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

Amarakoon Dissanayake
Wimalasena,
Deputy Principal,
Wellassa Subhagya Special School,
Kubukkana,
Monaragala,
and 12 others.
Intervenient Petitioners

CASE NO: CA/173/2015/WRIT

Vs.

Piyaratne Wickramage,
Manager,
Special Education Development
Services Society,
Wellassa Subhagya Special School,
Kubukkana,
Monaragala,
and 10 others.
Petitioners-Respondents

Secretary,
Ministry of Education,
Sri Jayawardhenapura Kotte,
Battaramulla,
and 6 others.
Respondents-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Asthika Devendra with Kaneel Maddumage for the Intervenient Petitioners.
Shantha Jayawardena for the Petitioners.

Written Submissions:
by the Intervenient Petitioners on 26.06.2018
by the Petitioners-Respondents on 28.06.2018

Decided on: 03.07.2018

Samayawardhena, J.

The 1st petitioner is the manager and the 2nd-11th petitioners are office bearers of the Special Education Development Services Society which was the governing body of the school relevant to this application until the 1st respondent Secretary to the Ministry of Education took over the management of the school from the petitioners and handed it over to the 4th respondent. The petitioners filed this application seeking to quash by way of certiorari the said decision of the 1st respondent and also the decision of the 1st respondent to reinstate the 5th-7th respondent teachers whose services were discontinued by the 1st petitioner earlier.

After filing of this application, the proposed intervenient petitioners made an application to intervene in the action, which was objected to by the petitioners. This order is on that issue.

After the Divisional Bench decision of this Court in *Weerakoon v. Bandaragama Pradeshiya Sabawa*[1] the law is settled that no

[1] [2012] BLR 310

intervention is permitted in writ applications. This decision has consistently been followed by later decisions of this Court.[2]

Counsel for the intervenient petitioners says that those decisions are *per incuriam* as they have been made without regard being had to the Judgment of the Supreme Court in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero*.[3] I am unable to agree. Wijeratne's case (supra) is certainly not an authority to say that intervention is permitted in writ applications. What was considered in that case was the question of making necessary parties to a writ application and not the question of intervention in a pending writ application, which are two different matters. Whilst emphasizing that the Supreme Court did not in that case decide that in writ applications intervention is permitted, I must state with respect that whatever may have been stated on intervention in that case is *obiter dicta* and not *ratio decidendi*. Conversely, the only matter decided by the Divisional Bench of this Court in Weerakoon's case (supra) was intervention and nothing else and that is the *ratio decidendi* of that case.

On that ground alone the application for intervention shall be dismissed.

However, for completeness, let me now consider why the intervenient petitioners say that they shall be allowed to intervene in this action. That is on the basis that they are necessary parties to the action.

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[2] Nadaraja v. Suriyarachchi CA/187/2016/WRIT decided on 05.10.2016, India Meditronic (Pvt) Ltd v. Meditek CA/99/2014/WRIT decided on 26.01.2017, Sri Lanka College of Pediatricians v. Jayasinghe CA/408/2015/WRIT decided on 11.01.2017, Gunapalan v. Minister of Rural Economic Affairs CA/431/2016/WRIT decided on 07.06.2018.

[3] [2011] 2 Sri LR 258

If they are necessary parties, the 5th-7th respondents who are supporting the application of the intervenient petitioners can take up that position, and if the Court holds with the said respondents on that point, the petitioners' application can be dismissed *in limine* without considering the merits.

On what basis do the intervenient petitioners say that they are necessary parties? That is on the basis that they would be affected in the event this Court decides to quash the decision of the 1st respondent to handover the management of the school from the petitioners to the 4th respondent. If I may elaborate on that point, what the intervenient petitioners say is that unlike when it was in the hands of the petitioners, the school under the new management is functioning properly, and grave prejudice would be caused to the intervenient petitioners and the school as a whole if the management again falls back to the petitioners.

If that argument is to be accepted as the base for intervention, not only the thirteen intervenient petitioners who are two deputy principles, six teachers and parents of five students of the school respectively, all the teachers, parents and probably the students are all necessary parties as all of them quite obviously aspire to see smooth functioning of the school for the greater benefit of the students.

I need hardy emphasize that the power to issue writs vested by Article 140 of the Constitution in this Court is a supervisory power and not an appellate jurisdiction (*The Board of Trustees of the Tamil University Movement v. F.N. de Silva*[4]) and in exercising the writ jurisdiction, this Court will not consider whether the decision is right or wrong in the context of the greater benefit of the society

[4] [1981] 1 Sri LR 350)

or otherwise, but whether the decision is lawful or unlawful in the eyes of the law. (*Public Interest Law Foundation v. Central Environment Authority*[5])

The petitioners have made the party whose decision is sought to be quashed and the parties directly affected by the outcome of this case as respondents to this application.

In the facts and circumstances of this case I do not think that the intervenient petitioners are necessary parties to this application.

Application for intervention is refused with costs.

Judge of the Court of Appeal

[5] [2001] 3 Sri LR 330