

**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 a Writ of  
Mandamus in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

C A (Writ) Application

No. 305 / 2012

1. Wanniarachchi,  
Deshapriya  
Chandratilaka  
Wanniarachchi,  
Thalgahamulawatta,  
Wettewe,

Dambadeniya.

**PETITIONER**

-Vs-

1. Director General of Health

Services,

Ministry of Health,

Public Health Complex,

No.555/5,

Elvitigala Mawatha,

Colombo 5.

2. Ministry of Health,

“Sausiripaya”,

No.385,

Rev. Baddegama Wimalawansa

Mawatha,

Colombo 10

3. Hon. Maithreepala Sirisena,  
Hon. Minister of Health,  
"Sausiripaya"  
No. 385,  
Rev. Baddegama Wimalawansa  
Mawatha,  
Colombo 10

4. Director of Environmental &  
Occupational Health,  
Ministry of Health,  
Public Health Complex,  
No. 555/5,  
ElvitigalaMawatha,  
Colombo 5.

5. Hon. Attorney General,

Attorney Generals' Department,  
Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**Before:     **A H M D Nawaz J****

**P. Padman Surasena J**

Counsel:   David Weeraratne with Aloka De Silva for the Petitioner.

          Niel Unamboowe PC Additional Solicitor General for the  
Respondents.

Decided on :                                 2017 - 07 - 05.

**JUDGMENT**

**P Padman Surasena J**

Learned counsel for all the Parties, when this case came up on 2017-02-03,  
agreed to file their written submissions and requested this Court to

pronounce the judgment after considering their written submissions. They dispensed with their necessity of making oral submissions.

The parties, pursuant to that agreement, have filed written submissions setting out the respective positions taken up by them. This judgment would thus be based on the material adduced by the parties in their pleadings and written submissions.

The Petitioner claims to have constructed a well as a source of ground water for bottling and packing drinking water. The Certificate of Registration dated 2006-11-27, produced marked **P 3**, had been issued to him by the 1<sup>st</sup> Respondent to carry on the said business. According to the conditions of the said Certificate of Registration, the said registration would be valid up to a maximum period of three years from the date of issue<sup>1</sup> and any application for renewal should be submitted six months prior to the expiry of validity of the existing registration<sup>2</sup>.

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<sup>1</sup> Condition 3 mentioned in the Certificate of Registration marked **P 3**.

<sup>2</sup> Condition 4 mentioned in the Certificate of Registration marked **P 3**.

However it is an admitted fact that the Petitioner had not submitted any application for renewal of the said registration by the time the existing registration expired on 2009-11-27<sup>3</sup>.

The Petitioner claims that he had made an application for renewal of the said registration in February 2011. He further states that he had submitted all the necessary reports etc. It is the Petitioner's complaint to this Court that the 1<sup>st</sup> and 4<sup>th</sup> Respondents acted arbitrarily to direct the Petitioner to close down the existing water well and to build a new water well as no such amendment was made to the existing regulations pertaining to the requirement of maintaining a secured area the diameter of which is 50 Meters. It was the Petitioner's position that the said secured diameter of 50 Meters was never increased to 100 Meters. The Petitioner further claims that in any case the secured diameter of his existing well is well over 100 Meters<sup>4</sup>.

It is on this basis that the Petitioners have invoked the writ jurisdiction of this Court praying for a writ of Mandamus directing the 1<sup>st</sup> Respondent to issue a Certificate of Registration in the name of 'Sisila Mineral Waters'

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<sup>3</sup> Paragraph 10 of the affidavit of the Petitioner & paragraph 3 of the statement of objections filed on behalf of the 1<sup>st</sup> -5<sup>th</sup> Respondents.

<sup>4</sup> Paragraph 32 of the affidavit of the Petitioner.

which is owned by the Petitioner. The 1<sup>st</sup> Respondent is the "Chief Food Authority" referred to in the Food Act No. 26 of 1980. He possesses the authority to issue Certificates of Registration for premises of bottling or packing drinking water.

It would now be necessary to turn to the stance of the Respondents in this case. Following positions have been taken up by the Respondents in their pleadings;

- I. that this application for a writ of Mandamus is premature as the Petitioner has not up to date submitted an application requesting for a Certificate of Registration in terms of regulation 3 of the Gazette No. 1420/4 dated 2005-11-21<sup>5</sup>.
- II. that this Court should dismiss this application in limine as the Petitioner has not exhausted the alternative remedy provided for in the said regulations.
- III. that the samples collected from the water source of the Petitioner is unsatisfactory as it contains E coil, which indicates fecal contamination,

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<sup>5</sup> Produced marked **P 2**.

IV. that the Petitioner's water source is situated outside the perimeter protection zone of 30.5 Meters in violation of By Law 35 of the Pradeshiya Sabha produced marked **R 4** and the resolution stated therein marked **R 4 A**.

it is clear from paragraph 32 of the petition that the basis the Petitioner had filed this application was, as he had claimed, an arbitrary action of the 1<sup>st</sup> -5<sup>th</sup> Respondents to insist that his well must be situated within a zone the diameter of which must be 30.5 Meters (approximately 100 feet) declared as a protected zone. This is borne out by the document the Petitioner had produced marked **P 17**. It is the position of the Petitioner that there is no such regulation which required the maintenance of a protected zone of that magnitude to be reserved around a water source.

However the Petitioner, after **R 4** was produced by the Respondents with their statement of objections, had taken up the position that his water source is well within the required limits. This is a deviation from his original position. It is also a clear indication that the Petitioner had



misrepresented facts to this Court. This alone is sufficient for the dismissal of his application.

As has been mentioned at the beginning of this judgment, the Petitioner has presented this application on the basis that the Respondents had acted arbitrarily to insist on a requirement to maintain a secured zone the diameter of which should not less than 100 Meters. It has now become clear before this Court that the Petitioner no longer attempts to maintain such a position. The said purported arbitrary action on the part of the Respondents therefore cannot be categorized as an action that is arbitrary for all what the Respondents had done was to insist on legal requirements to be complied with. This means that the application of the Petitioner has to necessarily fail.

In addition to the above ground, the Petitioner has also not adduced sufficient material to prove that his water source is well within the protected zone. Further, the misrepresentation by the Petitioner above referred to, affect the credibility of all the positions the Petitioner had taken up.

According to Rule 3 (1) (a)<sup>6</sup> every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit. Affidavits so filed in these proceedings are treated as evidence adduced by the relevant party. Thus, the assertion by the Petitioner in paragraph 32 of his affidavit that ‘... the conduct of the 1<sup>st</sup> and 4<sup>th</sup> Respondents is highly arbitrary and unlawful to direct me to close down the existing water well and to build another water well as no such amendment was made in the regulations pertaining to the secured diameter of a water well from 50 M to 100 M in a gazette notification...’ is clearly not true.

As per section 196 of the Penal Code, whoever in any declaration made or subscribed by him, which declaration any Court of Justice, is authorized by law to receive, makes any statement which is false, and which he knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false

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<sup>6</sup> Court of Appeal (Appellate Procedure) Rules 1990

evidence. Thus, the false assertions made by the Petitioner in his affidavit vitiates whole of his affidavit and renders it unworthy of credit.

In these circumstances and for the foregoing reasons we see no merit in this application and hence decide to dismiss this application with a cost of Rs. 50,000/= payable to the State by the Petitioner.

Application dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**A H M D Nawaz J**

I agree,

**JUDGE OF THE COURT OF APPEAL**