

**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 writs of certiorari and prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

C.A. Application No. 285/2017

B. Deniswaran,
2nd Cross Street, Pettah, Manar.

PETITIONER

Vs.

1. Hon. Justice C.V.Vigneswaran,
Chief Minister, Northern Province,
26, Somasundaram Avenue, Jaffna
2. Hon. K. Sarveswaran,
Kaddaipirai, Kopay South, Kopay
3. Hon. Ananthi Sasitharan,
Valakamparai, Chullipuum, Jaffna
4. Ho. G. Gunaseelan,
Field Street, Sinnakadai, Mannar
5. Hon. K. Sivanesan,
Kanukerny East, Mulliyawalli, Mullativu
6. Hon. P. Sathiyalingam,

Vairavapiliyankulam, Vavunia
7. Hon. Reginald Cooray,
Governor, Northern Province,
Governor's Secretariat, Old Park,
Kandy Road, Chundukuli, Jaffna
RESPONDENMTS

Before : L.T.B. Dehideniya J. (P/CA)

: Shiran Gooneratne J.

Counsel : Suren Fernando for the Petitioner.

: K. Kanag Iswaran PC with Lakshmanan Jeyakumar and Aslesha
Weerasekara for the 1st Respondent.

M.A. Sumanthiran PC with Niran Ankatel for the 6th Respondent

Argued on : 19.09.2017

Decided on : 16.10.2017

L.T.B. Dehideniya J. (P/CA)

This is an application for Mandates in the nature of Writ of Certiorari and Mandamus. The petitioner is an elected member of the Northern Provincial Council. The first respondent is the Chief Minister and one to six are members of the said Provincial Council. The seventh respondent is the Governor of the Northern Province.

The petitioner states that he was elected as a member of the Northern Provincial Council and was appointed as a Minister of the Board of Ministers of the said council. Among other things, the petitioner states that the first respondent has removed him from the office of Minister and another member was appointed. The petitioner's grievance is two-folded: one is that the first respondent has no legal right to remove a minister from the Board of Ministers and the other is that the decision to remove the petitioner is arbitrary, unreasonable, capricious, in breach of the petitioner's legitimate expectations and motivated by Mala fides. The petitioner is seeking for notice and interim order preventing the removal.

Under the Rule 46 of Rules of the Supreme Court 1978 "*every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Article 140 and 141 of the Constitution shall be by way of petition and affidavit in support of the averments set out in the petition and shall be accompanied by originals of documents material to the case or duly certified copies thereof, in the form of exhibits.*" It has been held in the case of *Brown & Co. Ltd. and another V. Ratnayake, Arbitrator and others* [1994] 3 Sri L R 91 that it is mandatory to adhere to the rules.

Rule 46 of the Supreme Court Rules of 1978 requires the petition to be supported by affidavit and to be accompanied by original or duly certified copies of documents material to the case in the form of exhibits. The burden of presenting a proper application is on the party that seeks the intervention of the Court. The procedure is specified for this threshold stage. The Rule regulates the mode of enforcing a legal right. The petitioner has to tender all relevant material to the Court in order to invoke its jurisdiction. If he fails to do this there is a failure to comply with a substantial aspect of the Rule.

In the case of Kumarasiri And Another Vs. Rajapakse [2006] 1 Sri L R 359 the requirement of filing an affidavit with a revision application has been considered. In that case the affidavit was held to be defective for the reason that the jurat was incorrect. Somawansa J held in that case that;

(i) On an examination of the' affidavit, it is clear that the jurat therein is not in conformity with the law. It is rather confusing and incorrectly worded; it does not state where the affidavit was affirmed.

Per Somawansa J., (P/CA)

"It is to be seen that, it is the flesh and blood of the affidavit which gives life to the skeleton in the petition."

Unless the facts contained in the petition are supported by the affidavit, the petition cannot stand alone. In the present case the petitioner filed a document perpeted to be an affidavit. The document was signed by the petitioner and a Commissioner for Oaths. There is no proper jurat in the affidavit.

Under section 12 of the Oath and Affirmation Ordinance a Commissioner For Oath is empowered to administer the Oath or Affirmation. He has to certify that the oath or affirmation was administered by him. the section reads thus

(1) The Minister of Justice may from time to time appoint fit and proper persons to be Commissioners for Oaths.

(2) A Commissioner for Oaths appointed under this Ordinance may administer any oath or affirmation or take any affidavit for the purpose of any legal proceedings or otherwise in all cases in which a Justice of the Peace is authorized by law so to do, and in all cases in which an oath, affirmation, or affidavit is commonly administered or taken before a Justice

of the Peace; and any oath or affirmation or affidavit administered or taken by a Commissioner for Oaths shall in all legal proceedings and for all other purposes have the same effect as an oath, affirmation, or affidavit administered or taken before a Justice of the Peace; and all enactments relating to oaths, affirmations, and affidavits administered or taken before a Justice of the Peace shall, with the necessary modifications, apply thereto: Provided that a Commissioner for Oaths shall not exercise the powers given by this section in any proceeding or matter in which he is attorney-at law to any of the parties, or in which he is otherwise interested.

(3) Every Commissioner before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, shall state truly in the jurat or attestation at what place and on what date the same was administered or taken, and shall initial all alterations, erasures, and interlineations appearing on the face thereof and made before the same was so administered or taken.

The jurat in this affidavit in this case reads thus:

Sworn and signed at Colombo

On this day 29 of August 2017

The Commissioner for Oaths has failed to confirm whether the document was signed before him or the oath/affirmation was administered by him or his presences. Unless it was sworn and signed before the Commissioner for Oaths, it is not a valid affidavit. Therefore this document cannot be considered as a valid affidavit. If the affidavit is not valid the application has to be failed inlimine.

Under the Article 154 F (5) of the Constitution, the Board of Ministers of a Provincial Council has to be appointed by the Governor as instructed by the Chief

Minister. At the inception the petitioner was so appointed. Petitioner's contention is that the Chief Minister cannot remove a Minister from the said the Board of Ministers. The first respondent by the letter marked P12 informed the petitioner that he has decided to remove the petitioner from the ministerial portfolio. The petitioner is seeking to quash the said letter by a Writ of Certiorari. There is no order containing in the document P12. This is only a communication of the 1st Respondent's intention to the petitioner. Therefore this document is not amenable to the Writ jurisdiction.

The Board of Ministers were appointed by the ruling party of the Provincial Council. Appointing the Ministers is a political act. The ruling party should be able to change its Board of Ministers as and when necessary. If a reshuffle of Ministers become necessary the Chief Minister can instruct the Governor to do so. Once the new Ministers are appointed, the former Ministers automatically cease to hold office.

These appointments being political appointments, the rules of the administrative law do not apply.

Under these circumstances, I refuse notice and dismiss the application.

President Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal