

**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 Writ of *Certiorari, Prohibition and  
Mandamus* under and in terms of Article 140 of  
the Constitution of The Democratic Socialist  
Republic of Sri Lanka**

Sachin Kavinda Fernando,  
68/6/A, Kahatagahawatta,  
Hadigama, Piliyandala.

**Petitioner**

**CA/ WRIT/265/2016**

Vs,

1. Sarachchandra Silva,  
President
2. Kapila Jayalath,  
General Secretary
3. Manjula Vass,  
Treasurer

1<sup>st</sup> to 3<sup>rd</sup> Respondents above named, all of,

Sri Lanka School Cricket Association,  
Sri Lanka Cricket,  
No.35, Maitland Place,  
Colombo 7.

4. Akila Viraj Kariyawasam, MP  
Hon. Minister of Education
5. W.M Bandusena,  
Secretary to the Ministry of Education

4<sup>th</sup> and 5<sup>th</sup> Respondents above named of;

Ministry of Education,  
“Isurupaya” Pelawatta, Battaramulla.

6. Mohan De Silva,  
General Secretary- Sri Lanka Cricket, No.35,  
Maitland Place,  
Colombo 7.

7. Dayasiri Jayasekara, MP  
Hon. Minister of Sports,  
No. 9, Phillip Gunawardana Mw,  
Colombo 7.

**Respondents**

**Before : Vijith K. Malalgoda PC J (P/CA) &  
P. Padman Surasena J**

**Counsel** : Chrishmal Warnasuriya for the Petitioners

Padma Bandara with Shanil Rajapakse for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents

Sumathi Dharmawardena, DSG with Indula Ratnayake, SC

for the 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents

Supported On: 30.08.2016

Order On: **07.09.2016**

## **Order**

### **Vijith K. Malalgoda PC J (P/CA)**

Petitioner of this application is a student of Prince of Wales College Moratuwa.

He seeks in his petition inter alia

- i. a writ of *Certiorari* to quash a determination made by the 2<sup>nd</sup> and/or 5<sup>th</sup> Respondents jointly and/or severally, contained in the communication dated 2016-07-20 which has been marked and produced as P 5;
- ii. a writ of *Mandamus* to compel 1<sup>st</sup> – 3<sup>rd</sup> Respondents to conduct the under 19 cricket tournament for 2016/2017 in accordance with the previously publicized regulation contained in circular dated 9/3/2016 marked and produced as P 4;

It was the contention of the learned counsel for the Petitioner that the Petitioner did not even apply for admission for the Advanced Level examination to be held in 2016 as he had a legitimate expectation of playing cricket for the school team in 2016/17 tournament in view of the decision contained in P-4.

It was also the submission of the learned counsel for the Petitioner that the authorities must be consistent in their decisions and it would be unlawful for them to set out one criterion in one document giving expectations to the interested people and then suddenly change the rules in a subsequent document. It was the position of the learned counsel that the Petitioner was left stranded in between the change of these rules.

Learned counsel for the Petitioner urged this court to look at this problem in a broader perspective as public interest litigation as numbers of young school boys have been affected by this determination. The Petitioner has stated so in paragraph 3 of his petition.

Learned Counsel for the petitioner further submitted that, the Petitioner by postponing his G.C.E. Advance Level Examination was getting ready for the tournament 2016/17 and by the impugned decision contained in the document P-5 the Petitioner's education as well as the sports carrier has been affected badly.

It was brought to the notice of court by the learned counsel for 1<sup>st</sup> – 3<sup>rd</sup> Respondents that the closing date for submitting applications for the advanced level examination for 2016 was prior to 9<sup>th</sup> March 2016. This submission was not controverted by the learned counsel for the Petitioner. Therefore the reason as to why the Petitioner postponed his examination, prior to the decision to extend the age limit for tournament 2016/17 was communicated to the schools has to be an extraneous one.

The letter marked P 4 is dated 2016-03-09. That letter only lasted less than 4 months. i.e. until 2016-07-20 which is the date of letter marked P 5. As such the reason as to why the Petitioner did not apply to sit for Advanced Level examination in 2016 could not have been the determination contained in the document marked P 4. In view of this finding this Court is compelled to entertain serious doubts about the Petitioner's desire and intentions to engage in this litigation as a public interest litigation as that was how the Petitioner states the public has been affected in this case.

Even though the Learned Counsel for the Petitioner made an attempt to show that there was an element of Public Interest in the present application by referring to certain documents he had produced before the court, this court is not inclined to accept the above contention for the reason that, the impugned decision affects a very small segment of students but at the same time there were others benefited by the said decision.

In this regard we are mindful of the decision by the Indian Supreme Court in *Janata Dal V, H.S. Chowdhary (1992)4 SCC 305* the term Public Interest Litigation was interpreted as, "a legal

action initiated in court of law for the enforcement of Public Interest or General Interest in which the public or class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

Since what the Petitioner seeks from this court is to compel the Respondents to maintain the determination described in the document marked P 4, it is necessary, first to consider whether that determination is a determination that has validly been made by the relevant authority namely, Sri Lanka Schools Cricket Association. The relevant portion of that letter is as follows..... “.....we take this opportunity to remind all the principals of schools that the age limited of the under 19 schools cricket tournament has been changed. This decision has been taken at the last fixtures meeting held on July 2015 at Ananda College where all the Masters in Charge and some coaches were present....”

It was the submission of the learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents that the purpose of the fixtures meeting is to fix dates for the school cricket matches and organize the calendar for such cricket matches for the coming year. It was the contention of the learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents that the so called determination mentioned in the document marked P 4 is not a valid determination made by the relevant authority.

The constitution of Sri Lanka School Cricket Association is marked and produced as P 1. Clause 3 therein sets out the objectives of this association which requires that this association has to work as an affiliated association to Sri Lanka Cricket.

According to clause 24.2 and clause 30.2 it must be the executive committee of the association which should take decisions on behalf of the association. The composition of the Executive Committee is set out in clause 11.

Petitioner was however unable to show to the satisfaction of this court that the decision he relies upon is a validly taken decision by the relevant authority. In these circumstances we are

compelled to hold that the decision set out in the document marked P 4 is not a decision which this court could uphold in the exercise of its writ jurisdiction.

In view of this, this court also cannot quash a subsequent communication contained in the document marked P 5 as all what the letter P 5 has done was an annulment of a previous invalid decision.

Even a communication which does not have lawful authority may give to the receiver an expectation. However such an invalid communication cannot create an expectation that is legitimate since the very communication is not by itself legitimate. Therefore this court cannot agree that the document marked P 4 has created a legitimate expectation which the Petitioner can agitate in a court of law exercising writ jurisdiction.

It is further revealed before this court that under ICC Rules and the Sri Lanka Cricket rules made based on the ICC Rules, the school cricket tournaments are played as under 19 tournaments, and by the decision conveyed in letter dated 9<sup>th</sup> March 2016, the age limit of the school cricket had been changed “as under 20” which was not acceptable to the ICC Rules and the Sri Lanka Cricket Rules.

The letter marked P 5 refers to the following 2 paragraphs “.....we write to inform you that the schools 1<sup>st</sup> xi cricket tournament shall be played as under 19 as have been played in the previous years. The secretary of the Ministry of Education has sent us a circular NO. ED/9/15/2/2/2 (cricket) dated 2016-07-13 to play the tournament under the age group of under 19 as conducted in the previous year's...”

It was revealed during the submissions before us that the decision to change the age limit in March was taken at a fixtures meeting held in July 2015 which was attended by Masters in Charge and Some Coaches and was not a decision taken by the executive committee of the Sri Lanka Schools Cricket Association as empowered by its constitution, but the said decision was

reversed on a directive received from the Ministry of Education through a circular No. ED/9/15/2/2/2 (Cricket) dated 13.07.2016.

Indeed the above paragraph cited from P 5 shows that there is in existence a Ministry of Education circular to that effect. The Petitioners, while being silent on this circular is not asking for any kind of invalidation of this circular in this application. The question thus arises as to whether which determination or rule to be followed by the schools in case the determination contained in P 5 is invalidated.

In this regard this court cannot ignore the fact that, Sri Lanka School Cricket Association is only an Association involved in facilitating the playing of cricket at Schools but, the Education Ministry being the Ministry in charge of the Education, extracurricular activities and all the other functions of children's education of this country has to act with responsibility when controlling the activities in schools. Therefore this court cannot ignore the circular referred to in the letter dated 20<sup>th</sup> July 2016 when considering the relief sought by the Petitioner, which are discretionary in nature.

For the reasons set out above we see no grounds to interfere with the decision conveyed by the Sri Lanka School Cricket Association in documents produced marked P-5. We therefore refuse notices.

Application is accordingly dismissed without cost.

**PRESIDENT OF THE COURT OF APPEAL**

**P. Padman Surasena J**

I agree,

**JUDGE OF THE COURT OF APPEAL**