

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

In the matter of an application for the
grant of a Writ of Certiorari and
Mandamus under and terms of Article 140
of the Constitution.

P.L.D.A.S.PANAGODA,
No. 55/2, Vijaya Place,
Vijaya Road,
Gampaha.

PETITIONER

CA (Writ) Application No- 316/2014

Vs,

01.J.M.C. JAYANTHI WIJETHUNGA
CHIEF SECRETARY,
WESTERN PROVINCE
CHIEF SECERTAY'S OFFICE,
"Sravasthi" Mandiraya,
No.32, Sri Marcus Fernando
Mawatha,
Colombo 07.

02.N.NILWALA,
SECRETARY,
MINISTRY OF AGRICULTURE,
AGRARIAN DEPARTMENT,

MINOR IRRIGATION, INDUSTRIES,
ENVIRONMENT, ARTS AND CULTURAL
AFFAIRS [WESTERN PROVINCE],
P.O.Box 566,
Sri Marcus Fernando Mawatha,
Colombo 07.

03.W.D.R.P. CHITHRANGANI,
DIRECTOR –IRRIGATION,
WESTERN PROVINCE,
Provincial Irrigation Director's Office,
No. 25 Maligawa Road,
Rathmalana.

RESPONDENTS

BEFORE : Vijith K. Malalgoda, PC, J (P/CA)

: A.H.M.D.Nawaz, J

COUNSEL : J.C.Weliamuna with M. KiriellaBandara for the
Petitioner

Manohara De. Silva PC for the 2nd and 3rd Respondents.

Supported Interim Order On : 24/10/2014.

Order On : 31/10/2014.

Vijith K. Malalgoda, PC, J (P/CA)

The Petitioner in this case alleges that she was interdicted by the Second Respondent with immediate effect by Document marked **P-11** and claims that the purported act was unlawful, illegal, ultra vires, mala fide and in excess of the 2nd Respondents powers and functions under the law.

The Petitioner had been the District Irrigation Engineer attached to Gampaha since 1st April 2008. She submitted that the Director Irrigation of Western Province on 22nd July around 7.00 pm informed her by Telephone that her presences with her Technical Officers was required for a meeting on the following day morning. This was confirmed to her by an e-mail dated 22.07.2014 sent at 6.18:49 pm (R-1).

The Petitioner was made to understand that the discussion would be relating to a purported walk way which was to be allegedly built around the Kesbewa- Wewa which is situated in the Colombo District outside the jurisdiction of the Petitioner's Irrigation Office.

In her Petition at Paragraph 12 the Petitioner explains as to what happened on 23rd when she attended the meeting.

At the meeting she was issued with two documents **P-5** and **P-5A** namely a letter and a plan giving details of the work to be attended to by the following day. Since the Technical Officers who attended the meeting along with the Petitioner informed her that they did not have the necessary expertise, this was brought to the notice of the 3rd Respondent who informed the persons present to address such concern in writing.

According to paragraph 13 of the Petition, the Petitioner makes the following statement-

" On or a about 24th July 2014, the petitioner received a letter addressed to the 3rd Respondent from 04 Technical Officers attached to the Gampaha Irrigation District Engineer's Office, which stated, inter alia, that

- a) To – date, all engineering matters relating to *the Kesbewa Wewa Walkway* has been handled by the Colombo District Irrigation Engineer's Office and the Gampaha District Irrigation Engineer's Office is unaware of the details, specification of the Kesbewa Wewa whch are required for such purpose;

- b) The Technical Officers attached to the Gampaha District Irrigation Engineer's Office do not have expertise, nor the training to design and provide an estimate for a walk way since designing a walk way requires Engineers who specialized in Town and Country Planning;
- c) It would be safe and productive if such design and construction is conducted by Engineers who specialize in Town and Country Planning **since all matters relating to irrigation in the said Project have already been completed by the Colombo District Irrigation Engineer's Office;**
- d) Furthermore, since the Gampaha District Irrigation Engineer's Office is currently involved with many projects on a Ministerial Level as well as on a District Level, and considering that the Gampaha Irrigation Engineers Office does not have the expertise, the Technical Officers requested the 3rd Respondent to release the officers attached to the Gampaha Irrigation Engineers Office form the *Kesbewa Wewa Walk way Project.*"

The Petitioner conclusively stated that this letter which was marked and pleaded as part of the Petition as **P6** was forwarded to the 3rd Respondent. There was no reference to P6 or a copy there of having been given to the 3rd Respondent on 23rd July 2013.

According to paragraph 15 of the petition, on 28th July 2013 the petitioner received a Letter from the 3rd Respondent requesting the Petitioner together with the Technical Officers attached to Gampaha Irrigation Engineers Office to attend another discussion regarding the same project. This Letter was produced **P-7**.

In response to the said letter the Petitioner claims in the Petition that she received another letter from 9 technical Officers attached to her Office stating inter alia that as intimated in their letter marked P6 they do not have the

technical skills, knowledge, training and expertise for such a project and requesting that they be released from the said project. (P-8)

The Petitioner wrote to the 3rd Respondent attaching P-8 on 30th, informing that none of the Technical Officers are coming forward to attend the meeting and faxed the above to the 3rd respondent on the same day i.e. 30th July 2014. (P-9)

On 2nd August she received an e-mail with a letter dated 30th July 2014 from the 2nd Respondent Interdicting the petitioner with immediate effect. (P-11)

When the above position was submitted to this Court at the support stage, this Court was satisfied with the material presented before this Court and decided to grant interim relief prayed for in sub paragraph (b) of the prayer to the effect.

‘Issue an appropriate interim order suspending the operation of the decision contained in letter marked P-11 and P -15 and thereby permitting the petitioner to continue in service as District Irrigation Engineer-Gampaha until the final determination of this Application “and granted interim relief for a initial period of 10 days.

The above version of the Petitioner was challenged by the 2nd and 3rd Respondents in their limited objections with regard to the question of granting interim relief.

Paragraph 7 (i-l) of the limited objections reads as follows.

- i. Accordingly, the petitioner was requested on 22.07.2014 to come for a meeting on 23.07.2014 as more fully described above. Similar requests were made from the Engineers of Kaluthara and Colombo District Offices;
- j. However as afore said, the petitioner did not attend the said meeting;
- k. the petitioner came to the office of the 3rd Respondent at or about 11.30 am and met the 3rd Respondent subsequent to the said meeting and handed over to the 3rd respondent, a letter bearing the date stamp 23.07.2014 signed by the Technical Officers who are under the Petitioner and informed that they do not have the training or experience to prepare

the said estimate. A true copy of the said letter dated 23.07.2014 is annexed hereto marked **R4**;

1. Thereafter, the 3rd Respondent informed the Minister Irrigation of the refusal of the Petitioner and the Technical Officers to prepare the estimate. At the request of the Minister, a meeting was called on 28.07.2014 at which the Petitioner was present. At the said meeting, when the Minister inquired from the Petitioner whether she is unable to perform the duty entrusted to her, the Petitioner informed that she will perform the duty and accordingly the Petitioner was requested to be present at the office of the 3rd Respondent on 30.07.2014 to prepare the estimates together with engineers and technical officers of the other District. “

As this Court has already pointed out, as submitted by the Petitioner, in Paragraph 13 of the Petition, she claims that it was on 24th July the day following the meeting on 23rd July that she received the letter med **P-6** from the 04 Technical Officers who attended the meeting along with her. This letter carries a seal dated 24 July 2014.

However the 2nd and 3rd Respondents impugn this position stating that same letter (**P6**) was handed over to the 3rd Respondent on 23rd July and this version is corroborated in that the letter carries a seal dated 23 July 2014 and the letter which was thus handed over on 23rd July 2014 has been marked as **R4** and tendered to Court.

We are very much concerned as to how and when this letter was prepared and handed over to the 3rd Respondent. From the seal on **R-4** it is clear that it was handed over to 3rd Respondent on 23rd , but what was submitted to us when the petition was supported was a letter carrying a date stamp of 24th which corroborates the version given in Paragraph 13 to the Petition. At no stage in the course of supporting the application for interim relief, an attempt was made to set out in detail nor do the pleadings available at the support stage bring out the salient point that on an anterior date namely 23rd July 2014 that **P6/R4** was **drafted with the assistance of a Management Assistant at the Head Office.**

It is only in the counter objection that the Petitioner seeks to explain the disparity appearing in the dates of the seals on the two documents namely **P6 and R4**. In the absence of an affidavit from the unnamed Management Assistant, this Court is not inclined to accept the explanation now tendered by the Petitioner in her counter affidavit since the Petition is patently devoid of any reference to the reluctance or otherwise of her office to carry out instructions which was given in writing and the omission to refer to such reluctance in writing at the earliest opportunity that the Petitioner had namely the support stage for interim relief is a culpable failure on the part of the Petitioner. If **P6** containing intransigence on the part of her subordinate officers for whatever reason had been handed over to the 3rd Respondent on the 23rd July 2014, this material fact which the Petitioner claims is exculpatory of her should have been brought to the attention of Court as an important averment in the Petition. It should not be proffered to this Court rather belatedly in a counter-affidavit. This belatedness which goes counter to paragraph 13 of her Petition would amount in our view to a serious omission/suppression of a material fact.

Similarly this court finds another important contradiction between the version given by the Petitioner and the documents submitted.

According to Paragraph 15 of the Petition, on 28th July 2014, the petitioner received a letter requesting her to be present with the Technical Officers for another meeting on 30th, which she did not attend due to two reasons, one was the receipt of **P-8**, indicating that none of the Technical Officers were coming forward to attend the meeting with her and the other was the fact that 30th being a Wednesday she could not leave the office due to Several circulars in operation preventing her leaving the office.

However according to paragraph 7-1 of the limited Objection, on 28th the Petitioner attended a meeting with the provincial Minister and agreed to be present for a meeting with the 3rd Respondent together with her Engineers and Technical Officers.

Even though Petitioner contradicts this by simply saying that she received the said letter on 28th, the fact that she attended a meeting with the Minister is clear from

the 1st Paragraph of P-7 to the effect "This refers to the instructions received from the Minister at the meeting on the above subject".

If the Petitioner had attended a meeting with the Minister and agreed to be present on 30th what is stated in Paragraph 15 of the Petition is contradictory to the documents submitted to this court by the Petitioner herself. We find that the Petitioner had suppressed and misrepresented some of the material facts at the time the application was supported for interim relief before us. We are not satisfied with the explanation that the Petitioner is now offering though her counter objections. This Court bears in mind the useful reminder of that celebrated jurisprudence as propounded by Pathirana J in the case of **Alphonso Appuhamy v. Hettiarachchi** 77 NLR 131 at 135 that a full and fair disclosure of all the material facts has to be placed before Court when an application for a writ or injunction is made and the process of Court is invoked. A party applying for a prerogative writ is under a duty to the Court to disclose all material facts within his knowledge, and this duty of disclosure is similar to the duty on a party applying for an injunction. This useful guideline is equally applicable to stay orders and since we find that the Petitioner has not kept to this duty, we are compelled to vacate the interim relief that has been granted on 30th September 2014.

Under these circumstances we are not inclined to extend the interim orders as we have originally issued on 30th September 2014 and we vacate the same. In any event in judicial review this Court is sufficiently clothed with power to make interim orders *ex mere motu* and exercising that power we direct that the Petitioner be paid half her monthly salary during the pendency of this application until this application is fully disposed of and concluded.


President Court of Appeal

A.H.M.D. Nawaz, J.

I agree,


Jude of the Court Of Appeal