

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

C A (Writ) Application

No. 144 / 2013

1. Seemasahitha Lankeeya Cinama  
Shilpeenge Sandhanaya.
2. Padmasiri Kodikara,  
President.
3. Sembukuttie Arachchige Don  
Navam Eranga Senaratne,  
Secretary.

4. Sunil Soma Peiris,  
Member.
5. Tissa Nagodawithana,  
Member.
6. Mohan Hettiarachchi,  
Member.

The 1<sup>st</sup> to 6<sup>th</sup> Petitioners of  
Seemasahitha Lankeeya Cinema  
Shilpeenge Sandhanaya,  
No. 32/ 1,  
Ewarihena Road,  
Polhenagoda,  
Colombo 05.

7. Prasanna Withanage,  
President.
8. Bennet Ratnayake,

Secretary.

9. Udayakantha Warnasuriya,  
Treasurer.
10. Dr. Dharmasena Pathiraja,  
Member.
11. Thissa Liyanasuriya,  
Member.
12. Chandraratne Mapitigama,  
Member.
13. Senesh Dissanayake Bandara,  
Member.
14. Ashoka Handagama,  
Member.
15. Vimukthi Jayasundera,  
Member.

The 7<sup>th</sup> to 15<sup>th</sup> Petitioners of Film  
Directors Guild of Sri Lanka,  
No. 1028/ 2,  
Nagahamulla,  
Battaramulla.

**PETITIONER**

-Vs-

1. National Film Corporation of Sri Lanka.
2. Ashoka Serasinghe,  
Chairman
3. D Karunarathna,  
Working Director.

4. Dr. Praneeth Abeysundara.
5. Prof. Roland Abeypala.
6. Vijith Kanugala.
7. Prof. Ariyaratna Athugala.
8. Mr. Samantha Weliweriya.
9. Malini Gamage.
10. Renuka Balasooriya,  
Film Producer.
11. Dr. D Venketeshwaran

The 1<sup>st</sup> to 11<sup>th</sup> Respondents of The  
National Film Corporation of Sri  
Lanka,  
No.303,  
Buddhaloka Mawatha,

Colombo 07.

12. Dr. Keheliya Rambukwella,  
Hon. Minister of Mass Media &  
Information.
13. Charitha Herath,  
Secretary.
14. Anura Priyadarshana Yapa,  
Acting Minister.

The 12<sup>th</sup> to 14<sup>th</sup> Respondents ,  
Ministry of Mass Media &  
Information,  
No. 163,  
Kirulapana Mawathä,  
Polhenagoda,  
Colombo 05.

15. Somarathne Dissanayake,  
Film Director,

Rupa Rekha,  
1320/ 2,  
10<sup>th</sup> Lane,  
Bogahawatta,  
Pannipitiya.

**RESPONDENTS**

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

**P. Padman Surasena J**

Counsel: J C Weliamuna for the Petitioners.

Nilantha Kumarage for the 1<sup>st</sup> - 9<sup>th</sup> Respondents.

Sanjeewa Jayawardena PC for the 10<sup>th</sup> and 15<sup>th</sup> Respondents.

Milinda Gunathilake DSG for the 12<sup>th</sup> - 14<sup>th</sup> Respondents.

Decided on: 2016 - 11 - 22

JUDGMENT**P Padman Surasena J**

The 4<sup>th</sup> - 15<sup>th</sup> Respondents named in this application are Film Directors. 1<sup>st</sup> Petitioner claims to be a registered society called Seemasahitha Lankeeya cinema Shilpeenge Sandhanaya, 2<sup>nd</sup> - 6<sup>th</sup> Petitioners are its President, Secretary and members. The 7<sup>th</sup> - 15<sup>th</sup> Petitioners are the President, Secretary, Treasurer and other members of the Film Directors Guild of Sri Lanka. The Petitioners in this application seek inter alia from this court ;

- i. a Writ of Certiorari quashing the decision (s) contained in the letter dated 18-05-2013 issued by the 14<sup>th</sup> Respondent Acting Minister (marked **P 6**)
- ii. a Writ of Prohibition prohibiting any one or more of the Respondents from acting on/ enforcing, the letter dated 18-05-2013 issued by the 14<sup>th</sup> Respondents Acting Minister (marked **P 6**) ;
- iii. a Writ of Mandamus directing any one or more of the Respondents to strictly follow the decisions of the 2<sup>nd</sup> Respondent chairman (as borne out by **P 2**) and the rules issued by the NFC (marked **P 3**)



read with the approval/ endorsement of the 12<sup>th</sup> Respondent Minister dated 12-02-2013 (marked **P 4**).

The 12<sup>th</sup> Respondent (then Minister of Mass Media and Information) by the document marked **P 4** has directed the 2<sup>nd</sup> Respondent that the proposed program of the National Film Corporation regarding the distribution of local films to be implemented from 2013-01-01 would be that the 1<sup>st</sup> exhibition of every film should be limited to 35 copies. Thereafter the Acting Minister of Mass Media and Information has directed the 2<sup>nd</sup> respondent who was the Chairman of the National Film Corporation by the letter dated 2013-05-18 produced marked **P 6** that where the National Film Corporation is satisfied that the producing activities of a film had begun before the effective date i.e. 2013-01-01, the rule restricting the number of copies at the first exhibition of such film to 35 copies should not be made applicable. It is this document that the Petitioners seek to quash in these proceedings.

The first paragraph of the letter marked **P 6** states that he refers to the rules made by the Minister of Mass Media and Information under sections 60 (1) and 60 (2) of the National Film Corporation Act which was effective from 2013-01-01.

Section 60 of the National Film Corporation Act is as follows.

- 1) The Corporation may make rules in respect of all or any matters for which rules are authorized or required by this Act to be made.
- 2) No rule made by the Corporation under this Act shall have effect until it has been approved by the Minister.

It is the argument of the learned counsel for the Petitioner that the letter produced marked **P 3** is a rule that had been formulated in terms of section 60 (1) of the National Film Corporation of Sri Lanka Act, and that the said rule has been unlawfully altered by the issuance of the document marked **P 6**, by the 12<sup>th</sup> Respondent Acting Minister.

Perusal of the document marked **P 3** does not reveal any indication that it is a rule made under the National Film Corporation of Sri Lanka Act.

However the 12<sup>th</sup> Respondent Acting Minister by the letter has approved the rule contained in **P 3** with effect from 2013-01-01, in terms of powers vested in him by Section 60 (1) and 60 (2) of the National Film Corporation of Sri Lanka Act.

It is necessary at this stage to examine the procedure National Film Corporation of Sri Lanka Act has provided for how the rules should be made under that Act for, as to Section 5 of the National Film Corporation of Sri Lanka Act states that the Corporation shall have such powers rights and functions as may reasonably be necessary to carry out its objects and in particular may ....

(j) Make rules in respect of the administration of the affairs of the corporation.

This is the only power that has been given by the National Film Corporation of Sri Lanka Act to the National Film corporation for formulating rules. This limited power is clearly limited to make rules in respect of the administration of the affairs of the corporation and nothing else.

It could be seen that the subject matter which is sought to be regulated by the rule in **P 3** by the 2<sup>nd</sup> Respondent who is the chairman of National film Corporation of Sri Lanka is the subject of exhibition of films. It is dated 2013-02-12 marked **P 4**. Thus it is not related to the administration of the affairs of the corporation. In view of this conclusion the document marked **P 3** cannot be considered as a rule formulated under section 5 (j) of the

National film corporation of Sri Lanka Act. On the other hand, the 2<sup>nd</sup> Respondent has not been empowered by the National Film Corporation of Sri Lanka Act to make rules on such subject matter as has already been shown above.

According to section 60 of the National Film Corporation of Sri Lanka Act the corporation is empowered by the act to make rules in respect of any matter for which making rules by the corporation is authorized by the Act. A closer look at the National Film Corporation of Sri Lanka Act shows that the corporation has not been authorized by the Act to make rules regarding the exhibition of films which is the subject matter set out in the document marked **P 3**.

It could also be seen from the provisions of the Act that it is the Minister who has been authorized by section 61 of the National Film Corporation of Sri Lanka Act, to make regulations on this subject matter. Relevant extract of section 61 reads thus,

" .....

- 1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

2) Without prejudice to the generality of the powers conferred by sub section (1) the Minister may make regulations in respect of all or any of the following matters. ...."

The subjects that the Minister may make regulations have been itemized in section 61 (2) from (a) to (l).

It could be seen that the subjects pertaining to

- the control supervision, inspection, maintenance and operation of cinemas and institutions engaged in the film industry,
- the exhibition of films,
- the allocation of screen time for the exhibition of local and foreign films,
- the regulation of the use and distribution of raw films and
- all matters conducive or incidental to the attainment of any of the objects of the corporation or to the exercise of its powers,

are amongst them.

Section 61 (3) of the National Film Corporation of Sri Lanka Act has made it mandatory that the regulations made by the minister under this Act should be published in the Gazette and shall come in to operation on the date of

such publication or on such later date as may be specified in the regulation.

Further Section 61 (3) of National Film Corporation of Sri Lanka Act has made it mandatory that the regulations made by the Minister under this Act shall as soon as convenient be brought before the Parliament for approval.

That section has further stated that any regulation which is not so approved by the Parliament shall be deemed to be rescinded as from the date of its disapproval.

There is no material before us to show that any of the steps under Section 61 (3) and 61 (4) have been followed. The Act has made it mandatory to follow these steps when making regulations by the Minister. The Minister has not followed any of the above steps with regard to the documents which the Petitioners have sought to categorize as rules.

The argument advanced on behalf of the Petitioners is founded on the fact that it is the Corporation which has the authority of making rules under the Act on the subject of regulating and screening of films and not the Minister. This argument for the above reasons must necessarily collapse.

Once that argument collapses there is nothing left out in this case for the Petitioners to proceed with.

In these circumstances and for the foregoing reasons we see no basis to grant the writs prayed for by the Petitioners. Therefore we decide to dismiss this application. However we make no order with regard to costs

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**