

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

S.K. Thotagamuwage
'Saman Sevana'
Bogoda – Telijawala,
Matara.

PETITIONER

C.A 293/2013 (Writ)

Vs.

1. Sri Lanka Tourism Development Authority
2. Dr. D.S. Jayaweera
Director General
Sri Lanka Tourism Development Authority.

both of No. 80,
Galle Road, Colombo 3

3. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Hejaaz Hizbullah with Nadun Wijesiriwardena instructed by
Ravindra Jayalath for the Petitioner
Faiz Mustapha P.C., with Faiza Markarfor 1st & 2nd Respondents

ARGUED ON: 03.03.2014

DECIDED ON: 05.05.2014

GOONERATNE J.

The Petitioner pleads in his petition that he is an Assistant Director at the Sri Lanka Tourism Development Authority. In this writ Application the Petitioner has sought a Writ of Certiorari to quash the decision and or the determination in letter marked P8. Perusal of P8 it is apparent that the Petitioner had been interdicted for the reasons stated therein. During the period of interdiction the Petitioner would not be entitled to a salary and he is requested not to enter the several premises referred to therein in P8 without prior approval. P8 had been issued based on a preliminary investigations, and it specifically deals with misappropriation of funds.

The learned counsel for the Petitioner supported this matter for interim relief as prayed for in sub para 'C' of the prayer to the petition on 23.1.2014. The learned President's Counsel who appeared for the 1st & 2nd Respondents vehemently objected to an issuance of an interim order by this court. He inter alia submitted to this court that the subject matter of this application is not amenable to the writ jurisdiction of this court, and demonstrated to court that the Petitioner's application for interim relief cannot be allowed to stand since a charge sheet would be issued as in P8, in due course and that the allegations against the Petitioner are of a serious nature. The position of the Petitioner as submitted to this court by the learned counsel for the Petitioner is that there is no evidence whatsoever to establish a prima facie case against the Petitioner. Learned counsel argues that his client was interdicted for a criminal offence and up to date no investigations have commenced.

In paragraphs 20, 21, 22 & 23 of the Petition certain reasons are adduced by the Petitioner contesting the interdiction. I have noted the contents of the said paras. The question is whether any interim relief should be granted to the Petitioner in the manner pleaded?

The substantive relief prayed for by the Petitioner is to quash the determination and the decision contained in letter P8. Petitioner also prays for a stay order to stay the effect of letter P8. The effect of prayer 'b' & 'c' are the same, except that the relief prayed for in sub para 'c' for interim relief is sought at an early stage in these proceedings. This court is not inclined to grant interim relief at this stage. It is prudent to inquire into the substantive matter in view of the serious nature of the allegations dealing with misappropriation of finances.

The inconvenience to the Respondents seems to be greater and the balance of convenience would not favour the Petitioner. On the other hand the Petitioner's application for substantive relief will not be rendered nugatory since court need to hear both parties and should also have the opportunity to peruse all pleadings i.e objections and counter objections, at the close of pleadings to decide on the validity of document P8. This court is not inclined to rule on P8 at this stage of the proceedings. To add to the above I have considered the views expressed in C.M. Row's Law of Injunction 5th Ed. Pg. 201. The balance of convenience means, is the comparative mischief or inconvenience to the parties.