

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

C.A (WRIT) Application No. 179/2014

In the matter of Application for Writs in
the nature of Certiorari and Mandamus
under Article 140 of the Constitution of
the Democratic Republic of Sri Lanka

1. J. A. Peter Nelson Perera,
No. 22/51, Chamikara,
Canal Road, Chilaw.
2. Rohan Jayatunga,
No. 39, Bristol Street, Colombo-10

PETITIONERS

Vs

1. Wimala Hewage
No. 146/A/3,
Jayapura, Kudamaduwa, Piliyandala
2. Sirirsena Rajapaksha
No. 72, Madeiyawa, Kegalle.
3. D.H.E Direx
Club Road, Kegalle.
4. Widura Abenayaka
No.146/A/31, Jayapura
Kudamaduwa, Siddamulla Piliyandala

5. Ananda Jayakody
No.449, Rambukkanagama Road,
Ingiriya
6. Mahinda Deshapriya
Commissioner of Election,
Election Secretariat,
Sri Jayawardanepura Kotte.

RESPONDENTS

Counsel : Bandula Wellala for the Petitioner

Anusha Samaranayake DSG for the AG.

1st, 2nd, 4th, and 5th Respondents are absent and
unrepresented

Before : L.T.B. Dehideniya J.

: Shiran Gooneratne J.

Argued on : 14.07.2017

Decided on : 10.10.2017

L.T.B.Dehideniya J.

The Petitioners instituted this writ application on the basis that they were the Chairman and the General Secretary of the political party called Sri Lanka Progressive Front (SLPF). The Petitioners state that the 1st Petitioner was appointed as the Chairman in the year 2000 and the 2nd

Petitioner was appointed as the General Secretary on the 27th of January 2001 and they are still holding the said positions in the SLPF. They complain that several others have informed the 6th Respondent, the Commissioner of Elections, claiming to be the Chairman and the General Secretary and it had resulted in rejecting the nomination paper tendered for the presidential election in 2010. The Petitioners have communicated to the 6th Respondent requesting him to accept the 2nd Petitioner as the General Secretary of the party but the 6th Respondent by the letter dated 04.12.2013 marked as P10 informed the Petitioners that there is a dispute within the party as to the post of General Secretary and therefore until the matter is resolved amicably within the party or by an order of a Court, he cannot accept anyone as the General Secretary of the SLPF. The petitioners are seeking a mandate in the nature of a writ of certiorari to quash the said letter marked P10 and a writ of mandamus directing the 6th Respondent to accept the 2nd Petitioner as the General Secretary of the party. Further they are seeking a writ of mandamus directing the 6th Respondent to recognize the said SLPF as a political party.

The Petitioners marked the party constitution as P1 and stated that all documentations of the party has to be issued under the signature of the Chairman and the General Secretary, but the documentation forwarded to the 6th Respondent by the 5th Respondent was not signed by Chairman and it has no validity in law. Further they submit that the persons claimed to be the Chairman and the General Secretary were not properly elected by the party.

The 6th Respondent in his objections stated that the SLPF is a recognized political party and there is no necessity to issue a writ of mandamus directing him to recognize the SLPF as a political party. He further stated that P1 is a copy of the constitution send to him in 1994 and he further

received party constitutions dated 03.03.1996, 30.11.1996, 30.11.1997 and 30.12.2009 and were marked as 6R1(a), 6RI(b), 6RI(c) and 6RI(d) respectively. There are changes to the position taken by the Petitioners.

The other Respondents also have filed objections denying the petitioners stand.

The Petitioners do not complain that the decision of the 6th Respondent not to accept anyone as the General Secretary is ultra vires or it violates the rules of natural justice or it is an arbitrary, capricious or illegal order. The Petitioners complaint is that it is based on wrong factual assertions.

The 6th Respondent has come in to the conclusion that there is a dispute in the party as to who is the lawful General Secretary, on the material received by him. He received several party constitutions time to time. The Petitioners in their counter affidavit dated 09.06.2015 in paragraph 08 have admitted that the constitution was amended and admitted that the copies marked as 6R1(a) and 6R1(b) as correct documents. The petitioners did not disclose that the party constitution was amended and failed to tender the constitution in force. Further the petitioners have admitted the document marked 6R3 as a correct document. The Petitioners refer to the document marked as 6R3 as a copy of the constitution but it is not. It is a letter issued by the 2nd Respondent to the 6th Respondent claiming that he is the General Secretary of the SLPF.

The 6th Respondent on good and valid reasons has decided that there is a dispute in the party to the post of General Secretary. His decision is not to accept anyone until the matter is resolved.

If the factual situation is in dispute, the Court cannot grant a mandate in the nature of a writ until the facts are been cleared. This Court has no

opportunity to verify the correctness of the facts. It has been held in the case of Thajudeen v. Sri Lanka Tea Board [1981] 2 Sri L R 471 that

Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue.

Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there is no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial and effective is available.

The Petitioners are seeking for a writ of mandamus directing the 6th Respondent to accept the 2nd Petitioner as the General Secretary. Once the matter is resolved the 6th Respondent will accept the General Secretary, no need to issue a writ.

Under these circumstances I refuse to issue the writs and dismiss the application.

President, Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal