

**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  
Mandamus* under article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka**

**CA/WRIT/30/2014**

1. Samarapala Angoda Liyanage,  
No.300, No 334/10, Hendala,  
Wattala.
2. Sheela Irangani Heenatimulla,  
No.124, Kerawalapitiya,  
Wattala.
3. Rambukkanage Damitha Shyamalee  
Samasekara alias Rambukkanage  
Damitha Shyamali Samarasekara,  
No.39/8, Pokuna Road, Hendala,  
Wattala.
4. Hettiarachchige Soma Malani Kulatunga,  
Palliyawatte, Hendala,  
Wattala.
5. Jayasooriya Arachchige Ananda Kumara  
Jayasooriya,  
No. 133, Shanthi Road, Hendala,  
Wattala.

**PETITIONERS**

**Vs,**

1. J.J. Rathnasiri,  
Divisional Secretary/ Government Agent  
and Additional Secretary Home Affairs,  
Additional Registrar General Divisional  
Secretary,  
Gampaha.

**And Seven Others**

**RESPONDENTS**

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

**Counsel: Shammil J. Perera for the Petitioners  
Priyantha Nawana, DSG for the 1<sup>st</sup> to 6<sup>th</sup> and 8<sup>th</sup> Respondents  
Sanjeewa Dassanayake for 7<sup>th</sup> Respondent**

**Argued on: 23.11.2016**

**Written Submissions on: 15.12.2016, 20.01.2017**

**Judgment on: 17.03.2017**

**Order**

**Vijith K. Malalgoda PC**

Five Petitioners before this court were applicants to the post of Registrar of Births, Deaths for Hendala Division and Registrar of Marriages (General) for the Southern Aluthkuru Korale Division within the Divisional Secretariat Division of Wattala in the District of Gampaha.

The said Petitioners have come before this court seeking inter alia,

- b) issue a mandate in the nature of a writ of *Certiorari* to quash the purported appointment letter dated 09<sup>th</sup> November 2011 issued by the 1<sup>st</sup> Respondent appointing the 7<sup>th</sup> Respondent to the post of Registrar of Births, Deaths of the Hendala Division and Registrar of Marriages (General) of the Southern Aluthkuru Korale Division within the Divisional Secretarial Division of Wattala in the District of Gampaha.
- c) issue a mandate in the nature of a writ of *Certiorari* to quash the purported appointment letter dated 24<sup>th</sup> October 2011 issued by the 4<sup>th</sup> Respondent appointing the 7<sup>th</sup> Respondent to the post of Registrar of Births, Deaths of the Hendala Division and Registrar of Marriages (General) of the Southern Aluthkuru Korale Division within the Divisional Secretarial Division of Wattala in the District of Gampaha.
- d) issue a mandate in the nature of a writ of *Mandamus* to direct any one or more of the 1<sup>st</sup> to 6<sup>th</sup> Respondents to appoint any one of the Petitioners whose names appear in the notice dated 14.06.2011 (P4) (however except Palihawadana Arachchige Bernard Cyril Perera Jayawardena who did not attend the interview held on 01.07.2011) to the post of Registrar of Births, Deaths of the Hendala Division and Registrar of Marriages (General) of the Aluthkuru Korale Division in the Gampaha District

According to the said Petitioners, the 4<sup>th</sup> Respondent to the present application by the notice published in the Gazette (extra ordinary) No 1672 dated 17<sup>th</sup> September 2010 had called for applications for the above post from those who were eligible to be appointed for the said post.

All the Petitioners who had necessary qualifications as referred to in the said Gazette notification, had applied to the said post within the stipulated time period.

Subsequently, on or about 14<sup>th</sup> June 2011, the 1<sup>st</sup> Respondent had published and displayed a notice stating that an interview will be held on 1<sup>st</sup> July 2011 at the Gampaha Divisional Secretariat at 9.30 am to select a suitable candidate for the said post. The Petitioners have heavily relied on the said notice which was produced before this court marked P-4.

According to the said document, P-4,

- a) It contained 7 names of the applicants to the above post, including the names of the 5 Petitioners before this court along with two others namely, Hettiarachchige Soma Malani Kulatunga and Palihawadana Arachchige Bernard Cyril Perera Jayawardena
- b) It was displayed in public places including the District and Divisional Secretariats and Grama Niladhari Offices of Gampaha District and the public were called upon to express their views in favour or against any of the applicants above named at the time of the interview
- c) The public were noticed to submit their views in favour or against the said applicants to reach the 2<sup>nd</sup> Respondent prior to the interview in writing
- d) Any objections raised after interview would not be considered

On or about the 17<sup>th</sup> October 2011, the Petitioners received information that the 7<sup>th</sup> Respondent, whose name was not appeared in P-4 had been appointed to the said post. (P-5 and P-6)

According to the Petitioners, they were surprised by the said appointment and therefore send a letter to the 6<sup>th</sup> Respondent objecting to the said appointment. (P-7) After sending the said objections, the Petitioners received a letter from the 4<sup>th</sup> Respondents dated 30.01.2012 informing that due to an inadvertence the objections could not be called for three other applicants including the 7<sup>th</sup> Respondent, and therefore calling for objections with regard to their applications on or before 05.03.2012.(P-8 and P-9)

However during the argument before this court it was revealed that the Petitioners who filed objections with the 4<sup>th</sup> Respondent, did not take part in the said inquiry, since the Petitioners have gone before the Supreme Court by way of a Fundamental Rights application. In the absence of any participation at the inquiry conducted, before the 4<sup>th</sup> Respondent, no adverse order was made against the 7<sup>th</sup> Respondent.

As observed by this court, the Petitioners main submission before this court was, that,

- a) the 7<sup>th</sup> Respondent's name was never appeared in the said P-4 notice, calling for any objections to the 7<sup>th</sup> Respondent been appointed for the said post
- b) the general public had been deprived of their right to express their opposition or objection to the 7<sup>th</sup> Respondent been appointed to the said post
- c) the said appointment of the 7<sup>th</sup> Respondent to the said post was contrary to the legitimate expectation of the Petitioners

When observing the submissions made by the said Petitioners', it was further revealed that the Petitioners contention was that the 7<sup>th</sup> Respondent who was not present at the interview on 1<sup>st</sup> July 2011 had been appointed to the said post and issued a letter of appointment to that effect.

However when responding to the above arguments of the Petitioners', the 1<sup>st</sup> to 6<sup>th</sup> Respondents took up the position that,

- a) Ten applications including those from the Petitioners and the 7<sup>th</sup> Respondent for the post of Registrar of Births and Deaths in Hendala Division and Registrar of Marriages (General) in Southern Aluthkurau Koralya Division had been received by the Respondents
- b) Individual letters dated 20<sup>th</sup> June 2011 were sent requiring each applicant to be present for an interview on 1<sup>st</sup> July 2011 including the 7<sup>th</sup> Respondent

- c) The names of 8<sup>th</sup> to 10<sup>th</sup> applicants had not been typed when the document P-4 was prepared to an inadvertence on the part of the typist one M.P.B. Silva. An explanation given by the said typist to the effect,

“විරෝධතා ගෙන්වා ගැනීම සඳහා ප්‍රාදේශීය ලේඛම් වෙත යවනු ලබන දැන්වීම යතුරු ලියනය කිරීමේදී, අවසාන උපලේඛනයේ සඳහන්වූ නම හා ලිපිනයන් 3ක් මාගේ ප්‍රමාද දෝශයකින් එම දැන්වීමට ඇතුළත්වී නැත එම බරපතල අතපසුවීම මාවිසින් හිතාමතා හෝ කිසියම් හානි ර හෝ අභ්‍යන්තර පුද්ගල උවමනාවකට සිදුවූවක් නොවන බව ප්‍රකාශකර සිටිමි. ඒ පිලිබඳව සම්පූර්ණ වැරැද්ද මා අතින් සිදුවූවක් බව පිලිගනිමි.” was produced by the said Respondents marked R-3.

- d) The interview proceeded as scheduled on 01.07.2011 and eight out of ten applicants attended the interview, were assessed on the basis of marks obtained at the written and oral tests were the 7<sup>th</sup> Respondent had scored the highest
- e) The omission to include the name of the 7<sup>th</sup> Respondent in the notice calling for objections (P-4) was rectified by giving a future time period for such objection against the rest of the candidates, including the 7<sup>th</sup> Respondent

Whilst referring to the above facts the Respondents took up the position that, the only laps they observed during the process of conducting the interview was rectified by giving further time, the moment the matter was raised by the Petitioners, but the said laps alone had not vitiated the written examination and the interview conducted impartially for all the candidates who presented for the interview on 01.07.2011 as scheduled.

Even though the Petitioners challenged the above position and took up the position that the 7<sup>th</sup> Respondent was not present for the interview on 01.07.2011 in the absence of her name in P-4, the Learned Senior Deputy Solicitor General who represented 1<sup>st</sup> to 6<sup>th</sup> Respondents whilst challenging the above contention, under took to produce the necessary documents before this court. On the directions given by this court, 2 (a) added Respondent had produced before this court the interview sheets and

the attendance register with regard to the interview conducted on 01.07.2011 to select the Registrar of Births and Deaths in Hendala Division and Registrar of Marriages (General) in Southern Aluthkuru Koralya Division in the Gamapaha District.

As observed by us, the attendance register produced before this court contained eight names and the interview sheets confirmed that the said eight persons had participated the interview on 01.07.2011. In the said attendance sheet which was filled by the individual applicants, the 7<sup>th</sup> Respondent had written her name and signed as the 7<sup>th</sup> person and the 1<sup>st</sup> to the 5<sup>th</sup> Respondent have written their names and signed at the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 4<sup>th</sup> places respectively and Raddadduwa Pathirathnage Nandawathy Pathirathne whose name was not found in P-4, was found in the letter dated 30.01.2012 (P-8) and the notice published after the interview was held (P-9), found in the 2<sup>nd</sup> place.

As observed by this court the said attendance sheet and the interview sheets produced before this court had confirmed the presence of the 7<sup>th</sup> Respondent along with another person by the name Nandawathy Pathirathne whose name too was not appeared in P-4 along with the five Petitioners confirms the fact that there was a genuine mistake by the officials at the Additional District Registrar's Office Gampaha when preparing the document P 4.

The Petitioners, whilst relying only on P-4 had claimed legitimate expectation that one of them would be selected as the Registrar of Birth, Death for Hendala Division and Registrar of Marriages (General) for Southern Aluthkuru Korale Division, the attendance Register and the interview sheets produced before us had created serious doubts of the above position taken by the Petitioners,

When considering the above documents along with the said position taken up by the Petitioners, it appears that the Petitioners have deliberately suppresses the fact that the 7<sup>th</sup> Respondent along with another applicant by the name of Pathirathnage Nandawathy Pathirathne before this court. By suppressing the said fact from this court, the Petitioners have presented a completely distorted version

before this court and in this regard this court is mindful of the decision in the case of *Alponso Appuhamy V. Hettiarachchi 1973 NLR 131* where the Pathirana J had observed,

“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.”

In their pleadings before this court the Petitioners have admitted the fact that they filed a Fundamental Rights Application before the Supreme Court with regard to the same matter. As revealed before us, the Petitioner did not go before the 4<sup>th</sup> Respondent to attend the inquiry with regard to the objections filed by the Petitioners against the 7<sup>th</sup> Respondent, since by that time they have filed the said Fundamental Rights Application.

During the argument before us, in addition to the fact that there was a genuine mistake from part of the officials attached to the office of the 2<sup>nd</sup> Respondent, the Respondent brought to our notice the outcome of the said Fundamental Rights Application and argued that the Petitioners are estopped from pursuing the present application since the Supreme Court had dismissed the said application.



With regard to the said argument placed before us, the Petitioners whilst relying on the decision by the Supreme Court in the case of *Stassen Exports Ltd V. Lipto to Ltd and Another SC (CHC)Appeal 51/2006* SC minute dated 19.11.2009 argued that the decision in the Fundamental Rights Application was decided on two preliminary objections raised before the Supreme Court and therefore the Court of Appeal is not estopped in deciding the case in hand on its merits.

In this regard we would first like to look into the decision by the Supreme Court in the case of *Stassen Export* and in the said case Shirani Bandaranayake J (as she was then) observed,

“Accordingly the theory pronounced on the basis of the doctrine of *res judicata* is that if an action is being brought and the merits of the matter had been decided by a Court with a final judgment being delivered, such a question cannot be canvassed by the same parties in another action.

The doctrine of *res judicata*, had been accepted and applied in Sri Lanka, as far back as in 1847 by Stark, J in **Mendis V. Himmappooa** (Ramanathan Reports (1843-1855) 88) well before the Civil Procedure Code came into existence. Since then the doctrine had been considered in many judgments (**Cassim V. Mricar** (1909) 12 NLR 184), **Palaniappa Chetty V. Gomes** (4 Balasingham Reports, 21), **Herath V. The Attorney General** (1958) 60 NLR 193, which was later amplified and statutorily recognized in items of the Civil Procedure Code.

The constituent elements of *res judicata* estoppel is clearly described by Spencer Bower (The doctrine of *res judicata*, Supra, pg.10), where he has stated thus:

“A party setting up *res judicata* by way of estoppel as a bar to his opponent’s claim, or as the foundation of his own, must establish the constituent elements, namely:

- i. The decision was judicial in the relevant sense;
- ii. It was fact pronounced;
- iii. The tribunal had jurisdiction over the parties and the subject matter;

- iv. The decision was-
  - a) Final and
  - b) On the merits;
- v. It determined the same question as that raised in the later litigation; and
- vi. **The parties to the later litigation were either parties to the earlier litigation or their privies or the earlier decision was in rem” (emphasis added)**

When considering the decision in the above case we have no reason to deviate and decide otherwise, if the matter to be determined is the same question as that raised in the later litigation.

Whilst relying on the said decision, the Petitioners referred to page 5 of the judgment in SCFR 121/2012 to the effect,

“When this matter was taken up for hearing on 7<sup>th</sup> December 2012 the Respondents raised two preliminary objections on the maintainability of the application as follows;

1. That the Petitioners’ application was out of time in terms of Article 126(2) of the Constitution as the application of the Petitioners has not been filed within one month of the alleged infringement
2. The Petitioners were guilty of suppression and misrepresentation of material facts, thereby failing to act with *uberrima fides...*”

and submitted that their Lordship when concluding the judgment had only referred to the said preliminary objection and held,

“In view of the reasons discussed above hold the preliminary objections raised by the Respondents on the basis that the Petitioners have failed to comply with the mandatory provisions contained in Article 126 (2) of the Constitution and on the ground that the Petitioners have misrepresented and suppressed

material facts to court and failed to observe the doctrine of *uberrima fides*. I dismiss the application in limine. No costs.”

and argued that the Petitioners are not estopped by canvassing against the decision of the Respondents since the Fundamental Rights Application was decided only on the two Preliminary Objections referred to above.

However in this regard our attention was drawn to the following observation made by the Supreme Court in the same judgment, at page 9 to the effect,

“On perusal of the written submission filed by the state it appears that in fact the Grama Niladhari 171 Kerawalapitiya and Grama Niladhari 171A Matagoda and the 7<sup>th</sup> Respondent had been present and given written statements in response to the objection. (2R9a, 2R9b and 2R9c) After the inquiry it had been found that the objections were baseless and were accordingly rejected. It has also been found that the error by not including the name of the 7<sup>th</sup> Respondent in the notice P-4 had been a bona-fide lapse which was discovered only after the interview was conducted, on the part of the typist who was assigned to prepare the notice. The court accordingly finds that no reasons are evident to justify the challenge of the appointment of the 7<sup>th</sup> Respondent.”

In the said observation their Lordships have clearly disclosed their view with regard to the case before them and therefore one cannot argue that the said observation is obiter. As observed by us, prior to the said observation, their Lordships have discussed the merits of the case and thereafter only made the above observation.

Even though the matter was disposed on the preliminary objection, their Lordships have considered the merits of this case and come to a conclusion that, “No reasons are evident to justify the challenge of the appointment of the 7<sup>th</sup> Respondent.”

In the said circumstance it is clear that the question before us was also determined in the said fundamental Rights Application and therefore we find that doctrine of *res judicata* estoppel is applicable in the case in hand.

For the forgoing reasons we see no merit in the application before us and therefore we are not inclined to grant any relief claimed by the Petitioners. This application is therefore dismissed, but we make no order with regard to cost.

Application dismissed without cost.

**President of the Court of Appeal**

**S. Thuraija PC J**

**I agree,**

**Judge of the Court of Appeal**