

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 and mandamus made in
terms of Articles 140 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.

C.A. Writ Application No.423/2011

1. Jayasinghe Mudalige Aruna
Kumara,
Nissanka Attanapitiya,
Kohilegedera,
And 2 others

Petitioners

Vs.

1. Dayananda Dissanayake,
Former Commissioner General of
Elections, Elections Secretariat,
Sarana Mawatha,
Rajagiriya
And 15 others.

Respondents

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

COUNSEL : Chula Bandara

for the Petitioner,

Yuresha De Silva SC

for the Respondents

Written Submission on : 19.07.2012 and 22.11.2012

Decided on : 30.01.2013

S.Sriskandarajah, J,

The Petitioners contested the local government elections held on 17th March 2011 for the purpose of electing members for the Kurunegala Pradeshiya Sabha. The 5th to the 16th Respondents were elected as Members at the said elections from the United Peoples Freedom Alliance. The Petitioners complain in this application that the Petitioners' rights to a fair and accurate counting of their preferential votes granted under the election laws are violated. The Petitioners complained that the counting of votes that were done at the respective counting centres were represented by Counting Officers appointed under Section 59(a) of the Local Government Elections Ordinance. Prior to the counting of votes, each recognized or independent group is entitled to appoint not more than 5 Counting Agents who are authorized to be present when the counting of vote is done in terms of Sections 60 and 61 of the said Ordinance. The Petitioners submitted that, as per notice issued by the 3rd Respondent in terms of 61(1) of the said Ordinance, the Kurunegala Pradeshiya Sabha votes were counted in the counting rooms Nos.68 to 76, at the Maliyadewa Girls College Counting Centre. The 1st, 2nd and 3rd Petitioners participated at the counting of both votes and the preferential votes conducted in room Nos.69 and 73, respectively. In addition, UPFA candidates and other representatives were present in rooms Nos.75 and 76 respectively, as Counting Agents. The Petitioners submitted that the tables that were used for the

counting of votes, 69, 73 and 75 were placed right across the room and, as they were facing the entrance to the room, and the ballot boxes were placed behind the table, none of the Counting Agents were permitted to get to the rear side of the table and thereby they were denied to see how the counting officers marked preference in the tally sheets. The Petitioners further submitted that when these matters were raised before the Chief Counting Officer, the Chief Counting Officer disregarded the Petitioners' claim and informed that there would be a check of these entries in the tally sheets and at that time these complaints could be sorted out. As far as the Petitioners are aware, there was no recheck of these entries, but what in fact happened was, the recheck to tally the total number of preferential votes marked in the tally sheets with the number of preferential votes found in the bundle of 50 ballot papers. The Petitioners contended that the difference of preferential votes between the 6th Respondent and the 3rd Petitioner is one vote, and the difference between the 16th Respondent and the 2nd Petitioner is 11 votes. In view of this, the Petitioners submitted that the difference of preferential votes was so narrow, that there could have been a change in the results if a recount was done and, in this Application, the Petitioners have sought a Writ of Certiorari to quash the decision of the 1st, 2nd and 3rd Respondents' preferential results and have sought a Writ of Mandamus directing the 1st, 2nd and 3rd Respondents to recount the preferential votes of all candidates of the United Peoples Freedom Alliance who contested the Kurunegala Pradeshiya Sabha elections held on 20th March 2011.

If the relief sought for by the Petitioners are granted, it would nullify the said elections to the Kurunegala Pradeshiya Sabha held on 17/03/2011. This will lead to a situation where the Petitioners are indirectly challenging the entire election process. The entire election process could only be challenged by an election petition provided by the said ordinance. The Petitioners, by this Writ Application are challenging the election results which they should have otherwise sought by an election petition. It was held in *Ratnasiri Perera Vs. Dayananda Dissanayake, Assistant Commissioner of Co-operative*

Development and others 1992 2 SLR 186, "that you cannot do indirectly which you can do directly."

The Petitioners in this Application are seeking for a Writ of Certiorari to quash the preferential election results, as the counting and declaring the preferential election results is not a decision or determination made by the Election Commissioner, it is only a declaration of election by the people exercising their franchise, as the document which reflects the results of election does not contain the decision or determination, hence a Writ of Certiorari will not lie, to quash the election document that contained the election results. In the case of *Gamini Atukorale Vs. Dayananda Dissanayake, Commissioner of Elections and others, 1998 3 SLR 206*, it was held by His Lordship Wijetunga J. as follows: "Counsel further submitted that what the Petitioner sought to quash was the final result of the said election which was merely a declaration of the results of such election by the Returning Officer in terms of Section 65 of the Ordinance. He had no discretion in regard to the declaration of the result, in that he had merely to adopt and determine the number of votes cast for each recognized political party or independent group from the statements of votes cast at each polling station. That is not a "decision", but merely the proclamation of the result and as such, it cannot be the subject of an application for a Writ of Certiorari".

In the given circumstances, this Court is of the view that a Writ of Certiorari will not lie to quash the said declaration and, therefore, this Court dismisses this Application without cost.

President of the Court of Appeal