

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

CA Application No. 326/17 Writ

A matter of an application for Writ of  
Certiorari, Mandamus and Prohibition.

Sampath Priyantha Jayasundara  
(The temporary Trustee of Dodamwala  
Sri Natha Dewala of Kandy District)  
of No.949/1, Peradeniya Road, Kandy

**PETITIONER**

-Vs-

1. D.N. Parakrama Jayawardane  
The Commissioner,  
Department of Buddhist Affairs,  
Regional Office, Divisional,  
Secretariat Building, Kandy
2. Nimal Kotwalagedara,  
The Commissioner General,  
Department of Buddhist Affairs,  
“Daham Paya”, 135, Srimath  
Anagarika Dharmapala Mawatha,  
Colombo 07.
3. Hon. Attorney General,  
Attorney General’s Department,  
Colombo 12.

4. H.M. Eranga Neelakantha Herath,  
“Sandamali Niwasa”  
9<sup>th</sup> Post, Dikyaya, Buttala.
5. H.W Janaka Saman Kumara,  
No. 21, Siyambalagoda, Danture.

### **RESPONDENTS**

Counsel : Sunil Abeyrathne for the Petitioner

Dilrukshi Dias Wickramasinghe PC DSG for the 1<sup>st</sup>, 2<sup>nd</sup> and  
3<sup>rd</sup> Respondents

**Before** : L.T.B. Dehideniya J.

: Shiran Gooneratne J.

Argued on : 12.10.2017

Decided on : 13.10.2017

#### **L.T.B.Dehideniya J. (P/C.A.)**

The Petitioner was the Basnayake Nilame of the Sri Natha Devale at Dodamwela and is a candidate for the same post at the upcoming election to be held on the 16<sup>th</sup> of this month. Among the eligible voters for the election of Basnayake Nilame, the non bhikku trustees of the temples of the area are also included. The Petitioner has obtained a list of voters from the 1<sup>st</sup> Respondent on 18.09.2017 marked “C”. In the said list there was only one non bhikku trustee listed. Thereafter, the 1<sup>st</sup> Respondent issued another list on 04.10.2017 marked “E” including the names of the 4<sup>th</sup> and 5<sup>th</sup> Respondents in the said category. The Petitioner's argument is that when an election is coming closer the Viharadhipathi bhikkus take steps to withdraw the names of the bhikku trustees because they are not having the voting rights and nominate non bhikku trustees to make them eligible to vote. After

the election, again they withdraw the names of the non bhikku trustees and nominate bhikkus for the post of trustees. The Petitioner's contention is that this practice has an adverse effect on the election. Therefore he is seeking to quash the list marked as "E".

The Counsel for Petitioner further submits that under section 8(2) of the Buddhist Temporalities Ordinance, (hereinafter sometimes called and referred to as the BTO) the eligible voters shall be given one month notice. From the date of the second list marked "E" there is no one month time period to the date of election. Therefore the Counsel argue that the list marked "E" is not valid in law.

The learned President's Counsel appearing for the 1<sup>st</sup> Respondent submitted that the nominating trustee vests solely on the hands of the Viharadhipati Thero. Once the nominations are being forwarded to the 1<sup>st</sup> Respondent, it is mandatory for the 1<sup>st</sup> Respondent to issue the appointment unless the nominee is not unqualified under the provisions of the BTO. The learned President's Counsel further submitted that the appointment of the additional two persons named in the list marked "E" was a process started long before the election was called. She tendered certain documents across the Bar table where it shows that the process commenced in July, that is prior to the paper notice calling for the election is being published.

Under section 8(2) of the BTO the voters must be informed one month prior to the election. The section reads;

*8.(1) The trustee for a dewale for which it has been customary to appoint a Basnayake Nilame shall be the Basnayake Nilame thereof. The trustee for every other dewale shall be a person appointed by the Commissioner of Buddhist Affairs.*

*(2) Whenever a vacancy occurs in the office of a Basnayake Nilame the Commissioner of Buddhist Affairs shall within three months of such occurrence summon to a meeting at a place within the administrative district in which such dewale is situated"*

*(a)(i) in the case of a dewale situated in the Kandyan provinces, the persons for the time being holding office in that district as divisional Assistant Government Agents; or*

*(ii) in the case of any other dewale, the persons for the time being holding office in that district as divisional Assistant Government Agents and grama seva niladharis;*

*(b) the Basnayake Nilames of the dewales in the administrative district in which the dewale is situated and in the case of a dewale in the Kandy administrative district also the Diyawadana Nilame; and*

*(c) the trustees not being bhikkhus of all temples situated within the divisional Assistant Government Agent's division in which the dewale is situated, to each of whom he shall send by registered post not less than one month before the date fixed for the said meeting a written notice thereof addressed to the last known place of abode of such person.*

Under this section the voters have a right to receive notice one month prior to the election. The Petitioner does not complain as a voter that he has not received the one month notice. His complaint is that the two persons named in the list marked "E" have not received notices or there was no opportunity to send notices to them. Petitioner has no right to complain about other voters.

Under section 11(2) of the BTO the 1<sup>st</sup> Respondent has no option other than issuing the appointment to the person nominated by the Viharadhipathi. The section reads;

11. (1) .....

*(2) Whenever a nomination is duly made under sections 9 or 10 and reported to the Commissioner of Buddhist Affairs it shall be the duty of the Commissioner of Buddhist Affairs to forthwith issue a letter of appointment to the person so nominated unless such appointment would contravene the provisions of this Ordinance.*

The 1<sup>st</sup> Respondent is performing a ministerial act and he has no discretion in appointing the trustee. On the other hand he cannot delay the appointment for the reason that an election is called because the law provides that the 1<sup>st</sup> Respondent to issue the letter of appointment forthwith. If he delays to issue the latter of appointment, he will be violating the duty entrusted upon him by law. By operation of law the trustee so appointed becomes eligible to vote at the election.

Under these circumstances the 1<sup>st</sup> Respondent issuing an amended list of voters marked "E" is within the law.

I refuse notice and dismiss the application.

President, Court of Appeal

**Shiran Gooneratne J.**

I agree.

Judge of the Court of Appeal