

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

In the matter of an application for Mandates in the nature of Writs of Certiorari, Mandamus & Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 151/19

1. Asanga Seneviratne
2. Alana Seneviratne (minor)

Both of No. 6/1,
Independence Avenue, Colombo 07.

PETITIONERS

Vs.

1. Harin Fernando, MP,
Hon. Minister of Sports
2. Chulananda Perera
Secretary, Ministry of Sports

Both of:
Ministry of Telecommunication,
Foreign Employment & Sports,
09, Philip Gunawardene Road,
Colombo 07.

3. Lt. Gen. N. U. M. M. W Senanayake
Chairman
4. Suresh Subramaniam – Member
5. Maxwell De Silva – Member

6. Asiri Iddamalgoda – Member

All of:

The National Selections Committee,
45, Sir Marcus Fernando Mawatha,
Colombo 07.

7. Iqbal Bin-Ishque – President

8. Suresh Subramaniam - Vice President

9. Prageeth Gunasekara – Secretary

10. Arjun Fernando
Chairman – Selection Committee.

11. Sriya Munasinghe – Member

12. Anura Seneviratne – Member

13. Senaka Kumara – Member

14. Arun Dias Bandaranayake –
Member

All of:

Sri Lanka Tennis Association,
45, Sir Marcus Fernando Mawatha,
Colombo 07.

15. Oneli Perera

16. Anjalika Kurera

17. Neyara Weerawansa

18. Tania Doloswala

19. Ashanthi Senviratne

20. Tiara Beneraegama
21. Denuli Jayakodi
22. Sethmi Sumanaweera

All C/o:

Sri Lanka Tennis Association,
45, Sir Marcus Fernando Mawatha,
Colombo 07.

RESPONDENTS

Before: Kumudini Wickremasinghe, J
Arjuna Obeyesekere, J

Counsel: Chrishmal Warnasuriya with Prabuddha Hettiarachchi and Jayathu Wickramasuriya for the Petitioners

Sumathi Dharmawardena, Senior Deputy Solicitor General with Manohara Jayasinghe, Senior State Counsel for the 1st and 2nd Respondents

Ruwantha Cooray for the 7th Respondent

Hejaaz Hisbullah for the 10th – 12th Respondents

Harsha Fernando with Ruvendra Weerasinghe for the 17th Respondent

Shehan De Silva for the 18th Respondent

Supported on: 5th April 2019

Written Submissions: Tendered on behalf of the Petitioner, the 1st, 2nd, 7th, 10th – 12th, 15th and 17th Respondents on 8th April 2019

Decided on: 10th April 2019

Arjuna Obeyesekere, J

The Petitioners have filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the selection criteria annexed to the petition marked '**P11**';
- b) A Writ of Certiorari to quash the selection of the national contingent for the Junior Federation Cup Tennis Tournament that is scheduled to be held in Thailand from 15th – 18th April 2019;
- c) A Writ of Mandamus to formulate a transparent and acceptable selection criteria for the selections that are to be made by the Sri Lanka Tennis Association;
- d) An interim order suspending any further selections for the National contingent for the Junior Federation Cup Tennis Tournament that is scheduled to be held from 15th – 18th April 2019
- e) An interim order restraining the 7th – 14th Respondents from any further selections for the National contingent for the Junior Federation Cup Tennis Tournament that is scheduled to be held from 15th – 18th April 2019, based on the purported selection criteria marked '**P11**'.

This Court must observe at the outset that although the Petitioners have claimed that, 'to date the said trials for Junior Fed Cup has not been conducted

by the Respondents',¹ the trials to select a girls team to participate at the Junior Federation Cup Tennis Tournament that is scheduled to be held in Thailand from 15th – 18th April 2019 (the said Tournament) have been conducted and concluded prior to 25th February 2019 by the Sri Lanka Tennis Association, as borne out by the document marked '**P14**'.² In fact, the submissions that were made by all Counsel were on the basis that trials had been conducted and concluded without the participation of the 2nd Petitioner.

Although the Petitioner has not provided this Court with the results of the said trials, this Court has been informed that the 17th Respondent won all her matches against the other competitors during the said trials. '**P14**' confirms that the Selection Committee has already submitted the "team's nomination to the Ministry of Sports based on results of the trials concluded". The learned Senior Deputy Solicitor General for the 1st and 2nd Respondents informed this Court while this application was being supported that the said selection has been confirmed by the Minister of Sports, as required by Section 40 of the Sports Law No. 25 of 1973, as amended.³ The question of making 'any further selections' does not therefore arise and in these circumstances, the necessity for this Court to consider the interim orders prayed for does not arise.

The only issue that remains for the consideration of this Court is whether notices should be issued on the Respondents in terms of the Court of Appeal (Appellate Procedure) Rules, 1990.

¹ Paragraph 15 of the petition. This has been repeated in paragraph 7 of 'P9', which is a letter dated 23rd March 2019 is sent on behalf of the Petitioners to the 1st Respondent.

² 'P14' is an email sent by the 10th Respondent to the father of the 17th Respondent.

³ Section 40 reads as follows: "The Minister may regulate and control, by regulation, the participation in sports either in Sri Lanka or abroad, of individual participants or teams of players purporting to represent Sri Lanka." The decision of the Minister nullifies the decision in 'P13' to reject the selection of the 17th Respondent.

This Court must also observe that except the Writ of Mandamus in paragraph c(i) of the prayer to the petition, the rest of the relief has been sought against the National Selection Committee for Tennis and/or the Selection Committee of the Sri Lanka Tennis Association. Although the Sri Lanka Tennis Association is the National body for tennis in Sri Lanka and has been registered in terms of the Sports Law, it does not appear that the Petitioners have established a link between the purported actions and/or inactions on the part of the 3rd – 14th Respondents and any provision of the Sports Law or the regulations made thereunder. However, this Court shall not consider at this stage whether this Court has the jurisdiction to consider the reliefs prayed for against the 3rd – 14th Respondents as this matter was not addressed by the learned Counsel during the course of their submissions.

The dispute that gives rise to this application is the alleged failure by the 7th – 14th Respondents to permit the 2nd Petitioner to participate at the trials that were conducted to select the girls team to represent Sri Lanka at the aforementioned Tournament, with the 1st Petitioner claiming that the said failure is unreasonable and malicious.

The facts of this matter very briefly are as follows.

The 1st Petitioner is the father of the 2nd Petitioner, who has participated and won many Doubles events at local and international Tennis tournaments. By an email dated 11th February 2019 annexed to the petition marked 'P4', one Zareena Saleem had requested the 1st Petitioner and several others to inform, on or before 13th February 2019, the availability of their daughters to play trials

from 18th February 2019 onwards in order to select the team that is to participate at the said Tournament.

The 1st Petitioner, by an email sent on 12th February 2019 annexed to the petition marked 'P5', informed the 10th Respondent who is also the Chairman of the Selection Committee of the Sri Lanka Tennis Association that he is objecting to trials being called at short notice as the 2nd Petitioner was participating in the Clay Court tournament conducted by the Sinhalese Sports Club and that requesting players to adapt to 'hard' courts within 2-3 days is unacceptable. This Court must observe at this stage that the Petitioners have not disclosed the days on which the SSC Tournament was due to conclude or the days on which the 2nd Petitioner was to take part. The 1st Petitioner had stated further that the 2nd Petitioner "is also in the under 20 National Netball pool and the final trials are during this period. They have morning and evening training and trial matches start on 17th".

By an email dated 13th February 2019 annexed to the petition marked 'P6', the 10th Respondent had responded to 'P5', explaining as follows:

"Sri Lanka junior tennis teams are taking part in international team competitions from early March onwards and we therefore scheduled trials for Junior Davis Cup (completed), World Junior Boys (will be completed tomorrow), World Junior Girls (started on 11 Feb to be completed by Feb 17) and now Junior Fed Cup (from 18 Feb onwards subject to Court availability..."

This is the reason given by the 10th Respondent for the trials to be scheduled from 18th February 2019 onwards, as well as why the trials cannot be held in the first week of March, as proposed by the 1st Petitioner. The most important point made in 'P6', especially as the team was to take part in an international team event, is that the above scheduling of dates was done as "the Team captain and coach must have sufficient time to prepare the team for the respective competition".

The 1st Petitioner, who had replied 'P6' by his email dated 14th February 2019, annexed to the petition marked 'P7' had raised issue with players who have not played a tournament in Sri Lanka being permitted to participate in the trials as opposed to the 2nd Petitioner who had not only taken part in many tournaments held in Sri Lanka but won several of them. However, the issue that the 1st Petitioner was required to address at that stage was not whether others could take part in the trials but importantly, whether the 2nd Petitioner was agreeable to take part in the trials. In this regard, this Court observes that the 1st Petitioner had reiterated in 'P7' that the 2nd Petitioner is due to take part in National netball trials during the period that the tennis trials were proposed to be held.

This Court will now consider whether the decision of the 10th Respondent in 'P6' to schedule the trials for a date after February 18 and, the refusal to postpone the trials, is unreasonable. This Court must observe that all parties are in agreement that trials had to be conducted in order to select the team.⁴ Thus, non participation at the trials, for whatever reason results in the particular player being disqualified from being considered for selection.

⁴ The 16th Respondent, who is the current Girls Under 16 National Champion and with an International Tennis Federation ranking in the top 1000, has been given direct entry to the team.

Although the 1st Petitioner sought a postponement of the trials on account of it being difficult to adapt from one surface to another without sufficient time, this Court observes that this issue may have applied to the other players, as well. Thus, this Court does not consider that to be a sufficient reason to postpone the trials. What is significant however is that the request for a postponement of the trials seems to have been more connected to the 2nd Petitioner being part of the National Netball Pool and practices taking place in the same period that the said trials were to take place.⁵ A postponement of the trials on this account would have been unfair by the other participants. This Court has examined the reasons given in 'P6', referred to earlier, as to why the trials were scheduled from 18th February 2019 onwards and why the trials could not be postponed to early March 2019 as proposed by the 1st Petitioner and is of the view that the said reasons cannot be considered as being unreasonable or irrational.

In terms of Section 30 of the Sports Law, "any person who is aggrieved by any decision or action of a registered National Association of Sports may, in accordance with the succeeding provisions of this Law, appeal to the Minister against such decision or action and the Minister's decision on such appeal shall be final and conclusive and shall not be questioned in any court of law." The 1st Petitioner states that by a letter dated 22nd February 2019 annexed to the petition marked 'P8', he made a complaint to the 2nd Respondent, the Secretary, Ministry of Sports primarily with regard to permission being granted to the 17th Respondent to take part in the trials⁶ as well as the refusal by the 10th Respondent to postpone the trials. The learned Senior Deputy Solicitor

⁵ Paragraph 4(d) of 'P9' reads as follows: "Ms. Seneviratne being in the Under 20 National Netball pool has two training sessions per day and trial matches to be started by 17th February 2019..."

⁶ Paragraph 9 of the letter 'P9'.

General informed this Court that no action was taken on this letter as the 2nd Respondent does not have the power to inquire into the matters set out therein. However, this Court observes from the letter dated 27th March 2019 annexed to the petition marked 'P13' issued by the Director General of Sports to the Secretary of the Sri Lanka Tennis Association that a complaint of the 1st Petitioner has been inquired into and a decision has been taken *inter alia* that players who do not take part in trials should not be permitted to take part in the said tournament.⁷ This decision, which has not been challenged in these proceedings, means that the 2nd Petitioner cannot be in contention for selection to represent Sri Lanka at the said Tournament.

Be that as it may, the Petitioners, acting through their Attorneys-at-Law have filed an appeal marked 'P9' with the Minister of Sports in terms of Section 30 of the Sports Law. The appeal relating to the non-selection of the 2nd Petitioner now stands decided in view of the submission of the learned Senior Deputy Solicitor General that the 1st Respondent has confirmed the selection of the team that is to participate at the said Tournament.

This Court observes that even though general issues relating to selection far wider than the non-selection of the 2nd Petitioner has been raised by the 1st Petitioner in 'P9', there does not appear to have been an adjudication of these matters by the 1st Respondent. This Court observes further that in terms of Regulation 7(vi) of the National Association of Sports Regulations No. 1 of 2016, annexed to the petition marked 'P12',⁸ it is the duty of the Sri Lanka Tennis Association to formulate a transparent selection criteria to select teams

⁷ The selection of the 17th Respondent had also been quashed by this letter. However, as informed by the learned Senior Deputy Solicitor General, the Minister of Sports has permitted the 17th Respondent to take part in the said Tournament, thereby over-ruling that part of 'P13'.

⁸ Published in Gazette Extraordinary No. 1990/23 dated 27th October 2016.

to represent the country in international or regional sports events in coordination *inter alia* with the Director General of Sports. This Court also notes that conflicting submissions have been made with regard to the authenticity of the Selection Criteria annexed to the petition marked 'P10' and 'P11'. Taking into consideration all of the above, this Court is of the view that the 1st Respondent must consider the general issues relating to selection raised by the 1st Petitioner in 'P9' in the context of the Selection criteria that has now been proposed by the Sri Lanka Tennis Association and, where necessary discuss with the relevant stakeholders and issue directions in terms of the law to ensure that selections to represent Sri Lanka are carried out in a transparent and fair manner.

In the said circumstances and subject to the above, this Court does not see any legal basis to issue notices to the Respondents. The application is accordingly dismissed, without costs.

Judge of the Court of Appeal

Kumudini Wickremasinghe, J

I agree

Judge of the Court of Appeal