

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

**In the matter of an Application for a mandate in  
the nature of *Writ of Certiorari and Prohibition*  
under article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka**

V. W. Gunasekara,  
'Asoka', Aluth Thanayamgoda Pahala,  
Mapalagama Central,  
Galle.

**PETITIONER**

**CA/WRIT/309/2014**

**Vs,**

1. E.M. Gunasekara,  
Registrar General,  
Registrar General's Department,  
No. 234/A3, Denzil Kobbakaduwa Mw,  
Battaramulla.
2. P.B. Abeykoon,  
Secretary, Ministry of Public Administration and  
Home Affairs,  
Ministry of Public Administration and Home  
Affairs Independence Square,  
Colombo 07.
3. Somalatha Jayasinghe,  
Additional District Registrar,  
Divisional Secretariat- Nagoda,  
Galle.

**RESPONDENTS**

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

**Counsel:** J.C. Weliamuna with Pasindu Silva for the Petitioner

Anusha Samaranyake DSG, for the Respondents

Argued On: 09.09.2016

**Order on: 21.10.2016**

## **Order**

**Vijith K. Malalgoda PC J**

Petitioner to the present application Vijith Waruna Gunasekara has come before this court seeking inter alia,

- b) Grant and issue a mandate in the nature of writ of *Certiorari* quashing the decision reflected in P-5(a) thereto dismiss the Petitioner from the post of Registrar of Births and Deaths of Mapalagama Athumale Division and Registrar of Marriages (General) of Gangabadapattuwa Division in Nagoda Divisional Secretariat in the Galle District;
- c) Grant and issue a mandate in the nature of writ of *Certiorari* quashing the decision reflected in P-5(a) to dismiss the Petitioner from the post of Registrar of Births and Deaths of Mapalagama Athumale Division and Registrar of Marriages (General) of Gangabadapattuwa Division in Nagoda Divisional Secretariat in the Galle District;
- d) Grant and issue a mandate in the nature of writ of *Certiorari* quashing the Preliminary Inquiry reflected in P-3;

- e) Grant and issue a mandate in the nature of writ of *Certiorari* quashing the decision of the Preliminary Inquiry reflected in P-3 if any;
- f) Grant and issue a mandate in the nature of writ of *Certiorari* quashing the advertisement P-7 in so far as it is applicable to the post of Registrar of Births and Deaths of Mapalagama Athumale Division and Registrar of Marriages (General) of Gangabadapattuwa Division in Nagoda Divisional Secretariat in the Galle District;
- g) Grant an issue a mandate in the nature of writ of *Certiorari* quashing paragraph 6 of circular P-6 permitting the dismissal of the Registrars solely based on Preliminary Investigation/Inquiry;
- h) Grant and issue a mandate in the nature of writ of *Prohibition* preventing any one or more of the Respondents making any appointment to the post of Registrar of Births and Deaths of Mapalagama Athumale Division and Registrar of Marriages (General) of Gangabadapattuwa Division in Nagoda Divisional Secretariat in the Galle District other than the Petitioner;

The Petitioner was appointed as a Births and Deaths Registrar under the Marriages (General) Ordinance by the Registrar General with effect from 21.04.2010 for Mapalagama, Athimale and Gangabadapaththuwa Divisions.

As submitted before this court the petitioner was served with a notice by the Additional Divisional Secretary Nagoda, directing him to attend an inquiry with regard to the Marriage Certificate No. 1712.

With regard to the said inquiry conducted by the 4<sup>th</sup> Respondent, the Petitioner had submitted that,

- ❖ No formal charge sheet was given to the Petitioner no was any evidence led in the presence of the Petitioner

- ❖ The inquiry officer had informed the Petitioner that he had registered a marriage on 27.10.2011 of which the bride was underage
- ❖ The Petitioner denied the same and stated that he took steps to register the marriage after perusing the original birth certificate of the female party, which was produced by the said party at the respective registration

With regard to the said registration which took place on 27.10.2011 the Petitioner had further submitted before this court that,

- a) On or about 26.10.2011, one Nilanduwage Chamara Madusanka and Bodahandi Nirosha Sandamali came to the Petitioner's Office to register the marriage of the said Nilanduwage Chamara Madusanka and Bodahandi Nirosha Sandamali. The said Nilanduwage Chamara Madusanka and Bodahandi Nirosha Sandamali were accompanied by the father of the said Nilanduwage Chamara Madusanka (namely, Nilanduwage Amaradasa – I.D No. 620174998V) and the mother and father of the said Bodahandi Nirosha Sandamali (namely, Poragoda Kanthi De. Silva-I.D No. 606793774V Bodahandi Jarathna De. Silva I.D No-601443350V).
- b) The aforesaid Bodahandi Nirosha Sandamali was in appearance more than 18 years of age. The said Bodahandi Nirosha Sandamali did not produce her National Identity Card claiming that she had lost it in the Tsunami. Therefore, the Petitioner asked her to produce the Birth Certificate and she submitted an affidavit affirming that she is over 18 years, which was confirmed by the parents of the bride and the bride groom who were present thereat. At that instance, the Petitioner insisted them to tender the Birth Certificate of the said Bodahandi Nirosha Sandamali. Then the Petitioner was told that they did not bring her Birth Certificate and therefore, they will come to register the marriage with the birth certificate of the bride. The Petitioner states that no documents were filled with regard to the respective marriage on that day.

- c) Thereafter, on 27.10.2011, again the same parties arrived and an original Birth Certificate of the said Bodihandi Nirosha Sandamali was produced to the Petitioner and the Petitioner was told by the said Bodahandi Nirosha Sandamali that her Birthday is accurately stated in the said Birth Certificate. Consequently, the marriage between the said Nilanduwege Chamara Madusanka and Bodahandi Nirosha Sandamali was registered, after the perusal of the relevant documents. Thereafter the original Birth Certificate was returned to the said Bodahandi Nirosha Sandamali and a copy was retained by the Petitioner.

As referred by the Petitioner an inquiry was conducted by the 4<sup>th</sup> Respondent and the said inquiry proceedings and the report was submitted before us by the Respondents marked 1R3. The said proceeding contained the findings of the inquiry and the statement made by the Petitioner at the said inquiry.

Since the Learned Deputy Solicitor General had placed several discrepancies between the documents submitted by the Petitioner before this court and the material revealed at the said inquiry I would first like to analyze this position before going to the merits of this matter as argued by the Learned Counsel for the Petitioner.

As submitted by the Petitioner before this court, the female party to the said marriage and her parents whilst claiming that the National Identity Card of the female party was lost during Tsunami, had submitted an affidavit affirming that she is over 18. Since the Petitioner insisted them to produce the Birth Certificate, the parties agreed to come on the following day with the Birth Certificate.

The following day i.e. 27.10.2011, parties had come with the Original Birth Certificate of the female party and after satisfying the date of birth, the Petitioner has registered the marriage and obtained a copy of the Birth Certificate, which is produced before this court marked (P-4g). The notice of marriage submitted on the same day is also produced by the Petitioner marked (P-4a) and the

affidavit said to have brought and submitted on the previous day confirming that the bride is above 18 years is also produced marked P-4f.

As observed by this court, in the affidavit submitted by the said Bodahandi Nirosha Sandamali de Silva, she had affirmed that her date of birth is 27.01.1993, but the Birth Certificate copy said to have kept by the Petitioner after comparing with its original, the date of birth is recorded as 20.11.1992. We further observed that the date of birth written on the notice of marriage too had been erased and recorded it as 20.11.1992. However the Petitioner in his statement made before the 4<sup>th</sup> Respondent had taken up the position that the female party to the said marriage had informed that both the Birth Certificate and National Identity Card belonging to the female party was lost due to Tsunami and an affidavit had been given in place of the said documents.

When considering the two positions taken by the Petitioner, it is observed by this court that the Petitioner had only relied on the affidavit (P-4f) said to have given by the female party when making the statement at the inquiry, but also relied on a Birth Certificate to justify his conduct before this court (P-4g). However by bringing this additional material, the Petitioner has created another discrepancy with regard to the date of birth of the female party.

As observed by me, the date of birth according to (P-4f) is 27 01.1993 and according to (P-4g) it is 20.11.1992. according to the statement made at the inquiry, the Petitioner had entered the date of birth in the notice of marriage according to the affidavit given by the female party, but the document P-4a the notice of marriage filed before this court carries the date of birth on 20.11.1992 which is the date appeared on the Birth Certificate (P-4g) but not the date appear on the affidavit (P-4f). However it is clearly visible that the date written on (P-4a) had been erased.

In the said circumstances it is clear that the Petitioner had suppressed material facts before this court when he submitted before this court that he went through the Birth Certificate of the female party prior to register the marriage between the parties, when in fact he had admitted before the inquiry

that the parties failed to submit both the Birth Certificate and the National Identity Card at the time the marriage was registered. It is further observed that the Petitioner is guilty of misrepresenting facts, when he submitted an altered document to support the position he has taken up before this court and also submitting a copy of a Birth Certificate which he had never received at the time he registered the marriage.

As revealed before this court the alleged inquiry was conducted on an allegation of registering the marriage of an underage girl and the Petitioner has come before this court seeking a writ of *Certiorari* to quash the findings of the said inquiry as one relief among several other reliefs referred to above. However it is the duty of the Petitioner when he sought relief in the nature of a prerogative writ, to come before the court with clean hands.

In the leading case of *R.V. Kensington Income Tax Commissioners (1917)1 KB 486* Scrutton LJ observed that..... an applicant who does not come with candid facts and clear hands cannot hold a writ of the court soiled hands suppression or concealment of material facts is not advocacy. It is jugglery, which has no place in equitable and prerogative jurisdiction.

In the case of *Alponso Appuhamy Vs. L. Hettiarachchi and Another 1973 NLR 131* Pathirana J observed that,

“The necessity of a full and fair disclosure of all the material facts to be placed before the court when an application for a writ or injunction is made and the process of the court is invoked is laid down in the case of *The King V. The General Commissioners for the purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmond de Poignac* - (1917) Kings Bench Division 486. Although this case deals with a writ of *Prohibition* the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her

application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of *Prohibition* without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the court would not go into the merits of the application, but will dismiss it without further examination.”

As revealed before this court the inquiry referred to this case was commenced on a complaint received against the Petitioner with regard to a marriage registered by him of an underage female party under the Marriages (General) Ordinance (as amended).

During the argument before this court the Learned Counsel for the Petitioner challenged the validity of the circular under which the said inquiry was held, which is produced marked P-6.

The last two paragraph of the said circular reads thus,

“5. උක්ත ලේඛණ ඉදිරිපත් නොකරන අවස්ථාවකදී හෝ එම ලේඛණ සම්බන්ධයෙන් සැඟිමකට පත්විය නොහැකි අවස්ථාවකදී, මේ සමඟ අමුණා ඇති ආකෘතිය සම්පූර්ණ කර, ග්‍රාම නිලධාරීන් විසින් සහතික කළ හා ප්‍රාදේශීය ලේඛම් විසින් අණු අතසන් තැබූ, වයස හා අනන්‍යතාවය තහවුරු කරගැනීමට උපයෝගී කරගත් ලේඛණ/ පිටපත් විවාහ දැන්වීමට ඇමිණිය යුතුවන අතර මේ සඳහා ව්‍යාප් ලේඛණ උපයෝගී කරගන්නේ නම්, ඒ පිළිබඳව වගකීම රෙජිස්ට්‍රාර්වරයා විසින් දැරිය යුතුවේ.

6 බාලවයස් විවාහ සිදුකිරීම අනාවරණය වුවහොත් විධිමත් විනය පරීක්ෂණයකින් තොරව මූලික විමර්ශණයක් පමණක් පදනම් කරගෙන, වරදකරුවන රෙජිස්ට්‍රාර්වරුන් තනතුරෙන් පහකිරීමටත්, විවාහ රෙජිස්ට්‍රාර් කිරීමේ පනත



උල්ලංඝනය කිරීම සම්බන්ධයෙන් අධිකරණ ක්‍රියාමාර්ග ඔස්සේ දඬුවම් පැනවීමටත් කටයුතු කරන බව දන්වමි.”

The Petitioner contended that he was not served with a charge sheet regarding the alleged lapse on his part and the letter marked P-3 was based on an unfounded allegation. It was further submitted that he was not given an opportunity to be heard in defence and the arbitrary decision taken based on the above circular to terminate his service was against the rules of natural justice.

However the Learned Deputy Solicitor General who appeared for the Respondents whilst explaining P-6 submitted that, the circular P-6 had been issued to all Marriage Registrars informing them of the importance of ascertaining proper identity and the age of parties contracting marriages in view of the amendment to the several laws including the Marriages (General) Ordinance No 19 of 1907 (as amended) and the Penal Code.

In this regard the Respondents have further relied on several circulars issued by the 1<sup>st</sup> Respondent time to time, but further submitted that, due to the continues violations reported to the 1<sup>st</sup> Respondent against the Marriage Registrars, the 1<sup>st</sup> Respondent was compelled to issue P-6.

Whilst referring to the letter of appointment issued to the Petitioner which was produced marked P-2a by the Petitioner, the Respondent took up the position that the Marriage Registrars (including the Petitioner) holds office at the pleasure of the 1<sup>st</sup> Respondent and accordingly a Registrar could be dismissed without a hearing and the provisions of the Establishment Code pertaining to a disciplinary inquiry has no application to a Registrar.

In this regard this court is mindful of the decision in the case *Maduraperumage Karunathilake Jayawardena Vs. W.A. Senarathne and two others CA 2366/2004* CA minute dated 12.03.2007, when the Petitioner to the above case complained that other than a show cause letter, no charge sheet was served and an inquiry was not held before terminating his service as the city corner Gampaha. The Court of Appeal held that, “In view of the facts and circumstances of this case the Petitioner

cannot claim that a charge sheet should have been served on him and an inquiry would have been held. The explanation given by the Petitioner was not accepted by the Respondents. Therefore the Respondents terminated the services of the Petitioner. In these circumstances the Petitioner cannot state that the rules of Natural Justice have been denied to him.”

However it was revealed before this court that,

- a) P-3 had been dispatched notifying the Petitioner to attend an inquiry in respect of a marriage registered by him under the Marriage (General) Ordinance on 27.10.2011.
- b) In the said letter the Petitioner was informed the nature of the complaint and given an opportunity to produce all documentation with regard to the said complaint.
- c) An inquiry had been held by the 4<sup>th</sup> Respondent and a statement had been recorded from the Petitioner at that time.
- d) In his statement the Petitioner took up the position that, in the absence of the Birth Certificate or a National Identity Card he had satisfied himself of the age of the female party having regard to her appearance and the contents of an affidavit submitted by the female party.
- e) The documentation produced by the Petitioner did contain a copy of a Birth Certificate given by the female party even though the Petitioner belatedly claimed that a Birth Certificate was produced before him by the female party on the following day prior to their marriage was registered.
- f) Since the position taken up by the Petitioner before the said inquiry was clearly in violation of P-6.
- g) Steps had been taken to dismiss the Petitioner.

Even though a charge sheet had not been served on the Petitioner, an opportunity had been given for him to submit his position at an inquiry held by the 4<sup>th</sup> Respondent and therefore the Petitioner cannot take up the position that Rules of Natural Justice have been denied to him.

I see no merit in the argument raised by the Learned Counsel for the Petitioner when he challenge P-6 before us .For the reasons set out above this court is not inclined to grant relief as prayed by the Petitioner. Petitioner's application is therefore dismissed with the cost fixed at Rs. 5000/-

Application is dismissed with cost.

**President of the Court of Appeal**