

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

In the matter of an appeal to Court of
Appeal under Article 154 P (6) read with
Article 138 of the Constitution against a
judgment of Provincial High Court
exercising its writ jurisdiction.

C A (PHC) / 88 / 2013

Provincial High Court of

Southern Province

(Galle)

Case No. HC/WRIT/ 11 / 2012

1. Peradorapage Nishantha Kumudu
Kariyawasam,
No. 37,

Beraliyadolawatta,

Hapugala,

Wakwella.

PETITIONER - APPELLANT

-Vs-

1. Southern Provincial Road Development

Authority,

No. 19,

Lower Dickson Road,

Galle.

2. T L Chandrasiri,

General Manager,

Southern Provincial Road Development

Authority,

No. 19,
Lower Dickson Road,
Galle.

3. B W Dani,
Accountant,
SLAS Grade 1 (retired)
Lakmini,
Galpamuna,
Palatuwa.

4. Chandima Rasaputra,
Minister of Education, Land and Land
Development, Highways, Information
and Rural and Estate Infrastructure
facilities of the Southern Province,
Galle Municipal Council Shopping
Complex,
Talbot Town, Galle,

(Presently at,
No. 46,1/1,
Colombo Road,
Kaluwella,
Galle.

5. Secretary,

Ministry of Education, Land and Land
Development, Highways, Information
and Rural and Estate Infrastructure
facilities of the Southern Province,
Galle Municipal Council Shopping
Complex,
Talbot Town,
Galle,

(Presently at,
No. 46,1/1,
Colombo Road,

Kaluwella,

Galle.

6. Southern Provincial Council,

Kalegana,

Galle.

7. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P / C A)

K K Wickremasinghe J

Counsel; Mahinda Nanayakkara with Aruna Jayathilake for the Petitioner
- Appellant.

Chaya Sri Nammuni for the 1st 2nd and 4th -7th Respondent-
Respondents.

Sanjaya Kodithuwakku with Duminda Rajapaksha for the 3rd
Respondent - Respondent.

Argued on : 2017-10-11

Decided on : 2018 - 05 - 23

JUDGMENT

P Padman Surasena J

The Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court of the Southern Province holden in Galle challenging by way of a writ of

Certiorari, the validity of the issuance of the charge sheet produced marked ☉ 14.

At the conclusion of the case, learned Provincial High Court Judge had dismissed the said application holding that the Appellant had resorted to an unacceptable way in an attempt to get the charge sheet quashed in lieu of answering the charges levelled against him.

The Appellant has lodged the instant appeal to this Court against the said judgment of the Provincial High Court.

The impugned charge sheet has been issued under the provisions of the Disciplinary Procedure Code of the Southern Provincial Road Development Authority (hereinafter referred to and called as the Authority). It is the submission of the learned counsel for the Appellant that the issuance of the said Disciplinary Procedure Code is ultra vires.

Section 14 of the Provincial Road Development Authority Statute No. 04 of 1992 of the Southern Provincial Council has empowered the General Manager of the Authority to be in charge of disciplinary control and proceedings of its employees. However, it is the contention of the learned

counsel for the Appellant that it is the Minister who is empowered to make regulations in that regard in terms of section 26 of the said statute.

What section 26 of the statute states is that the Minister may make regulations for any matter for which such regulations are required to be prepared. It cannot be interpreted as having stated that no power under the statute whatsoever could be exercised by anyone without the Minister first making regulations for such an exercise. One has to bear in mind that the primary authority flows from the statute. The regulations that may be made by the Minister would be subservient to the statute.

On the other hand, section 14 has directly entrusted the exercise of the power referred therein, to the General Manager of the Authority. The section has not subjected the exercise of that power to any regulation to be made by the Minister. It is also not a provision that the statute has required the Minister to make regulations in connection with the matters thereto.

In any case, learned State Counsel brought to the notice of this Court that the Minister has approved the relevant Disciplinary Procedure Code of the

Southern Provincial Road Development Authority by the document produced marked ඉග 6.

Charges contained in the charge sheet relevant to this case appear to be serious in nature. As has been concluded by the learned Provincial High Court Judge, the Appellant seems to have abused the court process to halt the disciplinary proceedings against him since the day the said charge sheet was issued on him. (i.e. 2010-05-11 up until now). The argument he has put forward is found to be a frivolous one.

The circumstances set out above, convince this Court that the Appellant has filed this application for ulterior motives. Writ jurisdiction of this court would be exercised at the discretion of court. One of the main requisite conditions is that the Petitioner must come to court with clean hands. In all the circumstances of the instant case, this Court is not convinced that the Appellant has fulfilled the said condition. Thus, the writs prayed for by the Appellant cannot lie.

In these circumstances, this Court decides to affirm the judgment of the learned Provincial High Court Judge dated 2013-04-30 and proceed to dismiss this appeal with a state cost fixed at Rs. 75,000/= payable by the Appellant to the state.

The case bearing No. C A (PHC) APN 69/2013 also has been filed to canvass the same matter by way of a revision application in which the Appellant had succeeded in obtaining a stay order until final determination of this matter. Thus, this Court makes order that the said revision application bearing C A (PHC) APN 69/2013 be also dismissed and the stay order issued in that case be dissolved forthwith.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL