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

C.A 453/2007 (Writ)

1. Janaka Lakshman Pallewala
   198/4, Heerassagala Road,
   Kandy.

2. The Society of Registered and Assistant Medical Officers (SRAMO) SRAMO Centre, 266/2, Deans Road,
   Colombo 10.

PETITIONERS

Vs.

1. Dr. Ajith U. Mendis
   Director General of Health Services
   385, "Suwasiripaya",
   Colombo 10.

2. Hon. Nimal Siripala de Silva
   Minister of Health Care & Nutrition
   385, "Suwasiripaya",
   Colombo 10.

3. Dr. H. A. P. Kahandaliyanage
   Secretary,
   Ministry of Health,
   385, "Suwasiripaya",
   Colombo 10.

4. Hon. Attorney General
   Attorney –General's Department
   Colombo 12.

RESPONDENTS

AND NOW

The Government Medical Officers Association
No. 275/75, Prof. Stanley Thillekeratne Mawatha, Colombo 7.

INTERVENIENT PETITIONER

Vs.

1. Janaka Lakshman Pallewala
   198/4, Heerassagala Road,
   Kandy.

2. The Society of Registered and Assistant Medical Officers (SRAMO) SRAMO Centre, 266/2, Deans Road,
   Colombo 10.

PETITIONERS-RESPONDENTS

5. Dr. Ajith U. Mendis
   Director General of Health Services
   385, "Suwasiripaya",
   Colombo 10.

6. Hon. Nimal Siripala de Silva
   Minister of Health Care & Nutrition
   385, "Suwasiripaya",
   Colombo 10.

7. Dr. H. A. P. Kahandaliyanage
   Secretary,
   Ministry of Health,
   385, "Suwasiripaya",
   Colombo 10.

8. Hon. Attorney General
   Attorney –General's Department
   Colombo 12.

RESPONDENTS-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Saliya Peiris for the Petitioners-Respondents

S. Parathalingam P.C., with N. R. Sivendran
for the Intervenient Petitioner

Senany Dayarathna for the 1st, 2nd, and 3rd Respondents

ARGUED ON: 29.01.2013

DECIDED ON: 21.03.2013

GOONERATNE J.

In this writ application the Government Medical Officers' Association, have sought to intervene. The writ application was filed by two persons. The 2nd Petitioner to the application for Writ of Certiorari is the Society of Registered and Assistant Medical Officers, SRAMO Centre. The 1st Petitioner is one Janaka L. Pallewala who is an Assistant Medical Officer and claim to be entitled to practice

Medicene and Surgery in terms of Section 41 (2) of the Medical Practitioners, Pharmacists, Midwifes & Nurses Ordinance (Medical Ordinance 26 of 1927) The 2nd Petitioner is an association consisting of Registered and Assistant Medical Officers. In the writ application before this court the Petitioners have sought to quash the decision of the 1st Respondent contained in circular No. 01 – 03/2007 (1) marked P16. The question at this point of time that has to be considered is whether intervention could be permitted in law. This court may have permitted intervention earlier, but it should not amount to a mechanical process to permit intervention if the application could be decided according to law (on the material furnished) without granting intervention. Further the Appellate Court rules (1990) do not permit intervention in writ applications.

To state very briefly the Petitioner plead inter alia that approximately 70% of the patients who come for treatment to Government Hospitals are treated by Assistant/Registered Medical Officers. Petitioner's aver that they perform the same duties as those having or Doctors having the M.B.B.S qualifications. The Petitioners are also issued Medico Legal Examination form (MLE for P7(a) to P7 (i) in respect of persons under the influence of liquor or drugs, to deal with such cases.

The Petition gives some details of Petitioners conducting test on persons under the influence of liquor and state no special expertise is required to carry out those tests. What the Petitioners are seeking to demonstrate is that they are also involved almost in the same way as M.B.B.S qualified Doctors to perform the various duties. It is pleaded in the petition more particularly in paragraph 32 that the GMOA (intervenient Petitioners) objected in the Petitioners

conducting tests as in paragraphs 27 – 32 of the Petition. In fact by P8 & P9 the complaint of the Petitioners are dealt with and the problem addressed to by Consultant Judicial Medical Officers and the Director General of Health Services.

It is pleaded that having examined the problem the 1st Respondent the Director General of Health Services issued circular P13. Thereafter several objections were received to P13 by P14 (consisting of several letters of protests by Medico Legal Officers and Judicial Medical Officers etc.). However circular P13 which was in favour of the Petitioner had been cancelled or revoked by circular P16. (until further notice) A writ of Certiorari is sought to quash the decision in P16 issued by the 1st Respondent. The 1st Respondent had filed objection to the main application, but learned Counsel who appeared for 1st to 3rd Respondents informed this court that the 1st to 3rd Respondents have no objection to the intervention application. This court also note that the 1st Respondent has filed comprehensive objection to the main writ application, and this court cannot at this stage nor should not rule on the final outcome of the main writ application.

The issuance of the circular in question or cancelling same had been done by the 1st Respondent. No doubt it is a function of the 1st Respondent who is necessarily in overall control and supervision of the Government Hospitals as the Director General of Health Services. In the case in hand this court get the impression that the 1st Respondent had been in contact with Judicial Medical Officers, the Department of Forensic Medicine, Medico Legal Consultants as evident from the annextures to document P14. The intervenient Petitioner have an interest in the cancellation of the relevant circular P16, may be to ensure in one way the due performance of Medico Legal Service of this aspect which require formal training in the given field. On the other hand intervention in this

way of persons having an interest would not mean that court cannot proceed to decide the vires of document P16 and to decide whether the Petitioner has established acceptable grounds for the issue of a Writ of Certiorari. No doubt the intervenient Petitioner has cited a case decided by this court, where intervention was permitted. However that judgment need not be followed in other cases which need to be reconsidered depending on facts and circumstances of each case, and I think though the above rules were not considered in CA No. 978/2008, the Court of Appeal (Appellate) procedure Rules of 1990 do not permit 3rd party interventions.

In the facts and circumstances of this application I find a more persuasive judgment, to decide the question of intervention. The case of R. H. P. Fernando and another Vs. The Divisional Secretary, Hanguranketha and Two Others reported in 2005 BLR 120, is relevant to the facts of this case, which has referred to the cases of Maha Nayake Thero, Malwatta Vihare Vs. The Registrar General 39 NLR 186 et al (1938) 39 NLR 186; The Government Therapists Association Vs. George Fernando, Director of Health Services et al CA No. 86/1993 CA minutes dated 27th July, 1994; Tyre House (Pvt.) Ltd. Vs. Director General of Customs CA Application 730/1995 C.A minutes dated 5th June 1996; Bandaranayake Vs. de Alwis et at (1982) 2 Sri L.R 617. I would even though it is prolix, incorporate good part of the above judgment which has in fact considered cases and allowed applications for interventions too.

At pgs. 121, 122 & 123...

In the hearing into the application for intervention, learned President's Counsel appearing for the Intervenient-Petitioner relied on the judgment of the Supreme Court in Maha Nayaka Thero, Malwatta Vihare v. Registrar-General et al (1938) 39 N.L.R 186 to show that our courts

have allowed interventions by third parties in proceedings for prerogative relief where the decision of court would affect such parties. This was an extraordinary case in which the Maha Nayaka Thero of the Malwatta Vihara had sought a writ of mandamus on the Registrar General to compel the latter to exercise his power under the Buddhist Temporalities Ordinance by modifying the register of priests in terms of a communication from the petitioner to the effect that a certain priest had been expelled by him from the priesthood. Intervention by the expelled priest in question was allowed by court, without objection being taken. At page 189 of the judgment, Soertsz J. has observed that the expelled priest was permitted to intervene "as he was vitally concerned in the matter", but the focus of the judgment of the Supreme Court was on the question whether the Court should exercise its beneficial discretion in favour of the petitioner in the peculiar circumstances of the case. Soertsz J., after carefully considering the merits of the case, went on to refuse the mandamus sought by the Maha Nayaka Thero as his Lordship was satisfied that the substantial dispute between the intervenient priest and the Maha Nayaka Thero ought to be adjudicated upon and determined by a proper tribunal in a regular action, and the grant of the mandamus at that stage would put the intervenient priest "in a position of great disadvantage, and even of great danger" (page 192). This judgment is not helpful in deciding whether intervention should be allowed in a case such as the present one, where objection is taken to the application for intervention.

It is interesting to note that in its decision in The Government Dental Therapists Association, et at v George Fernando, Director of Health Services, et al. CA Application No. 86/93 C.A Minutes dated 27th July 1994, this Court sought to adopt a liberal approach in permitting third party intervention into writ proceedings. In the course of his judgment in this case Ameer Ismail J. observed that –

> "Each of the intervenient petitioners in the present case cannot be said to be a meddlesome busybody or a meddlesome interloper who do not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who similarly has a sufficient interest in the subject matter of a pending writ application, and on this basis permit intervention.

As against these authorities, learned Counsel for the Petitioner relied on the decision of the Supreme Court in M.D. Chandrasena v S. F. de Silva (1962) 65 N.L.R 143 in which Tambiah J. pointed out that although the Courts Ordinance had empowered the Supreme Court to make rules governing its own procedure, no rules had been framed to enable an intervenient to take part in proceedings for the issue of the writs of mandamus or certiorari to which he is not a party, and conclude that such intervention cannot be allowed for the additional reason that the

recognition of such a principle would open the "floodgates, as it were, to a torrent of similar applications, and thus impede the functioning of the Courts" (page 144). His Lordships observed as follows at pages 143-144 of the judgment –

> It seems to me that the English common law has been adopted by our courts to determine the principles that should guide the court in either granting or refusing these writs. It has never been the practice of this Court to allow persons other than those who are parties to the application for writs to intervene in the proceedings."

In this context, it is pertinent to note that the Court of Appeal (Appellant Procedure) Rules, 1990 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this Court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in these proceedings. Learned Counsel for the Petitioner submits that these rules stipulate clearly the manner in which writ applications field under Article 140 of the Constitution should be determined, and strongly contends that these rules have been formulated so as to preclude third party interventions. He submits that the mere facts that an intervenient has sufficient interest in the subject matter of a pending writ application would not by itself warrant the addition of the intervenient as a party to the pending litigation. It is noteworthy that the liberal view expressed by Ameer Ismail J. in The Government Dental Therapists Association et al v George Fernando, Director of Health Services was not followed by Dr. Ranaraja J. in Tyre House (Pvt.) Ltd., v. Director General of Customs CA application No 730/95 CA Minutes dated 5th June 1996, "in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in writ applications." In the course of His Lordship's judgment in the latter case, Dr. Ranaraja J. observed that –

> 'To permit intervention overlooks the basic rule governing locus standi which is that a person who has a particular grievance of his own is entitled to certiorari ex debito justitiae, while the grant of the remedy to a stranger is purely discretionary.....
>
> "In the instant case, what the intervenients are seeking is to prevent the relief sought by the petitioner being granted. Thus they have no common interest with the petitioner and can in no way be considered 'aggrieved persons' who have an interest in preventing an abuse of power by the Director General of Customs, as alleged by the petitioner. It is the respondent and he alone who could say that he has acted within the law and his decisions sought to be quashed are valid in law. Court cannot permit outsiders to offer him moral support or cheer him along in his battle with the petitioner. Such a course

would only strengthen the case of the petitioner that the respondent acted the way he did for extraneous reason and therefore mala fide."

The above dicta apply with equal force to the facts and circumstances of the present case. The Petitioner challenges the action of Respondents on the basis that such action "have been taken malicious, arbitrary, capriciously, irrationally, unreasonably and for collateral purposes" (vide paragraph 23 of the petition). It is not the intention of this Court, and indeed it is hardly possible for the Court at this point of time, to enter into the merits of this matter. This Court has to decide on the legality or validity of the actions of the Respondents after considering the objections that will be filed by the Respondents. By the order of this Court dated 24th May 2004, the Respondents have been granted time till 26th July, 2004 for filing their objections, but to permit the Intervenient-Petitioner to be added as a party and to file objections with respect to the substantive relief sought by the Petitioner against the Respondents would, in the opinion of this Court, open the floodgates to a large number of similar applications which will add further to laws delays.

Before parting with this order, it is necessary to make reference to the decision of the Supreme Court in Bandaranayake v de Alwis et al. (1982) 2 Sri LR 617. The petitioner in that case sought writs of Quo Warranto and Prohibition in terms of the proviso to Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 18A of the Special Presidential Commission (Special Provisions) Act No. 4 of 1978 on the basis that the 1st respondent has become incompetent to hold office and to function as a member of the Special Presidential Commission of Inquiry by reason of certain financial dealings he had with A.H.M. Fowzie, a well known politician, while the latter was subject to the jurisdiction of the Commission and had been served with notice that his conduct was being investigated by the Commission.

Two applications were field seeking the permission of Court to intervene in these proceedings. In the first of these applications, the State Attorney moved that the Attorney-General be granted a hearing in the interests of justice. The Supreme Court rejected this application on the ground that what was in issue in the case was the personal conduct of the 1st Respondent in his private dealings in which the State is in no way involved. The Court also noted that if in the course of the proceedings the Court considers it necessary to hear the Attorney-General, he would certainly be noticed as amicus curiae, but that stage had not been reached in the case. The other application was made by Fowzie with whom the 1st Respondent was alleged to have had the financial dealings, on the basis that the imputations and insinuations of impropriety and suspicion relating to the conduct and dealings between the 1st respondent and himself and the related scandal affect him as well. It was submitted on behalf of Fowzie that an adverse

finding against the 1st respondent would have serious consequences on his integrity and expose him to jeopardy. Counsel appearing on his behalf sought to justify the application under the provisions of Article 134(3) of the Constitution. While Article 134(1) of the Constitution conferred on the Attorney General a right of audience in the seven instances set out therein, Article 134(2) confer on a party to a proceeding a similar right of being heard in person or by representative in such proceedings. Article 134(3) provided that "the Supreme Court may in its discretion grant to any other person or his legal representative such hearing as may appear to the Court to be necessary, in the exercise of its jurisdiction under this Chapter." (Italics added) Samarakoon C.J. commented at pages 620 of the judgment that "The provisions of Article 134(3) give the Court an unlimited discretion" and went on to observe that –

> The words of Article 134(3) are of wider important than Section 18 of the Civil Procedure Code. The word 'necessary' in this Article is not restricted to a hearing for the purpose of exercising the jurisdiction conferred by Chapter XVI of the Constitution. It goes way beyond such limits. It gives the Court the discretion to hear any person if it considers that the interest of justice require that he be heard. In that view of the provisions of Article 134(3) the question I ask myself is whether it is necessary to her the said Fowzie to decide the allegations against the 1st respondent. The transaction of sale and purchase is a common legal transaction. It is not the transaction that is impugned. It is the conduct of the 1st respondent in entering into such transaction at a time when he was member of the Commission which had assumed jurisdiction over the said Fowzie in terms of section 16 of the Law No. 7 of 1978 that is now in question. This court need not, and indeed is not called on to, decide any allegations of misconduct or corruption against Fowzie."

This observation is relevant to the present case despite the fact that there is no corresponding provisions in the Constitution or any other law seeking to confer on a third party a right of audience in the Court of Appeal in the lines of Article 134(3) of the Constitution, as it illustrates the restraint that is exercised by even the apex court of the country in dealing with applications for third party intervention in the context of the supervisory jurisdiction of court which is exercised with a view of keeping administrative authorities within their lawful bounds.

In all the above circumstances it is evident that though the earlier cases, depending on the facts of each case permitted intervention, it is beyond doubt that the Appellate Court Procedure Rules 1990 does not permit 3rd party

intervention. Mere fact of interest in the subject matter of the application is also not the deciding factor to grant intervention. Having seriously considered the dicta in all the above cases I think this court need to adopt a more cautious approach and prevent 3rd party intervention since based on the facts presented by the Petitioner and the Respondent, would be more than sufficient to decide the main question of issuance of a writ or not. For the above reasons the application to intervene is refused. No costs will be awarded.

Application refused.

JUDGE OF THE COURT OF APPEAL