

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

**Court of appeal case no.  
CA/PHC/APN/116/2016  
H.C. Jaffna case no.  
1990/2016**

1. President,  
Government Nursing Officers Union,  
Jaffna Teaching Hospital Branch,  
Jaffna.
2. Secretary,  
Government Nursing Officers Union,  
Jaffna Teaching Hospital Branch,  
Jaffna.  
**1<sup>st</sup> and 2<sup>nd</sup> Respondents Petitioners**  
Vs.  
Sivsnathan Yamunanantha,  
Medical Officer In Charge,  
Out Patient Department,  
Jaffna Teaching Hospital Branch,  
Jaffna.  
**Petitioner Respondent**
3. Director,  
Jaffna Teaching Hospital Branch,  
Jaffna.
4. Honorable Attorney General,  
Colombo.  
**3<sup>rd</sup> and 4<sup>th</sup> Respondents Respondents**

**Before** :H.C.J.Madawala J.  
: L.T.B. Dehideniya J.

**Counsel** : J.C.Weliamina with Shanaka Jayawardana and Niranjan Arulpragasam for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Petitioners.  
: D.W.Jhonthasan for the Petitioner Respondent.  
: Sanjaya Rajarathnam PC. ASG for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents

**Argued on** : 10.10.2016

**Written submissions filed on** : 17.10.2016

**Decided on** : 28.10.2016

**L.T.B. Dehideniya J.**

The Petitioner Respondent (Hereinafter sometimes called and referred to as the 1<sup>st</sup> Respondent), a medical officer (Doctor) attached to the Jaffna Teaching Hospital, instituted this action in the High Court of Jaffna seeking for a mandate in the nature of a writ of *certiorari* to quash the decision of the Government Nursing Officers Union Jaffna Teaching Hospital Branch (Hereinafter sometimes called and referred to as Branch Union) to take a trade union action and a writ of *mandamus* to compel the Union to continue in their work. The learned High Court Judge of Jaffna issued an interim order preventing the Union from taking any trade union action until the conclusion of the case. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent Petitioners (Hereinafter sometimes called and referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners) who are the President and the Secretary of the Branch Union presented this revision application to set aside the said order of the learned High Court Judge. The Petitioners moved this Court for a stay order to stay the proceeding in the High Court of Jaffna. This order is on the said application.

A writ of *certiorari* is basically granted to quash a decision and the writ of *mandamus* is to perform a legal duty. The 1<sup>st</sup> Respondent stated that he came to know that the Branch Union has taken a decision to walk out by media reports. The so called decision was not produced in Court and the 1<sup>st</sup> Respondent has failed to specify the at least the date of the decision that he wants to quash. The Petitioners do not deny that the Branch Union has taken a decision to walk out/strike and therefore, the Court can presume by implication that there is a decision to walk out by the Branch Union.

The grievance of the Petitioners in this application is the order of the learned High Court Judge preventing the Branch Union from taking trade union action. This order was made until the application for the writ of *mandamus* is finally considered.

Wade and Forsyth Administrative Law ninth edition (Indian edition) page 608 refers to the case of R v. Electricity Commissioners (1924) KB 171 where Lord Atkin LJ has defined the decisions/actions that are amenable to writ jurisdiction as follows;

*“where anybody or persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King’s Bench division exercised in these writs.”*

This formula sets several requirements to bring a decision within the scope of judicial review. The decision maker must have the legal authority to determine questions affecting the rights of subjects and must be under a duty to act judicially.

Justice P.B.Banerjee in “Writ Remedies” 6<sup>th</sup> Edition at page 146 explains the conditions precedent for issue of *mandamus*. He says;

*9.2.1. Existences of legal right and duty are the conditions precedent for the issue of mandamus.*

At page 147 it says;

*Lord Goddard C.J. said in R. v. National Joint Council for Dental Technician ex-parte Neate, (1953) 1 QB 704 at 707 that “the remedies of these prerogative writs have been applied have been all the statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised may lead to detriment of subjects who may have to submit to their jurisdiction.”*

Dr. Sunil Coorey in his book on Principles of Administrative Law in Sri Lanka 3<sup>rd</sup> Edition volume 2 page 855 says that *“Even if the duty sought to be enforced by mandamus is a duty of public nature, it has sometimes been contended that the mandamus will not issue to compel its performance unless such duty is owed by, and therefore the party to be compelled by mandamus is a “public body” or a “state entity” or an “instrument of state”.*

In the present case the Petitioner sought a writ of *mandamus* against the President and the Secretary of a branch union of a trade union, the Government Nursing Officers Union. It is private organization formed by the Government nursing officers for their own benefit. The trade union has no public duty. It does not owe any duty toward the Petitioner as a member of the public at large. Whether it is ethical for a trade union engaged in the health sector to walk out from their duty is a matter to be decided by themselves. The Court cannot make any ruling on ethics in a writ application.

The trade union in issue is not a public body or a state entity or an instrument of state. It is only a group of persons organized on a contractual relationship for their benefit. Any decision taken by this union may have an

impact on general public, but it does not become a public body because of the impact it creates on the general public. Any strike or a walk out by any trade union in the country may have an impact on general public. Article 14 (1) (d) of the Constitution guarantees the freedom of forming and joining trade union.

*14(1) Every citizen is entitled to-*

*(d) the freedom to form and join a trade union;*

Section 2 of the Trade Unions Ordinance defines a trade union as an association of workmen where one of the objects among other things of such an association is to strike to bargain the demands. The section reads;

*"trade union" means any association or combination of workmen or employers, whether temporary or permanent, having among its objects one or more of the following objects :-*

*(d) the promotion or organization of financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out,*

The section 18 allows a registered trade union to go on a strike.

*18. If any trade union does not apply for registration in due time, or if the registration of any trade union is refused, withdrawn, or cancelled, then-*

*(a) .....*

*(b) the trade union shall not, nor shall any of its officers or agents on behalf of the union, take part in any trade dispute or promote, organize or finance any strike or lock-out, or provide pay or other benefits for its members during a strike or lock-out;*

Under these circumstances a registered trade union can, as of a right, go on a strike to bargain their demands. In such a situation can a Court issue a prerogative writ to prevent a trade union from going for strike action is in doubt.

In the caption of petition presented to the High Court in this case refers to the ICCPR Act, but the application is not based on the said Act. ICCPR Act is entered in the caption in hand written letters as a second thought.

Under these circumstances, it is doubtful whether Court can issue a *mandamus* preventing the Government Nursing Officers Union going for a strike action.

The learned High Court Judge has fixed the main case for judgment. I take it also in to consideration.

I order to stay the operation of the part (IV) of the interim order of the learned High Court Judge of Jaffna dated 10.08.2016 and direct the learned High Court Judge to proceed with the main case.

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal