

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

**In the matter of an application for
mandates in the nature of Writs Of
Certiorari, Mandamus and Qua
Warranto under Article 140 of the
Constitution of Sri Lanka.**

CA/Writ/291/2011

1. R.D. Lalith Ranasinghe,
150, Neboda Road,
Matugama.
2. L.L. Mery Munasinghe,
Welipenna, Lewwanduwa.
3. K.D. Mithrananda,
Handapamulla, Meegama,
Indigastuduwa.
4. A.N. Uchitha Sankalpa,
Payagala Road,
Yatadolawatta,
Matugama.
5. W.A. Jayaranjan,
348, Welimanana, Panthiya,
Matugama.

PETIONERS

Vs.

1. H.R.P. Peiris,
Returning Officer/Senior
Assistant Commissioner of
Elections,
Kalutara Administrative
District,
Department of Elections,
Kalutara.

And Twenty four others

RESPONDENTS

BEFORE : S. SRISKANDARAJAH, J (P/CA)

COUNSEL : J.C.Waliamuna,
for the Petitioner.
Janaka De Silva
for the Respondents.

Argued on : 07.09.2012

Order on
Preliminary objection : 30.01.2013

S.Sriskandarajah.J

The Petitioner contested the local authorities election of 2011 conducted on 17/03/2011 for the Matugama Pradeshiya Sabha from the United Peoples Freedom Alliance, a registered political party. The 1st and 2nd Petitioners have been declared elected as Members of the Matugama Pradeshiya Sabha at the said election, but the

Petitioners filed this application in the public interests of the voters in the Matugama Pradeshiya Sabha area, in ensuring fairness and transparency in the counting process of the preference and the preparation of the final results. The Petitioners have sought a Writ of Certiorari quashing the election of the 4th to the 12th Respondents as Members of the Matugama Pradeshiya Sabha, as reflected in P2. The Petitioners have also sought a Writ of Certiorari quashing the final results of the preference obtained by the candidates of the UPFA in respect of the Matugama Pradeshiya Sabha and quashing the part of the list containing the elected candidates that is applicable to the UPFA among other reliefs sought in the Petition.

The Respondents, by way of preliminary objection, raise the following issues:-

- (a) The Petitioner is in effect seeking a partial quashing of the election results of the Matugama Pradeshiya Sabha, which is not possible according to law;
- (b) In any event, there is a more effective and adequate remedy provided in terms of Section 82(q) read with Section 82(s) of the Local Authorities Elections Ordinance (as amended);
- (c) The counting of preference and declaration of the results has been duly completed and as such a Writ of Mandamus does not lie;
- (d) The declaration of preferential votes constitute a ministerial act and, as such, no writ of certiorari lies.

The Respondents explained that the counting of votes is done as stipulated in the Local Authorities Elections Ordinance and, accordingly, after the ballot boxes are

brought to the counting centres, the counting of votes is carried out in three stages, viz., the box count to verify the ballot papers in the ballot boxes ; then the party count to ascertain the number of those obtained by each party, and then the count of the preference votes; that the preference votes are then categorized into where no preference has been indicated, votes with one preference, votes with 2 preference, and votes containing more than 3 preferences, and votes that cannot be decided upon. Thereafter, in the presence of the counting agents of all the relevant parties, the results are entered by one counting officer and checked by another counting officer, and the results are announced and displayed; first, within the respective counting hall by the Chief Counting Officer of each counting hall. If there are no objections or requests for recount, the written statements containing the results are then sent to the results declaration centre for verification and thereafter the final results are announced.

In the above process, the Petitioners were given ample opportunity to seek a recount at the time of counting the preferential votes which the Petitioners have failed to exercise at the relevant time.

A preliminary objection was raised by the Respondents that the announcement of the results is only a ministerial act and not a decision or determination that attracts jurisdiction of this Court. In support of this contention, the learned counsel cited the case of *Gamini Atukorale Vs. Dayananda Dissanayake, Commissioner of Elections reported in 1988 3 SLR page 206 at 219*, where it was held that the decision of the results by the Returning Officer in terms of Section 65 of the Local Authorities Elections Ordinance is not a decision which attracts the jurisdiction exercisable by way of a Writ of Certiorari. The said declaration of elections is only an announcement of the results of the count and as there is no discretion involved, the declaration of election results cannot be quashed by a Writ of Certiorari as the said action is a ministerial act and, therefore, I uphold the preliminary objection of the Respondent that a Writ of Certiorari will not lie to quash the said decision.

The Petitioners also have not exercised the alternate remedy provided in terms of Section 82(b) read with Section 82(s) of the Local Authorities Election Ordinance, as amended, as the said remedy is provided for this purpose and it has adequate remedy in relation to the complaint of any irregularity in an election. As the complaints are in relation to disputes of facts and it needs leading of evidence, the procedure by way of a Writ of Certiorari is not a suitable remedy to give relief to the Petitioners. Further, the Petitioners in these proceedings are only seeking to quash the preferential votes that were cast to the UPFA candidate, which is a partial quashing of the said election. It was held in *Anthony and Others Vs. Chandradasa* 1996 2 SLR page 311, that in an election to proceed as void and to have another few members declared duly elected, is not possible. In these circumstances the petition to quash only the election of the UPFA candidate cannot be granted. In these circumstances this Court dismisses this application without cost.

President of the Court of Appeal