effective remedy this court should , in the exercise of its discretion, refuse the petitioner's application. It is therefore not necessary to consider the respondent's other grounds of objections."*

Our attention was drawn to a passage at page 260 of **Wade in Administrative Law ( 9<sup>th</sup> edition)** Questions of law and facts had to be distinguished , as was explained by Devlin J.

*“ Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there.*

*But where the dispute turns on a question of fact , about which there is conflict of evidence, the court will generally decline to interfere”.*

It was contended by the learned DSG for the respondent that the petitioner has a remedy before another forum to settle the disputed facts and not the Court of Appeal.

**S.A de Smith In Judicial Review of Administrative Law at page 452** states as follows:

*“ Mandamus has always been regarded as an extraordinary , residual and “supplementary” remedy; to be granted only when there is no other means of obtaining justice. Even though all the other requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion in his favour if a specific alternative remedy equally convenient, beneficial and effectual” is available.”*

When this matter was taken up for argument on 23/03/2011 the learned counsel for the petitioner conceded the fact that no oath or affirmation was annexed to the nomination paper when the nomination paper was tendered by the 1<sup>st</sup> petitioner of Sri Lanka Muslim Congress to the returning officer on 27/03/2011.

This is a discretionary remedy the petitioner is seeking in this application. The court must be satisfied that the public officer against whom the relief



is sought has exceeded his powers conferred upon him and the decision of the officer has affected his rights.

In **P.S. Bus Company Vs. Ceylon Transport Board** 61 N.L.R, 491 Sinnathamby J. stated as follows:

**“The prerogative writs are not issued as a matter of course and it is in the discretion of court to refuse to grant it if the facts and circumstances are such as to warrant a refusal....”**

In the circumstances I am of the view that the 2<sup>nd</sup> respondent has acted within the parameters of the law when taking the decision to reject the nomination paper of the Sri Lanka Muslim Congress for Attanagalle Pradeshiya Sabha 2011 and the petitioner therefore, is not entitled to the relief sought in this application.

Accordingly, I refuse and dismiss the petitioner's application without costs.

**PRESIDENT OF THE COURT OF APPEAL**

Upaly Abeyrathne J,

I agree.

**JUDGE OF THE COURT OF APPEAL.**