

**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 the Writs of Certiorari and  
Mandamus under and in terms of Article 140 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.**

Jeewani Hasantha Wickrematunga,  
No. 21, Pepiliyana Mawatha,  
Kohuwala,  
Nugegoda.

**Petitioner**

**CA (writ) Application No. 185/2014**

**Vs.**

1. Hon. Minister,  
Ministry of Indigenous Medicine,  
Ayurvedha Teaching Hospital Complex,  
4<sup>th</sup> and 5<sup>th</sup> Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.
2. Secretary,  
Ministry of Indigenous Medicine,  
Ayurvedha Teaching Hospital Complex,  
4<sup>th</sup> and 5<sup>th</sup> Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.
3. Homeopathic Counsel,  
No. 94, Shelton Jayasinghe Mawatha,  
Ragama.

4. M A Perera,  
Registrar,  
Homeopathic Medical Council,  
No. 94, Shelton Jayasinghe Mawatha,  
Ragama.
5. D Newton A Peiris,  
Chairman,  
Homeopathy Interim Administrative  
Committee,  
Ministry of Indigenous Medicine,  
Ayurvedha Teaching Hospital Complex,  
4th and 5th Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.
6. Hon. The Attorney General,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

### **Respondents**

#### **And now between**

1. Korlagamage Sydney Suranimala Kularatne,  
No. 1/15, Kandy Road, Dalugama, Kelaniya.
2. Wickramanayake Pathrannehelage  
Dissanayake,  
Ambruksevena,  
Diwulwewa, Hettipola.
3. Liyana Arachchige Lawrance Perera,  
No. 548/2, Nelum Mawatha, Jayanthipura,  
Battaramulla.

### **Intervient- Petitioners**

**Vs,**

Jeewani Hasantha Wickremathunga,  
No. 21, Pepiliyana Mawatha,  
Kohuwala,  
Nugegoda.

**Petitioner – Respondent**

1. Hon. Minister,  
Ministry of Indigenous Medicine,  
Ayurvedha Teaching Hospital Complex,  
4<sup>th</sup> and 5<sup>th</sup> Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.
2. Secretary,  
Ministry of Indigenous Medicine,  
Ayurvedha Teaching Hospital Complex,  
4<sup>th</sup> and 5<sup>th</sup> Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.
3. Homeopathic Council,  
No. 94, Shelton Jayasinghe Mawatha,  
Ragama.
4. M A Perera,  
Registrar,  
Homeopathic Medical Council,  
No. 94, Shelton Jayasinghe Mawatha,  
Ragama.
5. D Newton A Peiris,  
Chairman,  
Homeopathy Interim Administrative  
Committee,  
Ministry of Indigenous Medicine,

Ayurvedha Teaching Hospital Complex,  
4th and 5th Floors,  
No. 325, N M Perera Mawatha,  
Colombo 08.

6. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

### **Respondents-Respondents**

**Before** : **Vijith K. Malalgoda PC J (P/CA)**  
**&**  
**H C J Madawala J**

**Counsel:** **C. Jayadeva for the Petitioner**  
**Sanath Weerasinghe with Jayalath Hissella for the intervenient**  
**petitioner**  
**Nayomi Kahawita SC for the Respondent**

**Mention on** : 04-12-2015

**Order on** : 07-12-2015

### **Order**

## **H C J MadawalaJ**

The intervenient- petitioner has filed this application to intervene in this matter and to direct to petitioner- respondent above named to amend the caption and to grant the intervenient- petitioner

Permission to file objections to the petition of the petitioner–respondent dated 13 June 2014 and for cost. The petitioner filed this petition dated 13 June 2014 asking inter alia for:

- a) A writ of Mandamus directing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and / or 1<sup>st</sup> and 2<sup>nd</sup> Respondents to take all necessary steps to under section 27(1)(c) of the Homeopathy Act for the petitioner to be granted registration as permanent homeopathic practitioner.
- b) Writ of Mandamus directing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and/ or 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the alternative to take all necessary steps to conduct the written examination under section 27( 5) of the Homeopathy Act and afford the petitioner an opportunity to sit for same.
- c) Writ of Mandamus directing to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and / or 1<sup>st</sup> and 2<sup>nd</sup> respondents to communicate to the petitioner the interviews conducted under section 27 (1)(c) and in the alternative written examination conducted under section 27(5) for the purpose of granting registration permanent as Homeopathic practitioner.
- d) Writ of Mandamus directing the 3<sup>rd</sup> , 4<sup>th</sup> and 5<sup>th</sup> Respondents and/ or 1<sup>st</sup> and 2<sup>nd</sup> Respondents to afford the petitioner an opportunity to face interviews conducted under section 27(1)(c) and the alternative written examination conducted under section 27 (5)

The positions of the intervenient petitioner were that they expected elections of Homeopathic Medical Council to be held in 2011 at the expiration of the term of the office of the Council which was elected in 2006. They were expecting an opportunity to vote at the elections and / or to stand candidature as they being senior practitioners. But as the then Minister in charge exercising his powers has removed the elected members of the said Council and appointed new members their rights vote at the elections and / or right to stand candidature as they being senior practitioners were violated. Consequently the council is defunct and it has caused serious and adverse repercussions of Homeopathy medicine practice and interest of the public at large and after the termination of the registrar / secretary of the said Council no proper appointment of registrar / secretary appointed to the said Council by a properly constituted council.

It was submitted that there is no provision in the said Act for a Homeopathy Interim Control Committee to discharge the functions of the Homeopathy Council consequently such committee has no right to call applications and make registrations of new Homeopathy practitioners. The intervening petitioners also stated that there is usurpation of power and authority of the said council by the Homeopathy Interim Control Committee or Homeopathy Interim Administrative Committee. The intervening petitioner further submitted that they have preferred a Fundamental Rights case bearing SC/ F/ R 965/2009 on this issue and same is pending determination and further that this case is a product of collusive action between respondents and petitioner to mislead court and enter into premeditated settlement negating and nullifying the final outcome of the said writ application.

The petitioner's position was that having obtained necessary qualifications she started her practice in Homeopathic medicine in 1999 and in her career that spans well over 15 years treated thousands of patients who were healed and specially terminally ill patients with incurable deceases and illnesses like Cancer, Arthritis, Psoriasis, Paralysis, Neurological disorders, Diabetics, High Blood pressure, Autism, Genetically disorders. The petitioner upon being called by the Homeopathy Council on or about 22/07/2008 faced an interview and a written examination and was awarded certificates of Provisional Registration and the names were entered in the Provisional Register and the said Provisional Registration was valid from 31/12/2008 to 30/11/2013. However after the elapse of the five year period of the Provisional (on or about 30/11/2013) despite making several oral and written request the Homeopathic Council (3<sup>rd</sup> respondent), the incumbent officers and/ or members of the Homeopathy Interim Administrative Committee who are responsible to continue the functions of the Homeopathy Council (5<sup>th</sup> respondent) and / or the 1<sup>st</sup> and 2<sup>nd</sup> respondents under whose administrative power and purview affairs relating to the Homeopathic Council (3<sup>rd</sup> respondent) is vested with, failed to take necessary steps as required by section 27 (5) of the Homeopathic Act to enable the Petitioner to register as a permanent Homeopathic practitioner and have her name transferred from the provisional register to the general register.

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 in earlier cases, but it should not

amount to a mechanical process to permit intervention if the application could be decided according to law. Further the Appellate court rules (1990) do not permit intervention in a writ application. When considering the legal and factual positions in this case it is necessary to find out whether there was substantial dispute between the petitioner and the intervening- petitioner. In the present case we find that the petitioners in her petition seeks redress against the respondents seeking the judicial intervention to issue writ of Mandamus to compel the respondents to make this offer the petitioner and opportunity to either through facing an interview or by way of written examination or both enabling the petitioner to be a permanent Homeopathic practitioner and have her name transferred from the Provisional registrar to the general register which was deprived of her due to the conduct of the respondents. As oppose to this, the Intervening Petitioners grievance was that the then Minister in charge by removing the elected members of the said council and appointing new members , they lost the right to vote at the elections and / or right to stand as a candidates, and the council is defunct and it has caused serious and adverse repercussions on Homeopathy medicine practice and that the committee has no right to call applications and make registrations of new Homeopathic practitioners and finally that there was usurpation of power and authority of the said council by the homeopathy Interim Control Committee.

It was submitted by the petitioner that there is actually no substantial dispute between the petitioner and the intervening petitioner in this case to be allowed to file objections to the petitioners' case. Section 11 of the said act clearly states that the Minister may, without assigning any reason, remove from office, by order published in the Gazette any appointed or elected member of the council. In the exercise of his powers under the preceding provisions of this section the Minister may act either on his own motion or on any recommendation made to him by the council under sub-section (2). Accordingly we find that the Minister had clear legal authority under section 11 of the Homeopathy Act to remove the Homeopathy council or any appointed or elected members. The Minister of Indigenous Medicine had by order published in the Gazette raring No. 1624/12 dated 20/10/2009 removing the said members of his office with effect from the date of publication of the order according to section 11 (5) any member who is aggrieved by the decision of the council to remove him from office may, within a period of 14 days after service on him of the notice of such decision, may prefer a written appeal against such decision at the Minister. Only members who are removed from his office has a right to an appeal

under this section. We find that none of the removed members who were aggrieved had not made and appeal from such order. The Minister had complete authority power and legal basis to appoint Homeopathy Interim Administrative committee to perform the functions and duties of the Homeopathy Council under section 12 of the said act.

The section 12 states as fallows,

“The council can the exercise of its powers or the discharge of its functions and duties under this Act, be subject to such general or special directions as may, from time , be issued by the Minister.” Hence we find that the appointment of the said Homeopathy Interim Administrative Committee by way of Gazette No. 1625/15 dated 29/10/2009 is clearly in accordance with the express provisions of the Homeopathy Act. The said Homeopathy Interim Administrative committee which was appointed on 16/06/2011 to discharge the functions of the Homeopathic council and the Chairman (5<sup>th</sup> respondent) appointed from January 2013 has powers to discharge the functions of the Homeopathic council under section 23 of the act inter alia to take necessary steps with regards to registration of the Homeopathy practitioners. There was actually no substantial dispute between the petitioner and the intervening petitioner in this case for the intervening petitioner to be allowed to be file objections to the petitioner’s case.

The intervenient-petitioner sort intervene in this matter stating that they are necessary parties and had tendered documents marked 1P1 to 1P7A with their petition dated 16<sup>th</sup> of October 2014, to substantiate and validate their assertion. It was submitted that on a perusal of these documents that it reveals beyond doubt that they are necessary parties whose presence is essential effectively to finally adjudicate this matter. It was further submitted that the petitioner has suppressed and the misrepresented facts and misinterpreted legal provisions contained in the said Act which will adversely affect the rights and interests of the intervenient-petitioner and other Homeopathic practitioners. It was submitted that the intervenient-petitioners are necessary parties without whom no order can be effectively be made. Accordingly it was submitted in order to safeguard their rights and interest as well as the rights and interest of the other Homeopathic practitioners who would be an effected by the usurpation of powers and authority of a Homeopathic Council by the so called Interim Committees. The intervenient –petitioners be



allowed to intervene in this matter. It was stated that 3<sup>rd</sup> party interventions had been allowed by the following cases,

- a) Mahanayaka Thero, Malwatta Vihara Vs. Registrar- General et al (1938) 39 NLR 186,
- b) The Government Dental Therapist Association et al Vs. George Fernando, Director of Health Services et al, CA Application No. 86 /93 CA minutes dated 27<sup>th</sup> July 1994,
- c) Jet wing Hotel Management Services (Pvt) Ltd Vs. Securities and Exchange Commission and others CA (writ) Application 293/09 decided on 31<sup>st</sup> May 2010,
- d) Jayawardena Vs Minister of Health and Others CA (writ) Application 978/2008 decided on 21<sup>st</sup> May 2009

Bandaranayake Vs. de Alwis et al (1982) 2 SLR 617. This judgment has considered the case of Maha Nayaka Thero, Malwatta Vihara Vs. Registrar General et al (1938) 39 NLR 186 and observed that such a judgment is not helpful to decide intervention. (above Mahanayaka case in fact allowed intervention) 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 Vs. Registrar-General et al (1938)39 NLR 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 sought 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.

**Sri Lanka Medical Council Vs. Secretary Ministry of Finance And Planning CA (writ) 651/2010- CA minutes of 3.4.2013 per Sri Skandarajah J.**

“...a person has “a standing” or ‘adequate interest” in a particular application is not the ground on which he could be made a party to that application. If the petitioner is aggrieved by any decision made by any authority, he should independently file an action to redress his grievance, but that is not a ground on which he could intervene in an application made by another person’s...”

**Dr. Ranaraja J. in Tyre House (pvt) (1) Vs. Director General of Customs CA 730/95 CA minutes 5.6.0996. per Ranarajah J.**

“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 male fide. “

As referred to above as we find that there is no substantial dispute between the petitioner and the Intervent-petitioners and as there is no common interest between the parties we are of the view that mere fact of the interest in the subject matter of the application is not the deciding factor to grant intervention. We find that the fact presented by the petitioner and the respondent it would be a more than sufficient to decide the main question of issuance of a writ or a not for the reasons said above. The application for intervention is refused. No cost will be ordered.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL