

**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. M.T.M. Nehamatullah  
Authorized Agent of Sri Lanka Muslim Congress  
to hand over nominations for Ukuwela  
Pradeshiya Sabha ,  
356, Main street,  
Matale.
  
2. M.T. Hasen Ali MP  
Secretary General  
Sri Lanka Muslim Congress  
51, Vauxhall Lane  
Colombo-02.

**Petitioners.**

CA 88/2011

Vs.

1. Dayananda Dissanayake  
Commissioner of Elections  
Department of Elections  
Sarana Road, Rajagiriya.
  
2. H.M.N. Dinipriya  
Returning Officer  
Ukuwela Pradeshiya SABha  
Assistant Returning Officer , Matale  
District, District Secretariat  
Matale.

**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 with A.M. Faiz & M.I.M. Iynullah for petitioners  
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> and  
10<sup>th</sup> respondents.  
Ali Sabri for the respondent  
Daya Palpola for 4<sup>th</sup> respondent  
Chrismal Warnasuriya for 5<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 of the Sri Lanka Muslim Congress appointed for handing over the nomination paper for the Ukuwela Pradeshiya Sabha and the 2<sup>nd</sup> the petitioner is the General Secretary of the Sri Lanka Muslim Congress a recognized political party under the Parliamentary Elections Act No. 1 of 1981.

The petitioners state that the Sri Lanka Muslim Congress prepared Nomination paper consisting of the names of candidates to contest the local authorities election for the electoral area of Ukuwela Pradeshiya Sabha and the 1<sup>st</sup> petitioner along with one A.M. Zafarullah went to the 2<sup>nd</sup> respondent's office on 27/01/2011 and handed over the nomination paper to the 2<sup>nd</sup> respondent along with the required documents in terms of the law to the 2<sup>nd</sup> respondent at the District Secretariat in Matale .

It is stated however, that the nomination paper was given back to the 1<sup>st</sup> petitioner to remove the file cover and submit only the nomination paper and in the rush thereafter his companion one Zafarullah who was 1<sup>st</sup> petitioner had had submitted the nomination paper to the 2<sup>nd</sup> respondent.

Thereafter around 2 pm on 27/01/2011 the 2<sup>nd</sup> respondent had read out the list of names of the political parties who handed over the nomination papers and announced that the nomination paper submitted by the Sri Lanka Muslim Congress had been rejected. On 31<sup>st</sup> January 2011 the 2<sup>nd</sup> petitioner received a letter dated 28/01/2011 stating the reason for rejection of the nomination paper submitted by the Sri Lanka Muslim Congress for Ukuwela Pradeshiya Sabha.

The reason for rejection of the nomination paper was that the nomination paper had been delivered by an unauthorized person. A copy of the said letter dated 28/01/2011 is marked P 4.

The petitioners have preferred this application seeking the following the reliefs

- a) A Writ of Certiorari quashing the decision of the 2<sup>nd</sup> respondent rejecting the nomination paper tendered by the 1<sup>st</sup> petitioner of the Sri Lanka Muslim Congress
- b) A Writ of Mandamus directing the 2<sup>nd</sup> respondent to accept the nomination paper tendered by the 1<sup>st</sup> Petitioner for Ukuwela Pradeshiya Sabha.

The petitioners complain that the decision of the 2<sup>nd</sup> respondent rejecting the nomination paper of the Sri Lanka Muslim Congress is unreasonable, arbitrary, ultra vires and unlawful.

The provisions in section 28 (2) of the Local Authorities Elections Ordinance as amended are as follows.

***“Any recognized political party or any group of persons contesting as independent candidates ( hereinafter referred to as an independent group) may for the purpose of election as members of any local authority submit one nomination paper substantially in the form set out in the first schedule setting out the names of such number of candidates as is equivalent members to be elected for that Local Authority increased by three. The returning officer shall as soon as practicable make a copy of each nomination paper received by him and display such copies of nomination paper on his notice – board”***

The provisions of section 28(5) of the Law are as follows:

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

On perusal of the above provisions it appears that the nomination paper shall be delivered by the persons referred to in the section which is mandatory provision of law.

The authorized agent in relation to a recognized political party means a person authorized in writing by the secretary of that recognized political party, to be the authorized agent of that recognized political party and whose authorization has been communicated by such secretary to the returning officer for the electoral area, in respect of which the election is being held at least seventy two hours before the commencement of the nomination paper.

The failure to deliver the nomination paper as per section 28 (5) would result in the said nomination paper being rejected under section 31(1) a of the Ordinance by the returning officer.

In the case of **Ediriweera Returning Officer for Akuressa Pradeshiya Sabha v Kapukotuwa, General Secretary, United National Party 2003 1 SLR 228** it was held that

**“ requirement of section 28(5) of the Ordinance is mandatory and calls for proper compliance.”**

In the case of **CA Writ 378/2006** decided on **09/03/2006** wherein the nomination paper had been delivered by an unauthorized person it was held, that

***“ Hence the provisions in section 28 (5) have to be construed as mandatory. In the event of non-compliance , section 31 (1) a places a firm sanction by mandating the rejection of the nomination paper . Therefore, the petitioner cannot claim that the nomination paper has to be accepted as there is substantial compliance . In the circumstances, the decision of the 1<sup>st</sup> respondent cannot be construed as unreasonable.”***

On examination of the provisions of section 28 (5) of the Ordinance it seems to me the provisions will have to be construed in strict sense as mandatory and the fact that the authorized agent was present at the time of handing over the nomination paper is a not a ground under section 28(5) of the Ordinance that should be taken into consideration by the returning officer not to reject the nomination paper and that fact cannot be taken into account to prove that the there is substantial compliance . Therefore I am of the view that there is no substantial compliance of the law and the court must construe the section 28(5) as mandatory for the secretary of the recognized political party or authorized agent to comply with.

The petitioner in this application is seeking a prerogative Writ and the if the court is satisfied only the discretion is exercised by court in favor of the petitioner.

In **P.S Bus Company v. Ceylon Transport Board** 61 NLR 491 the court held that ,

***“ A prerogative Writ is 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 , having considered the written submissions of all the parties, I am of the view that the relief sought by the petitioner cannot be granted in his favor and the application should be dismissed.

Accordingly, application is dismissed . We make no order for costs.

**PRESIDENT OF THE COURT OF APPEAL**

Upaly Abeyrathne J,

I agree.

**JUDGE OF THE COURT OF APPEAL.**