

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

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and a Writ of Mandamus under and in terms of Article 140 of the Democratic Socialist Republic of Sri Lanka.

01.A.D. Susil Premajyantha,
Secretary,
Eksath Janatha Nidahas Sandanaya,
(United Peoples Freedom Alliance)
301, T.B. Jayah Mawatha,
Colombo-10.

Petitioner.

CA 132/2011

Vs.

1. K.J.S. Madawa
Returning Officer for Galnewa Pradeshia
Sabha
Elections Office, Anuradhapura.

2. Dayananda Dissanayake
Commissioner of Elections
Election Secretariat
Sarana Mawatha
Rajagiriya.

3. S.A. Jayawickrama
No. 92, Hiripitiyawa
Galnewa.

4. W.M. Chandrathilaka
No. 70, Pahala Kalankuttiya
Kalankuttiya.

5. D.K.S. Kumarihami
No. 44, Sudarshana Gama
Huri Gas Wewa
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: Nihal Jayamanne PC with Kushan de Alwis, Chandana
Liyanapatabendi,
Kanchanna Ratwatte, Dilhan de Silva and Chamath Fernando for
petitioner
Shavindra Fernando DSG with Sanjaya Rajaratnam DSG , Nerin
Pulle SSC ,

Ms Yuresha de Silva SC and Ms Vichithri jayasinghe SC for 1st
2nd and 19th respondents. A.P Niles with Saman de Silva and
Suren Fernando for 3rd respondent.

A.S.M Perera PC for 15th respondent

ARGUED : on 22/03/2011

DECIDED on 12/05/2011

SATHYAA HETTIGE PC, P/CA

The petitioner in this application is the General Secretary of the Eksath Janatha Nidahas Sandanaya which is a recognized political party under Parliamentary Elections Act no. 1 of 1981. The said party is called and known as United People's Freedom Alliance (UPFA) in English.

The petitioner states in the petition that on 27/01/2011 the duly completed nomination paper of the UPFA consisting of names of 12 candidates including 5 youth candidates along with the required documents was delivered to the 1st respondent, returning officer through the Authorized Agent of the UPFA for the local election that was scheduled to be held on 17/03/2011 for Galnewa Pradeshiya Sabha. The petitioner also states that the nomination paper was duly signed by him and was attested by a Justice of the Peace as required by law.

The petitioner states that in terms of the provisions in section 28(4) (A) of the Law all the youth candidates submitted the affidavits certifying the date of birth of the candidates as required. It is stated that after the nomination period and the period for objections (no objections were raised) the 1st respondent announced that the nomination paper of the UPFA delivered by the Authorized Agent was rejected . Thereafter, the returning officer by the undated letter notified the decision for rejection of the

nomination to the petitioner. In that letter marked P 5 the returning officer has stated that rejection of the nomination paper was due to the reason that there was no confirmation of the age of one of the youth candidates and resultantly the required number of youth candidates were not included in the nomination list.

The petitioner states that the returning officer has not given a clear, valid and lawful reason as to why the nomination paper was rejected. Therefore, the petitioner states that the decision of the returning officer rejecting the nomination paper of the UPFA to contest the Galnawa Pradeshiya Sabha election is arbitrary, unlawful, ultra vires and illegal. Further petitioner complains that the decision contained in P 5 deprives the large number of people of their voting rights in electing a candidate of their choice.

As such the petitioner is seeking inter alia, a Writ of Certiorari quashing the decision of the 1st respondent set out in P 5 rejecting the nomination paper and a Writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the UPFA and to take all consequential steps according to law.

The learned President's Counsel submitted at the hearing of this application that the returning officer has failed to state as to why the affidavit of a youth candidate that was tendered was defective and he has failed to identify which one of the 5 youth candidates whose names appear in the said nomination paper had failed to prove his age by submitting a birth certificate/ affidavit.

The learned Counsel submitted that the decision in P 5 has been occasioned by the failure to take into account the circumstances and unreasonable.

The said decision is in breach of the duty of the 1st respondent to advance franchise and the said decision in P 5 gravely undermines the free and unfettered exercise of the choice vested in the people in the exercise of their franchise.

However, at the hearing of this application learned Deputy Solicitor General who appeared for 1st and 2nd respondents produced the relevant documents in court and it was observed on a perusal of the nomination paper marked P 3 that the last candidate in the column for the date of birth has entered his date of birth as 20/50/1972 which was obviously a mistake.

It further transpired in the course of hearing that the youth candidate had furnished an affidavit certifying the date of birth and confirming that he was a youth candidate. The date of birth of the youth candidate wrongly given in the nomination paper should not have been a reason for rejection of the nomination paper by the returning officer under section 31 (1) of the Local Authorities Elections Ordinance as amended. It was an admitted fact between the parties that the particular youth candidate has given an affidavit confirming his correct date of birth along with the nomination paper.

In the circumstances the learned Deputy Solicitor General had no objection to the Writ of Certiorari being issued quashing the rejection of the nomination paper of the UPFA contained in P 5 and issuing a Writ of Mandamus directing the 1st and 2nd respondents to accept the nomination paper of the petitioner.

This court is satisfied with the material placed before the court and having considered the submissions of the parties that the rejection contained in P5 is bad in law as the youth candidate has satisfied the age requirement in section 28(4) A of the Law and as such the decision of the returning officer contained in P 5 should be quashed granting relief to the petitioner.

Accordingly, the court issues a Writ of Certiorari as prayed for in paragraph (b) of the prayer to the petition and quash the document marked P 5.

Court issues a Writ of Mandamus as prayed for in paragraph © of the prayer directing 1st and 2nd respondents to accept the nomination paper of the UPFA and take all consequential steps according to law.

I order no costs.

PRESIDENT OF THE COURT OF APPEAL.

Upaly Abeyratne J,

I agree.

JUDGE OF THE COURT OF APPEAL.