

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for the grant of writs of Certiorari , Mandamus and Prohibition under and in terms of Article 140 of the Constitution.

1. Tissa Attanayake
General Secretary
United National Party
"Sirikotha"
400, Kotte Road
Pita Kotte
Sri Jayawardenepura.

2. Lalan Sudath Manju Sri Arangala
112/5, Puwakwatte Junction
Meegoda.

Petitioners.

CA 73/2011 & CA 135 /2011

Vs.

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

2. **J.A.S.P. Jayasinge**
Returning Officer
Homagama Pradeshiya Sabha Area
395, Old Kotte Road
Rajagiriya.

3. **A.D. Susil Premajyantha**
General Secretary
Eksath Janatha Nidahas Sandanaya
301, T.B. Jayah Mawatha
Colombo-10.

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

And others.

Respondents.

BEFORE; Sathya Hettige P.C. J, President of the Court of Appeal
Upaly Abeyratne J, Judge of the Court of Appeal.

COUNSEL: Ronald Perera for the petitioner

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

Nihal Jayamanne PC with Kushan de Alwis for 3rd respondent.

Chrismal Warnasuriya with Himalee Kularatne for 4th respondent

Dulindra Weerasooriya with Chamath Marapone for the petitioners.

In CA Writ No. 135/2011

Argued on 23/03/2011

Decided on 12/05/2011

SATHYAA HETTIGE PC, P/CA

The 1st petitioner in this application is the General Secretary of the United National Party a recognized political party under the Parliamentary Elections Act no 1 of 1981 and the 2nd petitioner is the Authorized Agent of the same party duly appointed by the 1st petitioner for the election members to the Homagama Pradeshiya Sabha for 2011.

All counsel agreed that both the applications can be consolidated and taken up together for hearing and further agreed that the judgment in this will be applicable and binding on all parties in the application no.CA 135/2011 as well.

Consequent to the notice issued by the 1st respondent marked P 2 the 2nd petitioner, the Authorized Agent of the UNP delivered the nomination paper of the candidates nominated by the UNP to the 2nd respondent on 27/01/2011 for election of members to the Homagama Pradeshiya Sabha for 2011. A draft nomination paper tendered by the 2nd petitioner is annexed marked P 3.

The petitioner states that after the closure of nomination period and after the expiry of the period for objections the 2nd respondent announced that the UNP nomination paper handed over by the 2nd petitioner was rejected due to a shortcoming in one affidavit which was tendered to confirm the age of one of the youth candidates. The petitioner further complains that the petitioner was not given an opportunity to make representations after the rejection. The 2nd respondent failed to give details for the rejection. The letter that was sent informing of the rejection is marked P 5.

The petitioner states that the reason given in the said letter rejecting the nomination paper submitted by the UNP was that no birth certificate or affidavit was produced to confirm the age of the youth candidate or it was produced with a defect. The letter marked P5 further stated that nomination paper submitted did not fulfill the requirements of section 28

(4) A of the Local Authorities Elections Ordinance as amended under section 31 (1) (bbb).

Section 28 (4) of the Act reads as follows:

“A certified copy of the birth certificate of every youth candidates whose name appears in the nomination paper or an affidavit signed by such youth candidate , certifying his date of birth shall be attached to such nomination paper”.

The relevant statutory provisions which confer power on the returning officer to reject a nomination paper is section 31(1) (bbb) of the Law which reads as follows:

“ where , as required by subsection 4A of section 28 , a certified copy of the birth certificate or an affidavit signed by such youth candidate, has not been attached to the nomination paper”

During the course of the hearing of this application and the connected application no. CA 135/2011 the counsel for the petitioner agreed that one of the affidavits did not contain the signature of the Justice of the Peace but only the official seal had been placed. The contention of the learned counsel for the petitioner that signature of the Justice of the peace is not mandatory cannot be accepted. The signature of the attesting Justice of the Peace is mandatory as required by law.

The learned DSG submitted that the ground for rejection of the nomination paper of the petitioner is that an affidavit of one of the youth candidates was defective for not containing a proper attestation by the Justice of the Peace. The respondent produced the said affidavit to court annexed to the written submissions marked 1R1.

On perusal of the said affidavit dated 25/01/2011 marked 1R1 the court observes that the affidavit has not been authenticated or attested by the Justice of the Peace by placing his signature.

In terms of section 12 (3) of the Oaths and Affirmation Ordinance Commissioner or before whom any affidavit is taken shall initial all alterations , erasures, and interlineations.

In the case of CA Writ application No. 356/2006 the Court of Appeal dealt with a similar issue . In that case the returning officer for Seethawaka Pradeshiya Sabha had rejected the nomination paper of the United National Party on the ground that the affidavit of one of the youth candidates had not been properly attested by a Justice of the Peace .The affidavit that was produced to court revealed that the said Affidavit did not contain the signature of the Justice of the Peace.

In that case court held that mere placing of rubber seal of the Justice of the Peace is not sufficient but the Justice of the Peace has to place his signature in the jurat. The jurat in an affidavit has to be signed by the Justice of the Peace.

The petitioners are seeking inter alia, the following reliefs.

- a) A Writ of certiorari quashing the purported order made by the 2nd respondent rejecting the nomination paper of the United National Party in P 5.
- b) A writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the UNP for the Homagama Pradeshiya Sabha and to take all the consequential steps mandated by law.

In CA application No. 135/2011 the petitioner seeks the same relief on the basis that the decision of the 2nd respondent is bad in law since the 2nd respondent has failed to give sufficient reason for rejection of the

nomination paper marked P 4. Learned counsel for petitioner submitted that no clear and specific reason is given in P4.

I have considered the oral submissions of the counsel and the written submissions filed in both the cases and I am satisfied that the decision of the returning officer is justified as he acted within the parameters of provisions in section 31 (1) (bbb) of the Local Authorities Elections Law . The returning officer has not committed any errors of law when rejecting the nomination paper. As such , I observe that no valid affidavit which contained the signature of the Justice of the Peace as required by law had been furnished by the petitioner confirming the date of the birth of one of the candidates.

The petitioner in this application is seeking a discretionary remedy and the court must be satisfied that the respondents have acted in excess of the powers conferred upon them in rejecting the nomination paper. I am of the view that the petitioner has failed to prove that the 2nd respondent acted outside the law. As such the petitioner is not entitled to the relief sought.

Accordingly, I dismiss this application and the connected application no.CA 135/2011. I order no costs.

PRESIDENT OF THE COURT OF APPEAL.

Upaly Abeyratne J,

I agree.

JUDGE OF THE COURT OF APPEAL.