

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

In the matter of an application for mandate in the  
nature of writs of Certiorari and Mandamus under  
Article 140 of the Constitution of Sri Lanka.

1. Rev. Battaramulla Seelarathana  
General Secretary  
Janasetha Peramuna  
185/B, Dewala Road,  
Talangama South  
Koswatta  
Battaramulla.
2. Shantha Baranagala  
Baranagala  
Morothota.

**Petitioners.**

CA 176/2011

Vs.

1. **Dayananda Dissanayake**  
**Commissioner General of Elections**  
**Elections Office**  
**Sarana Mawatha**  
**Rajagiriya.**
  
2. **D.M.P. Dissanayake**  
**District Returning Officer**  
**Elections Office.**  
**Kegalle.**
  
3. **T.A.C.N. Talangama**  
**Asst. Commissioner of Elections/**  
**Returning Officer**  
**Elections Office**  
**Kegalle.**
  
4. **A.d. Susil Premajyantha**  
**General Secretary**  
**Eksath Janatha Nidahas Sandanaya**  
**301, T.B. Jaya Mawatha**  
**Colombo-10.**
  
5. **Tissa Attanayake**  
**General Secretary**  
**United National Party**  
**Sirikotha**  
**Pitakotte.**

6. M. Tilvin Silva  
General Secretary  
Janatha Vimkthi Peramuna  
464/20, Pannipitiya Road  
Pelawatta  
Battaramulla.

**Respondents.**

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

**COUNSEL:** A S M perera PC for the petitioner

Shavindra Fernando DSG with Sanjaya Rajaratnam DSG , Nerin  
Pulle SSC, Ms yuresha de Silva SC & Ms. Vichithri Jayasinghe SC  
for the 1<sup>st</sup> 2<sup>nd</sup> & 3<sup>rd</sup> respondents.

W Dayaratne P.C for the 4<sup>th</sup> respondent.

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 Jansetha Peramuna a recognized political party and the 2<sup>nd</sup> petitioner is the Authorized Agent of the Janasetha Peramuna appointed for Local Authority election for Ruwanwella Pradeshiya Sabha for 2011

The petitioners states that the 2<sup>nd</sup> petitioner delivered the nomination paper for Ruwanwella Pradeshiya Sabha on 27/01/2011 to the 3<sup>rd</sup> respondent at

the Kegalle Election Office. It is stated in the petition that the 1<sup>st</sup> petitioner appointed one Shantha Kumarathunga as the Authorized Agent of the "Janasetha Peramuna" relating to delivery of the nomination papers for several other Pradeshiya Sabhas including Dehiowita Pradeshiya Sabha , Yatiyantota Pradeshiya Sabha and Aranayake Pradeshiya Sabha. The said Shantha Kumaranathunga had been present in the Kegalle Election office on 27/01/2011.

It is also stated in the petition that there was no objection raised by any of other parties in relation to nomination paper submitted by the Janasetha Peramuna during the period provided for objections.

The petitioners complain that the 3<sup>rd</sup> respondent informed the petitioner that the nomination paper submitted by the "Janasetha Peramuna" in respect of Ruwanwella Pradeshiya Sabha was rejected under section 31 (1) (a) of the Local Authorities Elections Ordinance as amended by the letter addressed to the 1<sup>st</sup> petitioner marked P4 on the basis that the nomination paper had been delivered by an unauthorized person.

Learned President's Counsel submitted that it was most probable that some official who took part in the proceedings that day had made an error and assumed that the said nomination papers had been handed over by Shantha Kumaranatunga and not by Shantha Baranagala the 2<sup>nd</sup> petitioner. Therefore Mr. A.S.M Perera PC submits that the 3<sup>rd</sup> respondent had erroneously rejected the nomination paper of the Janasetha Peramuna.

The petitioners complain that the rejection of the nomination paper by P4 constituted a grave error of law on the face of the record and the said rejection is bad in law and unsupported by evidence , ultra vires and null and void and without any force or avail in law.

The petitioners are seeking inter alia,

- a) A Writ of Certiorari quashing the decision made by the 3<sup>rd</sup> respondent rejecting the nomination paper of the Janasetha Peramuna in respect of the Local Authorities Election contained in P 4
- b) A Writ of Mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to accept the nomination paper of the Janasetha peramuna for Ruwanwella Pradeshiya Sabha and to take all the consequential steps mandated by law .

The returning officer , the 2<sup>nd</sup> respondent has rejected the nomination paper under section 31(1) of the Local Authorities Elections Ordinance as amended for failure to comply with the provisions in section 28 (5) of the Law.

Section 28 (5) provides as follows:

Sub section ( 5) of section 28 of the Law) provides that

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

***Such nomination paper shall be delivered to the returning officer within the nomination period by the secretary or authorized agent , in the case of a recognized political party, or the Group leader in the case of an independent group.”***

The returning officer derives the power to reject the nomination paper under section 31 (1) (a-e) of the law if the nomination paper has not been delivered in accordance with section 28 (5) of the Law. It appears from a perusal of the provisions contained in section 28 (5) which is mandatory in nature and requires strict compliance of the law.

The contention of the petitioner is that the nomination paper was delivered by the 2<sup>nd</sup> respondent who was the authorized agent on 27/01/2011. However, the position of the 1<sup>st</sup> and the 2<sup>nd</sup> respondents is that the nomination paper of the Janasetha Peramuna was delivered by one Shantha Kumarathunga in respect of Ruwanwella Pradeshiya Sabha local election for 2011 who was not the Authorized agent for Ruwanwella Pradeshiya Sabha which is a non compliance of the legal requirement in provisions of section 28 (5) of the Local Authorities Elections Law.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents have annexed to the written submissions photographs of the handing over of the nomination papers on behalf of the 1<sup>st</sup> petitioner marked 2R1 (a), 2 R (b) , 2R ( c) , 2R ( d) 2R (e) and 2R (f).

On examination of the documents marked and other material placed it appears there is a dispute of facts with regard to the identity of the person who handed over the nomination paper on behalf of Janasetha Peramuna in respect of Ruwanwella Pradeshiya Sabha .

Learned DSG submitted that when the facts are in dispute this court cannot exercise judicial review with regard to the relief sought by the petitioner.

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”.***

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."*

It is settled law that when the facts are in dispute writ jurisdiction of the Court of Appeal cannot be invoked since the judicial review is available only to decide on the legality of acts of persons and authorities in power and the disputed facts are matters for the courts of First Instance to decide having considered the evidence of the parties.

The issue to be determined in this case is the disputed identity of the Authorized Agent of the Janasetha Peramuna.

As such I am of the view that the relief sought by the petitioner in this application by way prerogative writs cannot be granted as the facts are disputed.

For the reasons set out above I am of the view that the relief sought in this application for a judicial review cannot be granted in favor of the petitioner.

Accordingly, the application is dismissed . No costs.

**PRESIDENT OF THE COURT OF APPEAL**

Upaly Abeyrathne J,

I agree.

**JUDGE OF THE COURT OF APPEAL.**