

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

Koralagamage Sydney Suranimala
Kularatne,
No. 1/15, Kandy Road,
Dalugama, Kelaniya.
And two Others
Petitioners

CASE NO: CA/WRIT/87/2013

Vs.

Salinda Dissanayake,
Minister of Indigenous Medicine,
Ministry of Indigenous Medicine,
Ayurvedha Teaching Hospital
Complex, No. 325,
N.M. Perera Mawatha,
Colombo.
And 10 Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Sanath Weerasinghe for the Petitioner.
Vikum de Abrew, Senior DSG for the
Respondents.
Decided on: 15.05.2019

Samayawardhena, J.

The petitioners who are senior practitioners of the Homeopathic Council of Sri Lanka filed this application mainly against the 1st respondent (Minister of Indigenous Medicine), the 2nd respondent (Secretary thereof), the 4th respondent (Secretary, Homeopathic Council), the 5th respondent (Advisor to Minister of Indigenous Medicine), and the 10th respondent (Homeopathy Interim Control Committee) seeking to quash by writ of certiorari the decision to call for applications for registration of new homeopathy practitioners as reflected in P8, and to prevent by writ of prohibition from registering new homoeopathy practitioners usurping powers of the Homoeopathic Council.

Homeopathic Council of Sri Lanka is a statutory body created by Homeopathy Act, No.7 of 1970. The members to the council are elected, according to the Act, by the homeopathic practitioners registered under the said Act. The Minister has, on or about 20.10.2009, removed the elected members to the Council and appointed new members on his own choice in contravention of the Act. The Supreme Court in the Fundamental Right Application filed by the removed members (SC/FR/891/2009 SC Minutes dated 31.03.2016) held that the said decision of the Minister is null and void. Pending the said Fundamental Right Application, the Minister has appointed an Interim Committee to do the work of the Council when there is no provision in the Act empowering the Minister to do so. It is the position of the Minister that the said Interim Committee was appointed with the concurrence of the Cabinet of Ministers and tenders R14A in support. By looking at R14A Cabinet Decision, it is clear that the Cabinet has not consented for such an Interim Committee

being appointed. It says, “*after discussion, it was decided that action should be taken by the Ministry on this matter in consultation with the Hon. Attorney General.*” There is no proof such an advice was given by the Attorney General. According to P8, it is this Interim Committee which has called for the registration of new homoeopathy practitioners.

Appointment of the Interim Committee by the Minister is *ultra vires*. Then the decisions made by the purported Interim Committee are null and void *ab initio*.

Once the Supreme Court in the aforesaid fundamental right application decided that the removal of the legally elected members of the Council and appointment of the new members to the Council are null and void, everything which flow from those bad decisions also become null and void. One such was the appointment of an Interim Committee.

Lord Denning in *Macfoy v. United Africa Co. Ltd.* [1961] 3 ALL ER 1169 at 1172 stated thus:

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void. Without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

This passage was quoted with approval by G.P.S. de Silva J. (later C.J.) in *Rajakulendran v. Wijesundera* [1982] 1 Sri Kantha LR 164 at 168-169.

This principle was applied by the Supreme Court in the recent case of *Padmal Ariyasiri Mendis v. Vijith Abraham de Silva* [2016] BLR 69 at 73 where it was held that:

The deed No. 1551 is void ab initio and therefore the title does not pass from the plaintiff to any other person. Therefore deed which was executed thereafter, i.e. deed No. 976 is also void ab initio.

Learned Senior DSG for the respondents in his written submissions seeks to dismiss the petitioners' application on futility on the basis that five new homeopathy practitioners were registered in response to the advertisement P8 pending determination of this application. That registration of five new members is on the above-mentioned principle of law is a nullity.

I must also add that it is well settled law that rights of the parties shall be determined at the time of the institution of the action. (*Abayadeera v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo* [1983] 2 Sri LR 267 at 280, *Kalamazoo Industries Ltd v. Minister of Labour & Vocational Training* [1998] 1 Sri LR 235 at 248, *Talagune v. De Livera* [1997] 1 Sri LR 253 at 255, *Kalamazoo Industries Ltd v. Minister of Labour and Vocational Training* [1998] 1 Sri LR 235 at 248, *Lalwani v. Indian Overseas Bank* [1998] 3 Sri LR 197 at 198)

Reliefs prayed for in the prayer to the petition are granted.

Application is allowed with costs.

Judge of the Court of Appeal