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

In the matter of an application in the nature of writs of certiorari and mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Wickramathanthrige Viraj
Amanda Wickramasinghe,
Raddella Road,
Manana,
Kalawana.
Petitioner

CASE NO: CA/WRIT/230/2016

Vs.

1. Minister of Education,
   Ministry of Education,
   Isurupaya,
   Battaramulla.
2. Secretary to the Ministry of Education,
   Ministry of Education,
   Isurupaya,
   Battaramulla.

3. Chief Commissioner-Teachers' Education,
   And the other Board Members of the Colleges of Education Board,
   Ministry of Education,
   Isurupaya,
   Battaramulla.
4. Provincial Director of Education, Sabaragamuwa,
   Provincial Education Office,
   Gatangama,
   Ratnapura.
5. Zonal Director of Education,
   Zonal Education Office,
   Nivithigala.
6. The Dean,
   Siyane National College of Education,
   Veyangoda.
7. Administrative Officer,
   Provincial Education Office,
   Gatangama,
   Ratnapura.

   Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Asoke Fernando with A.R.R. Siriwardane for the Petitioner.
Avanthi Weerakoon, S.C., for the Respondents.

Decided on: 08.01.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash by way of a writ of certiorari the decision not to admit the petitioner as a trainee to a National College of Education to follow a Pre-Service Professional Course in Teacher Education 2015; and to issue a writ of mandamus compelling the 1st to 3rd respondents—the Minister of Education, the Secretary to the Ministry of Education and the Chief Commissioner-Teachers' Education of the Ministry of Education—to select the petitioner as a trainee to follow the above course.

The petitioner applied to follow that course in response to the Gazette Notification published in the Gazette No. 1914 dated 08.05.2015 marked P1. There is no dispute that, according to the Gazette Notification, *inter alia*, "*The number of trainees to be admitted in the relevant secretarial division will be decided by considering the teacher carder requirements of each secretarial division in the school system in the year 2018.*"[1] In other words, selections were to be done on "*secretarial division*" basis depending on the availability of teacher vacancies, provided the applicants fulfilled the other requirements stated in the Gazette.

There is no dispute that the petitioner who was a resident of the Kalawana Divisional Secretariat (of Ratnapura District in Sabaragamuwa Province) was called for the interview and was, after the interview, placed in that Divisional Secretariat in the following positions.[2]

[1] Vide 6.1.1 of P1.
[2] Vide P11.

Science-English Medium	1st Place
Science-Sinhala Medium	2nd Place
English Language	2nd Place

However, the petitioner was not selected, as, according to the statement of objections of the 1st-7th respondents, there were no vacancies in the Kalawana Divisional Secretariat for Science in the year 2018, and the one vacancy for English Language was filled from the applicant who secured the 1st place.

I must pause for a while to state that, although the said statement of objections purports to be that of the 1st-7th respondents, as far as I can find, only the 2nd respondent has filed the proxy, and the corresponding affidavit filed by the 2nd respondent speaks only on his behalf and not on behalf of all the respondents.

In order to convince that there were no vacancies for Science and there was only one vacancy for English, the 2nd respondent has tendered R2 and R3. R2 and R3 are undated, unsigned and unauthenticated table charts indicating statistics. They do not bear even a heading to understand what they purport to be. The petitioner does not admit them as they are unauthenticated documents. Despite the fact that the learned counsel for the petitioner raised it in the counter affidavit and also at the argument, the learned State Counsel for the respondent did not think it necessary to tender certified copies of those two documents with the permission of Court. It is clear to me that the figures indicated in those two documents are unreliable. For instance, according to R2, for the year 2018, in the Divisional Secretariat of Kalawana, there were no vacancies for English Language, Science (English Medium) and Science (Sinhala

Medium). However, the applicant who secured the 1st place for English Language had been selected for English irrespective of, according to R2, there were no vacancies.

The petitioner has conversely tendered P6 with her petition to say that the figures contained in R2 and R3 are incorrect, and, in fact, there were 6 vacancies for English, 1 vacancy for Science (English Medium) and 1 vacancy for Science (Sinhala Medium) for the Divisional Secretariat of Kalawana for the year 2018. P6 is an official letter dated 27.04.2016 sent by the 4th respondent-Provincial Director of Education of the Sabaragamuwa Province to the 3rd respondent-Chief Commissioner (Teachers' Education); and the statistics contained in P6 have been received by the former, according to page 2 of P6, from the 5th respondent-Zonal Director of Education of Nivithigala.

There is no doubt that P6 is the central document in this case. Nevertheless, it is regrettable to note that the 2nd respondent has not placed before this Court the clear standpoint which he takes regarding P6. He says different things at different times. Either he is confused or he is trying to confuse the Court.

In paragraph 4(j) of the statement of objections and the corresponding affidavit he states that "*The document marked P6 relates to the vacancies for the intake for year 2016, and the same has been issued after the relevant selections were made*". According to the first part of this paragraph, vacancies stated in P6 relates to the year 2016 and not to the year 2018 and therefore it is totally irrelevant to the matter in issue.[3] Then in the same breath, he states that P6 has been issued after the

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[3] It may be recalled that according to the Gazette P1 selections were to be made according to the vacancies to be created in 2018.

selections for 2018 were made. Once he takes up the position that P6 is relevant to 2016 but not to 2018, I cannot understand why again he states that P6 has been issued after the selections for 2018 were made. That is meaningless.

Then in paragraph 7(h) of the statement of objections and the corresponding affidavit the 2nd respondent states that "*The documents marked as P5 & P6 relates to such current existing vacancies in the school system, in respect of relevant divisional secretariats*". When the 2nd respondent states that P6 relates to the current existing vacancies in the school system, that means P6 relates to the vacancies in 2017 as the statement of objections is dated 30.08.2017.

Then in the written submission the 2nd respondent states that "*the document annexed as P6 has not been called by this Ministry as P6 does not refer to any letter of this Ministry. Further P6 is dated 27.04.2016, whereas the teacher requirement for 2018 was decided in 2015 and the selections were completed in April 2016. As such P6 has been prepared after the selections were done*." By this paragraph, the 2nd respondent has for the first time attempted to attack the credibility of that document, which, in my view, should not have been done. The petitioner, even before the institution of this action, sent copies of P6 together with the Letter of Demand to the respondents including the 2nd respondent, but they opted not to reply.[4] The 2nd respondent did not take up such a position in his statement of objections either. That paragraph further says that P6 is dated 27.04.2016 and selections were completed in April 2016. The 2nd respondent does not exactly say on which date final selections

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[4] Vide P9 and the original registered postal article receipts marked P9A.

were done but make a vague and irresponsible statement without any documentary proof that "*selections were completed in April 2016.*"

It is my considered view that P6 is a genuine document and by no means a biased or incorrect document. There was no reason for the 4th respondent-Provincial Director of Education of the Sabaragamuwa Province to send P6 to the 3rd respondent-Chief Commissioner (Teachers' Education) stating incorrect figures regarding teacher vacancies for the Divisional Secretariat of Kalawana for the year 2018.

The predominant argument of the 2nd respondent that P6 relates to the vacancies in 2016 and not 2018 is in the teeth of the said document because P6 explicitly and clearly states that it relates to the vacancies for the year 2018. That is the first sentence of that letter, and the argument of the respondents that P6 relates to the vacancies in 2016 and not 2018 is simply outrageous.

In the circumstances, I have no hesitation to conclude that the decision not to select the petitioner as a trainee to follow the above-mentioned course for the year 2015 was, to say the least, irrational[5] and also unreasonable according to the standard of unreasonableness set out in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation*[6], which is commonly known as "*Wednesbury unreasonableness*", and therefore the petitioner is entitled to the reliefs—certiorari and mandamus—as prayed for in the prayer to the petition.

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[5] Sesadi Subasinghe (appearing through her next fried) v. Principal, Vishaka Vidyalaya [2011] 1 Sri LR 75 at 79-81, Perera v. Tilakaratne [2011] BLR 218
[6] [1948] 1 KB 223. Vide also Council of Civil Service Unions v. Minister for the Civil Service [1984] 3 All ER 935

However, the learned state counsel for the respondents for the first time at the stage of argument heavily relied on a technical objection to seek dismissal of the petitioner's application *in limine* without going into the merits of the matter. That is, as the 1st-3rd respondents against whom mandamus has been sought are not natural persons, mandamus cannot be issued.

This is different from the objection which the 2nd respondent has taken in paragraph 7(j) of the statement of objections and the corresponding affidavit, which reads as follows:

> *Without prejudice to the foregoing, the application of the petitioner is defective and not in conformity with the Court of Appeal (Appellate Procedure) Rules of 1990 as the petitioner has failed to specify and identify the instant respondents by their names.*

This objection stated in paragraph 7(j) of the objections is manifestly baseless, as I will explain later in this Judgment, the said Rules speak of the exact antithesis, i.e., the Rules say that the petitioner need not specify and identify the respondents by names.

Before I go into detail of this point of law, I must make the following general observation. Disposing of cases on technical grounds is easy and speedy. But that is not what the aggrieved party expects from Court. The aggrieved party wants case to be disposed of on merits rather than on technical grounds. It is generally the wrongdoer who cannot meet the case on merits, tries to cling on technical objections to defeat justice. We must understand that we are working in Courts of Law and not in

Academies of Law[7] and therefore, in my view, we must, as much as possible, try to dispose of cases on merits rather than on high technical grounds. I fully endorse the following observations made by Justice Wigneswaran in *Senanayake v. Siriwardene.*[8]

> *Courts are fast making use of technical grounds and traversing of procedural guidelines to dispose of cases without reaching out to the core of the matters in issue and ascertain the truth to bring justice to the litigants. This tendency is most unfortunate. It could boomerang on the judiciary as well as the existing judicial system.*

On what basis is this popular objection—that mandamus can only be issued against natural persons who hold public office—taken to secure dismissal of writ applications *in limine*? That is on the basis of the decision in *Haniffa v. The Chairman, Urban Council, Nawalapitiya.*[9] This decision has mechanically been followed by a number of later decisions of this Court.[10]

Sometimes I wonder whether Haniffa's case is being so blindly followed by this Court because it was a Supreme Court decision. However, we must understand that when Haniffa's case was decided in 1963, the Supreme Court was not the apex Court and the Court of final appeal was the Judicial Committee of the Privy

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[7] Vellupillai v. The Chairman, Urban District Council (1936) 39 NLR 464 at 465, W.M. Mendis & Co. v. Excise Commissioner [1999] 1 Sri LR 351 at 354-355, Edirisinghe v. Wimalawardena [2002] 3 Sri LR 343, Perera v. Geekiyana [2007] 1 Sri LR 202

[8] [2001] 2 Sri LR 371 at 375

[9] (1963) 66 NLR 48

[10] Vide Mahanayake v. Chairman, Ceylon Petroleum Corporation [2005] 2 Sri LR 193, Dayaratne v. Rajitha Senaratne, Minister of Lands [2006] 1 Sri LR 7 at 17, Martin v. Assistant Commissioner of Agrarian Services [2011] 2 Sri LR 12 and a large number of unreported cases including Palitha Fernando v. The Registrar General, CA/WRIT/43/2012 decided on 07.07.2015, Rizvi v. The Magistrate, Samanthurai, CA/PC/APN/150/2016 decided on 18.05.2017.

Council of the United Kingdom. The Supreme Court at that time was akin to the present Court of Appeal. Final appeal to the Privy Council was abolished only in 1972 on Sri Lanka becoming a Republic.

Is the Judgment in Haniffa's case a well-considered Judgment? This is a nagging question for me. This is the full Judgment delivered by Tambiah J. (with the agreement of Sri Skanda Rajah J.) in Haniffa's case.

> *In this application the petitioner has made the Chairman, Urban Council, Nawalapitiya, the respondent. The petitioner should have named the person against whom a Writ of Mandamus can be issued. The Chairman, Urban Council, Nawalapitiya, is not a juristic person. The Privy Council has pointed out that the juristic person must be created specially by statute (62 N. L. R. 169, 174, and at 182-183; 65 N. L. R. 253). Even if the Chairman, Urban Council, Nawalapitiya, was a juristic person I fail to see how we can issue a Mandamus on a juristic person. A Mandamus can only issue against a natural person, who holds a public office. If such a person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court. Therefore the contention of Counsel for respondent must prevail. The application is dismissed with costs fixed at Rs. 157.50.*

On what basis was it decided in Haniffa's case that mandamus can only be issued against a natural person who holds a public office? That is on the basis that "*If such a [natural] person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court.*"

In the first place, why we are so pessimistic that the orders of this Court will not be obeyed by juristic persons and public officers cited only by official designation? Is that a good ground to refuse mandamus? In my view, it is not. Can a Court, for example, refuse to enter a money decree in a recovery matter on the ground that the defendant has no assets?

We shall give solutions to the existing problems. We shall not refuse to give solutions to the existing problems upon imaginary or hypothetical problems.[11]

The observation in Haniffa's case that "*If such a person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court*" presupposes the position that if mandamus is issued against a juristic person as opposed to a natural person, in case of a violation, the juristic person cannot be dealt with for contempt of Court. This is not correct. When a writ of mandamus is issued against a juristic person the parties who must obey it are those in control of the affairs of the juristic person, and in case of a violation, they can be dealt with for contempt. In *Regent International Hotels Ltd v. Cyril Gardiner*[12], Samarakoon C.J. (with Ismail and Wanasundera JJ agreeing) held:

> *When an injunction is obtained against a juristic person the parties who must obey it are those in control of the affairs of the juristic person. In this case the injunction must necessarily be honoured primarily by the Directors of the Company. They are the persons whom the plaintiff sought*

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[11] Vide Thiagarajah v. Karthigesu (1966) 69 NLR 73 at 78, Somapala v. Wanasundara [2011] BLR 80 at 82

[12] [1978-79-80] 1 Sri LR 278 at 290

> *to bind. There was no requirement in law that they must also be directed. The section requires only a direction on the Corporation and then the officers of the Corporation whose duty it is to do or refrain from doing the acts set out in the order are the persons who are automatically bound by the Enjoining Order. If they fail, they are guilty of contempt and they are the persons to be charged.*

I do not think that public officers will disobey orders of this Court made upon the decisions which they or their predecessors have taken in the discharge of their official duties. They have no personal interest in those decisions. In fact, in practical terms, in almost all the cases where mandamus is sought and allowed, mandamus is ultimately issued not against the public officer who made the decision, but against the incumbent public officer who holds the office. Moreover, in most of the cases, the case itself is instituted against the successor in office as the public officer who made the impugned decision has ceased to hold office by that time. This goes to show the illogicality and fallacy of the argument that when mandamus is sought the public officer shall be cited by name and not by designation only.

When mandamus is sought, public officers are made respondents by their names and designations for otherwise their applications are destined to be dismissed *in limine* on the Judgment of Haniffa's case. Quite often, holders of the public office are changed, and whenever there is such a change, substitution is made and caption is changed adding the successor in office by his name, and notice is then issued upon the successor. This is a never-ending process until the Judgment is delivered. If the holder of the public office is

changed even after the delivery of the Judgment but before giving effect to it, still the successor needs to be substituted as the former has been cited by name.

One of the main causes for laws delays in writ applications, in my view, is this unfounded and irrational objection. Arguments are postponed due to constant changes of holders of the public office. During the period (26.10.2018-13.12.2018) where there was an uncertainty about holders of public office including the ministers and their secretaries, I believe, no application for mandamus could be taken up for argument or issued because of the need to change the caption to fall in line with the dicta in Haniffa's case!

Even though in Haniffa's case it was decided that "*A Mandamus can only issue against a natural person, who holds a public office*", in *Abayadeera v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo*[13], this Court did not agree with it and took the view that mandamus can be issued against any person, corporation, tribunal and public body. Atukorala J. as the President of the Court of Appeal (with Thambiah and Monemalle JJ. concurring) had this to say:[14]

> *A Mandamus can be directed to a Corporation.*
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> *"The Order of Mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty."*

[13] [1983] 2 Sri LR 267
[14] At page 279-280

(Halsbury's Laws of England, 4th Edn. Vol. 1, p. 111, para. 89).

In Pathirana v. Goonesekera 66 NLR 464, 467, Weerasooriya, S.P.J. observed—

"Where officials having a public duty to perform, refuse to perform it, mandamus will lie on the application of a person interested to compel them to do so. The rule would also apply where a public body fails to perform a public duty with which it is charged."

In Abayadeera's case the petitioners sought mandamus against the Vice Chancellor and the Dean of the Faculty of Medicine of the University of Colombo. Whilst dismissing the application on non-joinder of necessary parties, the Court, *inter alia*, held that:[15]

> *In our view the proper body to be directed by a Mandamus, assuring that a writ can go, is the University of Colombo and not the respondents to this application. The University of Colombo therefore is a necessary party and ought to have been made a party to these proceedings. The failure to do so is fatal to the petitioners' application.*

In the recently decided *Suriyarachchi v. Sri Lanka Medical Council*, popularly known as the SAITM case[16], Malalgoda J. as the President of the Court of Appeal (with Thurairaja J. agreeing) rejected the argument of the respondent—Sri Lanka Medical Council that mandamus sought against the said Council cannot be issued as it is not a natural person. In that Judgment the

[15] At page 281

[16] CA/WRIT/187/2016 decided on 31.01.2017

Court referred to the aforementioned Abaydeera's case (supra) and two other unreported Judgments of this Court[17] to conclude that the archaic argument that the mandamus can only be issued against a natural person is no more valid. This is what Malalgoda J. stated:

> *The learned President's Counsel for the 1st respondent whilst relying on the case of Haniffa v. The Chairman Urban Council Nawalapitiya 66 NLR 48 argued that a Mandamus cannot lie against the Sri Lanka Medical Council as it is a juristic person and not a natural person.*
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> *However in this regard this court is mindful of the decision in Abayadeera and 162 others v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo and another [1983] 2 Sri LR 267 where Atukorale J (P/CA) whilst referring to the decision in the Haniffa's case had observed that;*
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> *The law has been stated as follows in paragraph 112, page 127, Vol. 1, of Halsbury's "Laws of England", 4th Edition.*
>
> *"The Order of Mandamus will not be granted against one who is an inferior or ministerial officer bound to obey the orders of a competent authority to compel him to do something which is part of his duty in that capacity."*
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> *"The Vice Chancellor and the Dean of the Faculty of Medicine are officers of the University. The Council is the executive body and governing authority of the University and can exercise and discharge the powers and functions of the University, including the power to hold examinations.*

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[17] Government Registered Medical Officers Association v. Hon. John Seneviratne, Minister of Health, CA/WRIT/1498/2000 decided on 24.02.2004; Ekanayake v. Attorney-General, CA/WRIT/58/2012 decided on 25.04.2016

The Senate has control and general direction of, inter alia, education and examinations. The Vice Chancellor is subject to the directions issued by the Council and it is his duty to give effect to the decisions of the Council and the Senate. The Dean is the Head of a Faculty, and the Faculty which has powers over matters relating to examinations, is subject to the control of the Senate. It seems to us that the respondents are officers within the intendment of the above quotation from Halsbury.

In terms of s. 29 (b) of the Universities Act, the University has the sole power to hold examinations, including the 2nd MBBS examination. The power is reposed in the University. In their own petition, the petitioners state that they are entitled to require the University that it holds the 2nd MBBS examinations for them and others of their batch and those repeating the said examination, and that the University has the obligation to provide such an examination. The petitioners want this obligation of the University enforced through its officers or agents. It appears to us, assuming that the Writ of Mandamus can issue, it must be directed to someone in whom is lodged the power to do the act ordered to be done. What if the University of Colombo takes up the position that it has not been made a party to the application and has not been heard and therefore not bound in any way by these proceedings? In Jayalingam v. The University of Colombo CA application No 415/81, we find that the petitioner in that case, who was an external student, asked for a Writ of Mandamus on the University of Colombo to accept his application and permit him to sit the Final Examination In Laws, on the basis that it was the

University that had the power to conduct external examinations for enabling those who are not students of the University, to obtain degrees of the University.

Learned Counsel for the petitioners relied on the decision in Haniffa v. The Chairman, U.C., Nawalapitiya (supra). In this case, the petitioner made the Chairman, U.C., Nawalapitiya, the respondent to his petition. He was not named. Tambiah, J. pointed out that the Chairman was not a juristic person; that even if the Chairman was a juristic person, since disobedience to Writs of Mandamus is punishable as contempt of Court, a person who asks for a Mandamus to compel a public officer to perform a duty should name the public officer who holds the office. It is in this context, that Tambiah, J. said, "I fail to see how we can issue a Mandamus on a juristic person."……

In Pathirana v. Goonesekera 66 NLR 464, 467, Weerasooriya, S.P.J. observed,

"Where officials having a public duty to perform, refuse to perform it, mandamus will lie on the application of a person interested to compel them to do so. The rule would also apply where a public body fails to perform a public duty with which it is charged."……

Apart from this, the petitioners presented their petition on the basis that the respondents are the persons who are entrusted with the duty of carrying out the obligation which was reposed in the University, to hold the 2nd MBBS examination for them only. At the time they were made respondents, the 1st respondent held the office of Vice Chancellor by virtue of an appointment made by the

Chancellor, and the 2nd respondent held the office of Dean of the Faculty of Medicine, by virtue of her election by the Faculty (Sections 34 (1) and 49 (1) of the University Act). Under the Emergency Regulation, they cease to hold their respective office. The 1st respondent now holds the office of Vice Chancellor on an appointment made by the Minister (Reg. 3(2); the 2nd respondent now holds office as Dean on an appointment made by the Vice Chancellor. It is now sought to compel the 1st respondent to perform a duty on the basis that he has, by reason of Regulation 4 (a), absorbed in himself all the powers and duties of the University. Would not all these result in a change in the character of the petition and in the conversion of the original petition into a petition of another kind? What if the regulations are withdrawn tomorrow? Then the argument of learned Counsel for the petitioners, based on the Emergency Regulations, loses its validity.

In our view the proper body to be directed by a Mandamus, assuring that a writ can go, is the University of Colombo and not the respondents to this application. The University of Colombo therefore is a necessary party and ought to have been made a party to these proceedings. The failure to do so is fatal to the petitioners' application.....”

In the case of the Government Registered Medical Officers Association and another v. Hon. John Seveviratne Minister of Health and four others CA Application 1498/2000 CA minute dated 24.02.2004 K. Sripavan J (as he was then) issued a writ of Mandamus directing the 4th respondent Sri Lanka Medical Council to take steps in terms of law duly recognize the MD degree awarded.

> *Recently in the case of Ekanayake v. Attorney General and two others CA Application 58/2012 (CA minute dated 25.04.2016) this court reaffirm the position taken in the Abeydeera's case referred to above and observed that "the law seems to have moved away. Today a juristic person, no less than a natural person, can be commanded to carry out its public duty" and rejected the argument that Mandamus cannot lie against a public body such as the Sri Lanka Ports Authority.*
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> *When considering the decisions referred to above I see no merit in the said argument raised by the 1st respondent.*

In appeal, on behalf of the Supreme Court, Prasanna Jayawardena J. (with Nalin Perera J. (as His Lordship the present Chief Justice then was) and Wanasundera J. concurring) upheld the Judgment of the Court of Appeal.[18]

There is one other point which goes to the root of the matter, which has escaped the attention of the Court in the above cases (except *Dayaratne v. Rajitha Senaratne*,[19] which I will refer to later). That is, Rule 5 of the Court of Appeal (Appellate Procedure) Rules of 1990, which is directly relevant to the matter under consideration, i.e., how a public officer, when he is made a respondent for acts or omissions done in his official capacity, shall be identified or cited in a writ application.

The Court of Appeal (Appellate Procedure) Rules of 1990 have been made by the Chief Justice together with three Judges of the Supreme Court in accordance with Article 136 of the

[18] Sri Lanka Medical Council v. Suriyarachchi, SC Appeal No. 184/2017, SC SPL LA No. 41/2017 decided on 21.09.2018

[19] [2006] 1 Sri LR 7

Constitution of the Republic and published in the Government Gazette (Extraordinary) No. 645/4 dated 15.01.1991. By the time these Rules were made, the Supreme Court is the highest and final superior Court of the Republic.

It is noteworthy that when Haniffa's case was decided in 1963, the Court of Appeal (Appellate Procedure) Rules of 1990 were non-existent. Hence, after the said Rules came into force[20], the Rules shall invariably take precedence and thereafter there is no room to rely on Haniffa's case to summarily dismiss the applications for mandamus on the purported ground that the party against whom mandamus is sought has not been made a respondent "*by name*".

Rule 5 of the Court of Appeal (Appellate Procedure) Rules of 1990 reads as follows:

> *(1) This rule shall apply to applications under Articles 140 and 141 of the Constitution, in which a public officer has been made a respondent in his official capacity, (whether on account of an act or omission in such official capacity, or to obtain relief against him in such capacity, or otherwise).*
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> *(2) A public officer may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be sufficiently*

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[20] According to the Gazette No. 697 of 10.01.1992 *inter alia* Rule 5 came into force from 27.04.1992, and Rule 5(5) in particular came into force from 31.12.1991.

identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The Court may make such order as it thinks fit in the interest of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any such omission, defect or irregularity.

(4) (a) In respect of an act or omission done in official capacity by a public officer who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being in such office, such successor being made a respondent by reference to his official designation only, in terms of sub-rule (2)

(b) If such an application has been made against a public officer, who has been made a respondent by reference to his official designation (and not by name) in respect of an act or omission in his official capacity, and such public officer ceases to hold such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy or the issue of any notice, unless the Court considers such addition, substitution, proxy or notice to be necessary

in the interest of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of, such original respondent.

(c) Where such an application has been made against a public officer, who has been made a respondent by references to his official designation (and not by name), and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being in such office will be bound by and shall comply with, such order or direction.

(5) The provisions of sub-rules (4)(b) and (4)(c) shall apply to an application under Article 140 and 141 filed before such date as may be specified by the Chief Justice by direction, against a public officer, in respect of an act or omission in his official capacity, even if such public officer is described in the caption both by name and by reference to his official designation.

(6) Nothing in this rule shall be construed as imposing any personal liability upon a public officer in respect of the act or omission of any predecessor in office.

(7) In this rule, "ceases to hold office" means "dies, or retires or resigns from, or in any other manner ceases to hold, office."

According to Rule 5(1), Rule 5 applies to all the writ applications made under Articles 140 and 141 of the Constitution of 1978, as amended, across the board.

Article 140 says that the Court of Appeal has the power *inter alia* to issue "*orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First Instance or tribunal or other institution or any other person*"; and Article 141 *inter alia* says that the Court of Appeal has power to issue "*orders in the nature of writs of habeas corpus*".

Article 140 does not make a distinction between mandamus and other prerogative writs, and nowhere in that Article does it state that mandamus can only be issued against a natural person. According to Article 140, mandamus, like any other prerogative writ, can be issued "*against the judge of any Court of First Instance or tribunal or other institution or any other person*". Similarly, Rule 5 does not make a distinction between mandamus and other writs, and does not state that mandamus can only be issued against a natural person.

In summary, what Rule 5(2) says is that in the caption of such a writ application the public officer can be cited by official designation only and not by name; and if necessary, for clarity, his name can be disclosed in the body of the petition. 5(3) says that no application shall be dismissed due to misdescription of such public officer—it is a curable defect. 5(4) says that if such a public officer has ceased to hold office (a) at the time of filing the application, (b) during the pendency of such application and (c) after the delivery of the order but before complying with it, the same can be filed and proceeded with against his successor by official designation.

Dayaratne v. Rajitha Senaratne[21] may be the first case Rule 5 was referred to in an application for writ of mandamus. In that case, it is important to understand that, both the respondents against whom mandamus was sought had been cited both by names and official designations. Pending determination of the case both of them ceased to hold office. Nonetheless, even at the time of argument, the petitioner had not taken steps to add or substitute the successors in office in order to proceed with the application. When this matter was *inter alia* raised as a preliminary objection, the petitioner relied on Rule 5(4)(b) read with 5(5) to argue that the application can be proceeded with against their successors for the time being in office without addition or substitution. This argument was rightly rejected by Marsoof J. as the President of the Court of Appeal (with Sri Skandarajah J. agreeing) on the basis that Rule 5(4)(b) read with 5(5) was inapplicable in this instance as this was a case filed against the public officers both by name and designation, and as such, for the said Rules to be applicable, the case should have been filed before the specified date nominated by the Chief Justice, which, in this instance, was 31.12.1991[22], but this case had been filed long after the said specified date. That finding is in complete consonance with Rule 5. Rule 5 applies in applications where a public officer is made a respondent in his official designations only and not by name. The only exception is Rule 5(5) which is applicable only in respect of applications filed before 31.12.1991. The reference to Haniffa's case by Marsoof J.[23] is clearly *obiter dicta*. This Judgment of Marsoof J.

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[21] [2006] 1 Sri LR 7
[22] Vide Gazette No.697 of 10.01.1992
[23] At page 17

is not an authority to say that writ of mandamus is an exception to Rule 5.

It is a myth that mandamus can only be issued against natural persons. Mandamus, like any other prerogative writ, can be issued against natural, juristic or non-juristic persons including tribunals, corporations, public bodies, public officials identified by their official designations provided the other requirements to issue mandamus are fulfilled.

I issue both the writs of certiorari and mandamus sought by the petitioner as prayed for in paragraphs (c) and (d) of the prayer to the petition. The 3rd respondent shall pay a sum of Rs. 100,000/= as costs of the action to the petitioner.

Before I part with this Judgment, I might remind that, in terms of Rule 5(3):

> *No (writ) application shall be dismissed on account of any omission, defect or irregularity in regard to the name designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The Court may make such order as it thinks fit in the interest of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any such omission, defect or irregularity.*

Hence, to minimize laws delays, in the pending mandamus applications where respondent public officers have been cited both by name and official designation, with the consent of the counsel for the opposite party, amended captions can be filed

citing the said respondents by official designations only. If it is not done, the successors in office shall be substituted when the respondents cited both by names and designations cease to hold office.

Judge of the Court of Appeal