

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

Don Jagath Prasad Kumara
Wijesinghe,
No. 175,
Bellanwila,
Boralesgamuwa.
Petitioner

CASE NO: CA/WRIT/198/2015

Vs.

Bandula Chandrasekara,
Chairman,
Lanka Electricity Company
(Private) Limited (LECO),
E.H. Cooray Building,
No. 411,
Galle Road,
Colombo 3.
And 9 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: D.H. Siriwardena for the Petitioner.
Vikum De Abrew, Senior DSG for the
Respondents.

Decided on: 02.05.2019

Samayawardhena, J.

The petitioner and the 9th respondents are siblings. After a partition action, their ancestral home has fallen into the lots allotted to both of them. The electricity meter had been in the part of the house which went to the petitioner. As seen from 5R1, the electricity connection has been given in the name of the 9th respondent. 5R1 dated 24.03.1986 is a legally enforceable Agreement entered into between the 5th respondent-Lanka Electricity Company (Private) Limited (LECO) and the 9th respondent. In the meantime, as seen from 5R2 dated 11.03.2014, upon a written request made by the petitioner from the LECO, the name of the Electricity Account has been changed from the 9th respondent to the petitioner. In 5R2 the petitioner has specifically stated that, once the name change is made, if his brother-the 9th respondent objects to it, he is aware that the LECO would again change it in the name of his brother, and he has no objection to it. By 5R5 and 5R6 the 9th respondent has objected to it, and therefore, the LECO has changed it in the name of his brother-the 9th respondent. This has been ratified by the Public Utilities Commission of Sri Lanka. The Public Utilities Commission of Sri Lanka has informed it to the petitioner by 5R10 and the LECO has informed it to the petitioner by P23.

The petitioner has filed this application seeking to quash P23 by way of writ of certiorari and to compel the LECO by way of writ of mandamus to change the Electricity Account in his name.

This application is *ex facie* devoid of any merit. The matters heavily rely on by the petitioner such as the assessment rates to the house are paid by the petitioner, the part of the house which went to the 9th respondent's lot after the partition case is inhabitable are beside the point. The central document in this case is the Agreement marked 5R1. The LECO has done nothing illegal by changing the name of the Account to the former position upon objections being received from the former owner. As seen from 5R2, this is not at all an arbitrary decision. Hence P23 is entirely in order. The Court has no right to force the LECO to change the name of the Electricity Account in violation of the said Agreement.

There is absolutely no public duty on the part of the LECO to change the name of the Account as the petitioner urges to do. Nor has the petitioner any legal right to insist on the LECO to do so.

Writ will not issue for private purposes. This is a private dispute between two brothers arising out of an Agreement entered into between the LECO and the petitioner's brother marked 5R1 and the subsequent arrangement made by LECO on the promise given by the petitioner through 5R2.

In *Weligama Multi Co-operative Society v. Daluwatte [1984] 1 Sri LR 195* at 199 a Full Bench of the Supreme Court stated:

Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest. To be enforceable by Mandamus the duty to

be performed must be of a public nature and not of merely private character.

The Writ will not issue for private purposes, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by Mandamus which is confined to public duties and is not granted where there are other adequate remedies.

In *De Silva v. Sri Lanka Telecom* [1995] 2 Sri LR 38 the telephone of the petitioner was disconnected as the bills were not settled. The petitioner sought a writ of certiorari to quash the said decision and a mandamus on the Director of Communications to restore the facility. A preliminary objection was taken to the maintainability of the application on the ground that as there is a contractual relationship between the parties writ does not lie. Whilst upholding that objection and dismissing the application *in limine* this Court at page 41 held that:

Learned Counsel for the petitioner submitted that the agreement to provide a telephone line is one entered into in pursuance of a statutory duty to provide telephone facilities and this application does not fall within the province of pure contract but within the realm of the statutory function of a statutory body. I am unable to accept this submission. The decision sought to be quashed is a decision founded purely on contract. The telephone was disconnected for failure to settle the outstanding bills as provided for in the agreement. This was a decision taken wholly within the context of the

contractual relationship between the parties and not in the exercise of the powers of a public authority. Neither Certiorari nor Mandamus will lie to remedy the grievances arising from an alleged breach of contract.

I unhesitatingly dismiss the application of the petitioner. The petitioner shall pay a sum of Rs.50,000/= as costs to the State.

Judge of the Court of Appeal