

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

In the matter of an application for mandate in the nature of a writ of *Certiorari* and *Prohibition* under Article 140 of the Constitution, of the Democratic Socialist Republic of Sri Lanka.

K.M.R. Sanjeewa Kumara,  
No. 464/A,  
Gangasiripura,  
Debarawewa,  
Thissamaharamaya.

**Petitioner**

**Case No: CA/WRIT/163/2015**

*Vs.*

1. Air Marshal Harsha Abeywickrama,
  
- 1A. Air Marshal Gagan Pulasthi Bulathsinhala,
  
- 1B. Air Marshal Kapila Jayampathy,  
Commander of the Sri Lanka Air Force,  
Air Force Head Quarters,  
Colombo 02.**
  
2. Squadron Leader M.D.A. Weerasuriya,  
Commanding Officer,  
Air Force Camp,  
Weerawila.

3. Air Commodore D.J.C. Weerakoon,

3A. Air Commodore M.D.J. Wasaga,  
Commanding Officer,  
Air Force Camp,  
Weerawila.

4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 02.

**Respondents**

**Before** : A.L. Shiran Gooneratne J.

**Counsel** : Nuwan Bopage with Chathura Weththasinghe for the Petitioner.  
Maithree Amarasinghe, S.C. for the Respondents.

**Argued on** : 01/11/2017

**Written Submission on** : 02/02/2018

**Judgment on** : 10/05/2018

**A.L. Shiran Gooneratne J.**

The Petitioner, has invoked the jurisdiction of this court seeking inter alia, a mandate in the nature of a writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent to discharge the Petitioner from the Sri Lanka Air Force by the impugned document marked X9, and to re-instate the Petitioner with back wages. The Petitioner contends that the decision to discharge the Petitioner from the Sri

Lanka Air Force by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are unreasonable, malicious and bad in law.

The Respondents in their statement of objections, have taken up a preliminary objection that the Petitioner has misrepresented and has also suppressed vital material facts, in order to mislead court. The Respondents state that the impugned decision by the 1<sup>st</sup> Respondent to terminate the services of the Petitioner was taken not only in consideration of the case at hand but also considering the gross continuous ill-discipline of the Petitioner as manifested by the multiple acts of misconduct exhibited in documents marked R1 to R6.

In support of the above contention the Respondents submit that;

- (a) multiple grounds of misconduct by the Petitioner including fraud has been deliberately withheld from pleadings, which justify the decision taken by the said Respondents.
- (b) a distorted interpretation has been given to the witness statement of Air-women Sanjeewa in order to mislead court.

and submit that the said misinterpretation and misconduct of the Petitioner justifies the dismissal of this application.

In the circumstances, I wish to deal with the said preliminary objection to this application before dealing with the merits of the case.

In paragraph 2, of the counter objections filed of record, the Petitioner has denied the paragraphs which contains the averments relating to previous misconduct. However, in the same paragraph, the Petitioner admits of previous offences where he has been found guilty. The Petitioner admits to the acts of misconduct embodied in the said documents, and further state that, the incidents related to the said offences took place 15 years ago, and were not serious in nature. The Petitioner has failed to disclose any reason for the non disclosure of the said incidents of misconduct at the time of filing the Petition.

In paragraph 8, of the statement of objections the Respondents have in detail examined the statement given by Air-women Sanjeewa marked X1. While admitting that the said Air-women pleaded guilty to fraud as charged, the Respondents have demonstrated to court, the extent to which the Petitioner has indulged himself to mislead court, by misinterpreting the contents of the said statement. In paragraph 12, the Petitioner states that, Air-women Sujeewa in her statement stated that she prepared the fraudulent formats pertaining to the fraudulent statements and the Petitioner did not participate in the preparation of the said formats. However, as observed in document marked X1, tendered by the Petitioner, Air-women Sanjeewa strongly implicates the Petitioner in the preparation of the said fraudulent statements. Accordingly, the Petitioner has failed to address his stand on this issue in his pleadings, other than a total denial of his participation.

*Judicial Remedies in Public Law, Clive Lewis (5th Ed.) at page 415.*

states;

*“Misconduct in the course of judicial review proceedings, such as failing to make material disclosure of all the facts in an affidavit or witness statement may well lead to the court refusing to grant that claimant any remedy. Even inadvertent mis-statement of fact is a reason for refusing a remedy as claimant is required to show care (as well as candour) in a judicial review claim.”*

The document marked X9, pleaded in paragraph 2, refers to the fact that, the 1<sup>st</sup> Respondent in arriving at the impugned decision has considered various previous acts of misconduct and punishments given to the Petitioner. However, document marked X9, makes no reference whatsoever, to such acts of misconduct or punishment. When such incriminating facts pertaining to misbehavior stare in the face, the Petitioner, chooses not to disclose such facts and ignore making any reference in reply to such allegations in his affidavit. However, once brought to his notice, the Petitioner has admitted previous fraudulent conduct without giving any acceptable reason for non-disclosure of such material in the first instance.

In the case of *Alphonso Appuhamy Vs. Hettiarachchi (1973) 77NLR 131*, the court held, that;

*“if a material fact contained in a document is not expressly referred to in the Petition and affidavit, the Petitioner is guilty of suppression of the*

*material fact, even if that document it self is filed along with that Petition and affidavit and the fact that the document is being so filed is mentioned in the Petition and affidavit.”*

The Petitioner in document marked X9, states that, on or about 24/07/2014, the 3<sup>rd</sup> Respondent sent a letter to the Petitioner stating that, his service is no longer necessary to the Sri Lanka Air Force. However, the Petitioner has deliberately avoided a full disclosure of the contents of the said document and thereby has with held incriminating evidence against the Petitioner, which clearly amounts to a non-disclosure of material facts within the knowledge of the Petitioner.

The next question to be looked into is whether, the Petitioner mislead the court when he stated that, Air-women Sujeewa did not incriminate the Petitioner of participating in the preparation of the fraudulent formats in respect of missing goods from the 2<sup>nd</sup> Respondent supply division. As stated earlier, the Petitioners involvement in the said fraudulent activity is clearly demonstrated by the contents of the statement given by Air-women Sujeewa marked X9, which is relied upon by the Petitioner to establish the contrary, ie that the Petitioner did not participate in the preparation of the fraudulent formats. The Petitioner has not submitted any material to show that the impugned document marked X9, should be held in his favour. Plain reading of the said document clearly establishes an involvement of the Petitioner in the making of such fraudulent documents, which the Petitioner

has failed to explain. Such conduct on the part of the Petitioner is contrary, inter alia, to a full disclosure of all material facts.

In the case of *Namunukula Plantations Limited Vs. Minister of Landa and others 2012 ISLR 365*, the court held;

*“a person who approaches the court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which has any bearing on the adjudication of the issues raised. He owes a duty of utmost good faith (uberrimafides ) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”*

In the circumstances, I find that the Petitioner is guilty of suppression and misrepresentation of material facts and therefore, the petition is dismissed with costs fixed at Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL.